



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

This document has been electronically  
approved and signed.

**MEMORANDUM**

**DATE:** March 14, 2013

**TO :** The Commission  
Todd A. Stevenson, Secretary

**THROUGH:** Stephanie Tsacoumis, General Counsel  
Patricia M. Pollitzer, Assistant General Counsel, RAD

**FROM :** Mary A. House, General Attorney, RAD

**SUBJECT :** Revisions to Draft Proposed Rule for Amendment to 16 C.F.R. part 1110

On December 5, 2012, the Office of the General Counsel (OGC) provided the Commission with a draft proposed rule that would amend the rule on “Certificates of Compliance,” codified at 16 C.F.R. part 1110 (the 1110 rule). Staff is providing a revised draft proposed rule (a redline version and a clean version) with the two revisions described below.

(1) At the December 12, 2012 hearing, an issue arose concerning whether a common carrier of imported products could ever be responsible for certifying a consumer product as required in the 1110 rule. To clarify this issue, staff has added a definition of “importer” to proposed § 1110.3(b)(13) and updated language in the preamble that provides more information on when a carrier may be responsible for certifying a consumer product.

(2) Staff has prepared a revised recordkeeping burden analysis for the 1110 rule under the Paperwork Reduction Act of 1995 (PRA). The recordkeeping burden relates to the creation and third party disclosure of certificates for non-children’s products (GCCs) and for the third party disclosure of certificates for children’s products (CPCs). Because the Commission has not provided a burden analysis for creation of GCCs to OMB previously, the revised PRA discussion in this draft proposed rule includes that analysis.

Also attached are two memoranda from the Directorate for Economic Analysis. These memoranda provide the analysis upon which the revisions to the PRA section in the draft proposed rule are based.

**Redline of Staff's Revisions to Draft Proposed Rule Amending 16 CFR part 1110**

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Billing Code 6355-01-P

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1110**

**[CPSC Docket No. CPSC-2012-xxxx]**

**Amendment to Regulation on Certificates of Compliance**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Consumer Product Safety Commission (Commission, CPSC, or we) is issuing a proposed rule that would amend the existing regulation on certificates of compliance at 16 CFR part 1110. The proposed amendment is intended to update the rule to clarify requirements in light of new regulations on testing and labeling pertaining to product certification, and component part testing, codified at 16 CFR parts 1107 and 1109, respectively. The proposed amendment would, among other things, use newly defined terms such as “finished product certificate” and “component part certificate”; require that regulated finished products that are privately labeled be certified by the private labeler for products manufactured in the United States; clarify requirements for the form, content, and availability of certificates of compliance; and require that importers of regulated finished products manufactured outside of the United States file the required certificate electronically with U.S. Customs and Border Protection (CBP) at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

**DATES:** Written comments must be received by [INSERT DATE THAT IS 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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**ADDRESSES:** You may submit comments, identified by Docket No. [insert CPSC docket number], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through [www.regulations.gov](http://www.regulations.gov).

Written Submissions

Submit written submissions in the following way:

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

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to:

<http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

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

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**FOR FURTHER INFORMATION CONTACT:** Carol Cave, Director, Office of Import Surveillance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; ccave@cpsc.gov; telephone (301) 504-7677.

### SUPPLEMENTARY INFORMATION:

#### I. INTRODUCTION

##### A. *Background on 16 CFR part 1110*

The Commission promulgated a direct final rule on “certificates of compliance,” also referred to as “certificates,” on November 18, 2008 (73 FR 68328), which is codified at 16 CFR part 1110 (the existing 1110 rule). The Commission published the existing 1110 rule shortly after the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted on August 14, 2008, to clarify for stakeholders the certificate requirements imposed by the newly amended section 14(a) of the Consumer Product Safety Act (CPSA) and section 14(g) of the CPSA. The CPSIA amended section 14(a) of the CPSA to require that manufacturers and private labelers of children’s products subject to a children’s product safety rule certify such products as compliant based on testing conducted by a third party conformity assessment body, and that manufacturers and private labelers of regulated non-children’s products certify compliance based on a test of each product, or on a reasonable testing program. Section 14(g) of the CPSA states requirements for certificate content. Thus, the existing part 1110 rule sets forth certificate requirements, such as:

- limiting the parties who must issue a certificate to the importer, for products manufactured outside the United States, and, in the case of domestically manufactured products, to the manufacturer;
- allowing certificates to be in hard copy or electronic form;
- clarifying requirements for an electronic form of certificate; and
- providing certificate content requirements.

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*B. Why is the Commission proposing to amend the 1110 rule now?*

The Commission is proposing to amend the 1110 rule now to clarify certificate requirements in light of new rules related to testing and certification of consumer products and to implement section 14(g)(4) of the CPSA, which allows the Commission, in consultation with the Commissioner of Customs, to require that certificates for imported products be filed electronically with CBP up to 24 hours before arrival of an imported product.

Since the existing 1110 rule was promulgated in 2008, the Commission has been working diligently to implement the requirements of the CPSIA, including the requirements in section 14 of the CPSA for testing, labeling, and certification of consumer products. Recently, the Commission issued two key rules: (1) *Testing and Labeling Pertaining to Product Certification*, 16 CFR part 1107 (the Testing Rule or the 1107 rule), and (2) *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements*, 16 CFR part 1109 (the Component Part Rule or the 1109 rule). Both rules were published in the *Federal Register* on November 8, 2011 (76 FR 69482 & 76 FR 69546, respectively). The Testing Rule sets forth requirements for the testing, certification, and labeling of regulated children's products. It becomes effective on February 8, 2013. The Component Part Rule, which allows for component part testing and certification to meet testing and certification requirements, became effective on December 8, 2011. Amending the existing 1110 rule would allow the Commission to define and use new terms introduced by the 1107 and 1109 rules, and to describe and explain how certificates must be integrated and consistent with these new rules.

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*C. What statutory requirements apply to certificates of compliance?*

This section of the preamble describes the statutory requirements that apply to certificates and the Commission's authority to implement such requirements. Section 14 (a)(1) of the CPSA, as amended by the CPSIA, requires that except for certificates that apply to children's products, every manufacturer, or private labeler if there is one, of a consumer product that is subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission that is imported for consumption or warehousing, or distributed in commerce, must issue a certificate. Section 3(a)(8) of the CPSA defines "distribute in commerce" to mean "to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." For non-children's products, the certificate must be based on a test of each product or on a reasonable testing program. The certificate must specify each applicable rule, ban, standard, or regulation enforced by the Commission and certify that the product complies with all such listed rules.

Similarly, section 14(a)(2) of the CPSA requires that every manufacturer or private labeler, if there is one, of a children's product that is subject to a children's product safety rule must have the children's product tested by a third party conformity assessment body, and based on such testing, certify that the product is compliant with all applicable rules. Before importing such children's products for consumption or warehousing, or before distributing such children's products in commerce, manufacturers or private labelers must submit sufficient samples of the children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body, whose accreditation has been accepted by the Commission to perform such testing, to be tested for compliance with all applicable children's product safety rules. The manufacturer or private labeler must issue a certificate or certificates

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based on such testing, certifying that the children's products covered by the certificate(s) comply with all applicable children's product safety rules. Section 14(a)(2)(B) of the CPSA states that a certificate can be issued for each applicable children's product safety rule, or one certificate for the product can combine all applicable rules, by listing each applicable children's product safety rule separately and certifying compliance with all of them.

Section 3(a)(11) of the CPSA defines the term "manufacturer" as any person who manufactures *or imports* a consumer product. As such, any statutory obligation assigned to a manufacturer, by definition, applies to an importer. Thus, as written, the statutory obligation to issue a certificate for children's and non-children's products falls to the manufacturer, importer, or the private labeler of a consumer product, if the product is privately labeled under section 3(a)(12) of the CPSA. Section 14(a)(4) of the CPSA provides that in the case of a consumer product that has more than one manufacturer or private labeler, the Commission may, by rule, designate which person is responsible for issuing a certificate, and exempt all other persons from issuing certificates.

Section 14(g) of the CPSA contains certificate requirements. Section 14(g)(1) of the CPSA requires that a certificate shall identify the manufacturer (including importer) or private labeler issuing the certificate, as well as any third party conformity assessment body on whose testing the certificate depends. At a minimum, certificates are required to include: the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. Additionally, section 14(g)(2) of the CPSA requires that every certificate be legible and that all contents must be in English. Contents may also be in any other language. Moreover, pursuant to section 14(g)(3) of the CPSA, certificates must

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accompany the applicable product or shipment of products covered by the certificate, and a copy of the certificate must be furnished to each distributor or retailer of the product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of the certificate to the Commission. Finally, section 14(g)(4) of the CPSA states that in consultation with the Commissioner of Customs, the CPSC may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of such certificate to the Commission or to CBP.

In addition to the statutory authority to require certificates for regulated products, as outlined in sections 14(a) and (g) of the CPSA, the Commission has general implementing authority with regard to certificates, pursuant to section 3 of the CPSIA, which provides: “[t]he Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.”

## II. Description of the Proposed Rule

Because of the number of proposed changes, the Commission intends to strike the existing 1110 rule in its entirety and replace it with the proposed rule set forth below.

### A. *What Is the Purpose and Scope of this Part? – Proposed § 1110.1*

Proposed § 1110.1 would continue to describe the purpose of part 1110 but does so in language that is clearer and more simple. The changes also clarify which provisions of this part apply to component part certificates. Existing § 1110.1(a)(1) states that the purpose of the rule is to “limit” the entities required to issue certificates because the existing rule does not cover private labelers. The proposed rule would increase the number of entities responsible for issuing certificates and therefore would state that the purpose is to “specify” the entities that must issue

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certificates. The proposed rule also would implement section 14(g)(4) and require certificates for imported products to be filed electronically with CBP. Proposed § 1110.1(b) would reflect this change.

### *B. What Definitions Apply to this Part? – Proposed § 1110.3*

Existing § 1110.3 defines an “electronic certificate,” and incorporates definitions from section 3 of the CPSA as well as definitions set forth in the CPSIA. Proposed § 1110.3 would maintain these provisions, with minor grammatical changes, and would add ~~12~~<sup>13</sup> new definitions. The proposed new definitions would clarify the different types of certificates outlined in the Testing and Component Part Rules, such as “Children’s Product Certificate (CPC),” “General Conformity Certificate (GCC),” “finished product certificate,” and “component part certificate.” For example, two types of finished product certificates would be defined in the proposed rule: CPCs and GCCs. Either a CPC or GCC would only be required for “finished products” but not for “component parts” of consumer products under the proposed rule. Only certain regulated finished products would be required to be certified because our regulations typically are based on finished products. Under the Component Part Rule certification of component parts is voluntary, so not all component parts will be tested or certified, unless and until they become part of a regulated finished product; and component part suppliers may not know how the component part will be used and whether it will become part of a regulated finished product.

The proposed new definitions would also make part 1110 consistent with the Component Part Rule, by including and clarifying terminology used in that rule, such as “component part” and “finished product.” Proposed § 1110.3(b)(6) would define a “component part” as “a component part of a consumer product or other product or substance regulated by the

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Commission, as defined in § 1109.4(b) of this chapter, that is intended to be used in the manufacture or assembly of a finished product, and is not intended for sale to or use by consumers as a finished product.” Thus, the term “component part” would refer only to parts of products that are intended to be used in the manufacture or assembly of a finished product. In contrast, the term “finished product” refers to a product that is “imported for consumption or warehousing or is distributed in commerce.” Under the proposed definition, parts of such products that are packaged, sold, or held for sale to or use by consumers would also be considered finished products.

The distinction between a “component part” and a “finished product” is important because it defines when a product must be accompanied by a certificate under the proposed rule. “Finished products” are intended for sale to, or use by, consumers. “Component parts” are intended for incorporation into a finished product, and are not packaged, sold, or held for sale for use by consumers. In contrast, replacement parts of finished products that are sold separately would be considered finished products under the proposed rule. Because use of the Component Part Rule is voluntary, not every component part will be certified. It is only at the finished product stage that finished product certifiers will know all of the regulations that apply to a product and whether it must be accompanied by a certificate.

For example, doll clothing can be packaged and sold directly to consumers as a doll accessory. Such doll clothing that is packaged for sale to consumers would be considered a finished product under the proposed rule and must be certified. However, the same doll clothing could also be imported for use in the final assembly of a doll. Doll clothing that is imported for the purpose of being assembled with a doll for sale to consumers would be considered a component part under the proposed rule, and it would not be required to be accompanied by a

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certificate. If such doll clothing is a portion of a children's product, however, it still must comply with the applicable rules. Moreover, such doll clothing would need to be certified as compliant as part of a finished children's product.

Proposed § 1110.3(b)(11) would define a "finished product certifier" as "a party that is required to issue a finished product certificate pursuant to § 1110.7." Note that § 1107.2 of the Testing Rule defines a "manufacturer" as "the parties responsible for certification of a consumer product pursuant to 16 CFR part 1110." Thus, changing the party responsible for issuing a certificate in the proposed rule would also change the party responsible for third party testing under the Testing Rule.

The proposed rule would continue to place on the importer the obligation to certify finished products manufactured outside the United States that are not delivered directly to consumers in the United States. Proposed § 1110.3(b)(13) would define an "importer" as the importer of record, as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)) (Tariff Act). Pursuant to the Tariff Act, the importer of record is either "the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid" customs broker's license, pursuant to 19 U.S.C. 1641.

### *C. When Are Certificates Required? – Proposed § 1110.5*

Existing § 1110.5 states that a certificate that is in hard copy or electronic form "and complies with all applicable requirements of this part 1110 meets the certificate requirements of section 14 of the CPSA," and that such a certificate "does not relieve the importer or domestic manufacturer from the underlying statutory requirements concerning the supporting testing and/or other bases to support certification and issuance of certificates." Requirements for certificate format have been moved to proposed § 1110.9.

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Proposed § 1110.5 would clarify when consumer products are required to be certified. Proposed § 1110.5 would require that only finished products that are subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing or are distributed in commerce, must be accompanied by a GCC or a CPC, as applicable. Component parts of a consumer product are not required to be accompanied by a certificate.

### *D. Who Must Certify Finished Products? – Proposed § 1110.7*

Existing § 1110.7 provides that, except as otherwise provided in a specific standard, in the case of a product manufactured outside the United States, only the importer must certify a product and provide a certificate in accordance with section 14(a) of the CPSA, and that only the manufacturer must certify a product and provide a certificate for products manufactured in the United States. As explained below, the proposed rule would modify this section.

#### 1. Imports – Proposed § 1110.7(a)

Proposed § 1110.7 would retitle the section to read: “Who must certify finished products?” to state more accurately the focus of proposed § 1110.7 and to clarify that only finished products must be certified. Proposed § 1110.7(a) would maintain the requirement that an importer certify products manufactured outside the United States, except in the circumstance of products that are delivered directly to consumers in the United States, such as products purchased through an Internet website. In such a case, the proposed rule would require that the foreign manufacturer certify the product, unless the product bears a private label. The private labeler would be required to issue a certificate for products that bear a private label that are delivered directly to a consumer in the United States, unless the foreign manufacturer issues the certificate.

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Products introduced into commerce in the United States must comply with applicable laws and regulations. The proposed rule would continue to place on the importer the obligation to certify products manufactured outside the United States that are not delivered directly to a consumer. Section 1110.3(b)(13) of the proposed rule would define “importer” to be the importer of record, as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)) (Tariff Act). Pursuant to the Tariff Act, the importer of record is either “the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid” customs broker’s license, pursuant to 19 U.S.C. 1641. Thus, a validly licensed customs broker who serves as the importer of record for the imported products would be responsible for issuing the certificate required by section 14(a) of the CPSA and this rule with respect to the imported products.

Some common carriers, contract carriers, third party logistics providers, and freight forwarders (collectively, carriers), in addition to their delivery and transportation services, also may become licensed customs brokers and may serve as importer of record when bringing goods into the United States. Like any other customs broker that agrees to serve as an importer of record, when such a carrier chooses to serve as the importer, the carrier would be responsible for issuing a required certificate under the proposed rule.

Treating a carrier who also serves as an importer of record as an “importer” under the proposed rule is consistent with section 3(b) of the CPSA, which provides:

A common carrier, contract carrier, third party logistics provider, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer [including importer], distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

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This provision protects carriers from being “deemed” a manufacturer, importer, distributor, or retailer, based “solely” on “receiving or transporting a consumer product” in the ordinary course of business as a carrier. Under the proposed rule, imposing importer-related certification requirements on a carrier that chooses to become a licensed customs broker and that agrees to serve as the importer of record is based on the carrier’s status as importer of record and related customs functions rather than on the carrier’s transportation-related functions.

Additionally, the proposed rule would place the obligation to certify products that are delivered directly to consumers in the United States, such as products purchased through an Internet website, on the foreign manufacturer, unless the product bears a private label. This

proposed revision would clarify and remove any doubt about which entity has the burden to certify products directly delivered to consumers. The Commission recognizes that when a foreign entity delivers products directly to a consumer in the United States, the consumer could be considered the importer. Placing the obligation to test and certify consumer products on the purchasing consumer would be inconsistent with the goals of the statute, in that it would not protect consumers as intended by the testing and certification scheme set forth by Congress, and implemented by the Commission. Accordingly, the proposed rule would not place the burden of ensuring such compliance on consumers; rather, the Commission believes that the appropriate way to ensure compliance is to require companies that purposefully send their products into the United States to test and certify their products, as required by United States law.

For the vast majority of products imported into the United States through CBP, the proposed rule would continue to require that the importer of record certify the product, to provide a uniform, consistent, and predictable means of enforcing testing and certification requirements for imported products. We understand that some private labelers and brand owners

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with foreign manufacturing facilities want to test and certify their products. The Component Part Rule, which is already in effect, allows an importer to rely on testing or certification conducted by another party, as long as the importer meets the requirements of the 1109 rule, including exercising due care (see 16 CFR §1109.5(i)). Thus, private labelers and brand owners already can test and certify products on which an importer can then rely to issue their own certificate. The proposed rule would clarify that a finished product certificate must be issued by a required finished product certifier. An importer cannot simply pass along a component supplier's certificate. Thus, proposed § 1110.7(a) would ensure that the certificate required by the CPSC must be issued by the importer, who is required to certify the product. The ability of finished product certifiers, such as importers, to rely on another party's testing or certification under the 1109 rule allows a private labeler to test and certify, as needed, while maintaining the Commission's ability to enforce its regulations against the party responsible for importing the product.

### 2. Domestic products – Proposed § 1110.7(b)

For products manufactured in the United States, the proposed rule would continue to place the responsibility for issuing a required finished product certificate on the manufacturer, except in circumstances where a product is privately labeled, as defined in the CPSA. If a product is privately labeled, the proposed rule would place the obligation to certify the product on the private labeler, unless the manufacturer certifies the product. The Commission recognizes that under the existing 1110 rule, privately labeled products are required to be certified by the manufacturer. This relationship may continue as long as the product is certified. The proposed rule, however, would shift the obligation to ensure compliance for privately labeled products on to the private labeler.

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Duplication of effort to issue a certificate should not occur by requiring the private labeler to certify privately labeled products. A “private labeler” is a defined term in the CPSA. Pursuant to section 3(a)(12) of the CPSA, the term applies only to products that carry the private labeler’s brand or trademark on the product and not the manufacturer’s brand or trademark. Therefore, all products manufactured in the United States that contain a brand or trademark in addition to a manufacturer brand or trademark are not considered privately labeled under the CPSA, and the manufacturer would remain the required finished product certifier under the proposed rule. The proposed rule would change only the obligation to certify a product to the private labeler for products manufactured in the United States that bear a private label, which are those products that do not contain the brand or trademark of the manufacturer.

A “brand owner” is not defined in the CPSA. A brand owner would not be a required finished product certifier under the proposed rule, unless that entity imports products, manufactures products in the United States, or meets the definition of a “private labeler” for products made in the United States. We understand that some brand owners license their brand or trademark to appear on consumer products. Like “brand owner,” “licensee” and “licensor” are not defined terms under the CPSA, and the Commission cannot require a “licensee” or a “licensor” to issue a certificate. Regardless of who the required finished product certifier is under the proposed rule, brand owners can already test and certify products under § 1109.5(i) of the Component Part Rule. If the product is imported, an importer can rely on a brand owner’s testing or certification as a basis to issue the required finished product certificate. Moreover, a domestic manufacturer can rely on a brand owner’s testing or certification to issue a required certificate, as long as all parties follow the requirements in the 1109 rule.

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The proposed revisions to expand the required finished product certifier to include the private labeler for privately labeled products should not necessarily result in a change to existing relationships with regard to testing products and issuing certificates. Testing and certification can already be conducted by other parties under the Component Part Rule, and in both cases, where the private labeler has been included, the manufacturer can continue to issue the certificate.

### *E. What Form(s) May the Certificate Take? – Proposed § 1110.9*

Existing § 1110.9, titled, “Form of certificate,” states that “the information on a hard copy or electronic certificate must be provided in English and may be provided in any other language.” Proposed § 1110.9 would revise and elaborate on this concept, establishing requirements for language, format, and electronic certificates. This section would restate the statutory requirement that certificates must be in English, and may also contain the same content in any other language. The section would state that, except as provided in proposed § 1110.13(a)(1), which requires an electronic certificate for products imported into the United States, certificates may be provided in hard copy or electronically.

Proposed § 1110.9(c) would set forth requirements for electronic certificates in all cases, except certificates that would be required to be filed electronically with CBP at importation. The proposed rule would continue to allow a broad range of formats for electronic certificates, as long as they are identified by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means. However, several changes are proposed. First, proposed § 1110.9(c) would provide requirements for electronic certificates *other than* the filing of certificates electronically with CBP for imported products, which is discussed in detail in proposed § 1110.13(a)(1) in section II.G of this preamble. Accordingly,

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proposed § 1110.9(c) would apply only to: products manufactured in the United States; foreign-manufactured products that are delivered directly to a consumer in the United States; and imported finished products after importation, such as when requested by CPSC or CBP, or when certificates are furnished to retailers and distributors.

Second, proposed § 1110.9(c) would still allow for use of a “unique identifier” to access a certificate electronically, but it would require that the unique identifier be “identified prominently on the finished product, shipping carton, or invoice.” Experience with electronic certificates has shown that they can be effective as long as they are easily accessible. Searching products and paperwork for a certificate identifier should not require significant time and resources because it detracts from the efficiencies achieved by allowing electronic certificates. Requiring the placement of a unique identifier to be “prominent” and limiting the placement to three distinct options is intended to ensure the efficiency of allowing electronic certificates.

Third, proposed § 1110.9(c) would state that electronic certificates must be accessible “without password protection.” This amendment would ensure that access to electronic certificates is easy and efficient and does not require significant CPSC time and resources. If accessing information electronically is cumbersome, it defeats any efficiency achieved by electronic certificates. Thousands of entities, including manufacturers, private labelers, and importers, likely must certify consumer products. Maintenance of password information by the CPSC could become burdensome for CPSC’s import surveillance and other enforcement efforts. Accordingly, we propose that electronic certificates be accessible without password protection.

Finally, existing § 1110.13(a)(1) requires that electronic certificates be available to “the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.” Neither CPSC nor CBP regulations define or interpret this phrase, so it is

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currently unclear when the obligation to present a certificate on demand actually vests. Proposed § 1110.9(c) would clarify that electronic certificates, the URL, or other electronic means, and the unique identifier be accessible to the Commission, CBP, distributors, and retailers, “on or before the date the finished product is distributed in commerce,” to set forth a definite point in a finished product’s distribution chain when the certificate must be available. This requirement is intended to prevent a scenario where the CPSC or a retailer or distributor attempts to access an electronic certificate to find that it does not exist yet or is unavailable.

### *F. What Must the Certificate Contain? – Proposed § 1110.11*

Existing § 1110.11 restates and interprets the requirements for the contents of certificates, as provided in sections 14(a) and 14(g) of the CPSA. Proposed § 1110.11 would revise content requirements to reflect that such content requirements apply to all three types of certificates: GCCs, CPCs, and component part certificates. In addition, proposed § 1110.11 would add three content requirements to a certificate: (a) date of initial certification (proposed § 1110.11(a)(2)); (b) scope of the certificate (proposed § 1110.11(a)(3)); and (c) an attestation of compliance (proposed § 1110.11(a)(10)). Each requirement in the proposed rule is discussed below.

#### 1. Identification of the component part or finished product – Proposed §1110.11(a)(1)

The existing rule requires: “Identification of the product covered by the certificate.” Proposed § 1110.11(a) would state that each certificate must contain the information described therein, and then list each piece of information as numbered items 1 through 10, under proposed § 1110.11(a). Thus, proposed § 1110.11(a)(1) would incorporate the requirement to identify the product being certified, but it would broaden the nature of the “product” that can be covered by a certificate to include component parts as well as finished products. The proposed rule would

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require the certificate to state whether it covers a finished product or a component part to assist with enforcement and to clarify for all other parties the scope of the certificate.

Proposed §1110.11(a)(1) would further state that “[a] model number, style, or other unique identifier of the product should be provided, if any, along with a description of the finished product or component part. Certifiers may also include an identifier, such as a universal product code (UPC), a global trade item number (GTIN), or other identifying code that may assist with product identification.” This clarification is intended to provide guidance on the type of information that would be considered to be identifying information for a product. Providing a model number or style number, if they exist, would be the most useful way for the CPSC to identify the product, along with a narrative description of the product. Certifiers may also provide a stock-keeping unit, or SKU, to assist in product identification. Additionally, the CPSC is aware that many manufacturers use codes for purposes of product identification, such as UPC codes and GTINs. This type of information is also useful for CPSC to identify products. Certifiers would be encouraged to include any type of identifying code on the certificate, if it would aid in product identification. UPCs and GTINs are examples of identifying codes. Stakeholders are encouraged to comment on whether other types of codes should be stated specifically in the codified text. Although harmonized tariff codes may be placed on a certificate, they are insufficient, alone, to identify a product on a certificate. Similarly, a registered identification number, or RN, on wearing apparel, alone, is insufficient to identify a product on a certificate. An RN is a number, assigned by the Federal Trade Commission, which identifies a business, and does not distinguish products. This type of information can be used in conjunction with other identifying information to identify a product adequately on a certificate but is not sufficient by itself to identify a product.

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Certifiers are reminded that they may rely on one certificate to certify more than one product, if products are manufactured at the same facility and the tests apply to all of the products on the certificate. For example, several sizes of a garment may be listed on one certificate, if they were manufactured at the same facility and the testing on the component parts (e.g., fabric, buttons, and zippers) is applicable to each size garment produced. Certificates can be based on the one set of tests. The manufacturer could create one certificate, or it could create a certificate for each product. For example, under the Component Part Rule, a manufacturer of plastic trains that uses the same plastic resin in five different molds to create five different types of trains may test the plastic resin under the 1109 rule and then use those test results to support certification of all products made with the plastic resin. If that were the only testing required, the manufacturer could create one certificate for all five types of trains, or it could create five separate certificates relying on the same testing. The certificate must be explicit as to which product or products it is intended to cover. If additional testing is required that is unique to each product, certifiers should certify each product, but may rely on the same testing, where warranted.

### 2. Date of initial certification – Proposed § 1110.11(a)(2)

Proposed § 1110.11(a)(2) would require the certificate to: “[s]tate the date of initial certification of the finished product(s) or component part(s) to which the certificate refers.” This would be a new content requirement on the certificate, but the requirement is drawn from a current requirement in existing § 1110.13(b), which requires that electronic certificates have a means to verify the date of creation or last modification. In practice, many certificates, regardless of whether they are electronic or paper based, contain a date. The proposed rule would standardize the date required to be provided to reflect the date the product was originally

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certified. If a children's product undergoes a material change, a new certificate must be issued, pursuant to the Testing Rule. Accordingly, we anticipate that the certification date would be updated after a material change to reflect that the product was subjected to testing for applicable consumer product safety rules affected by the material change, and a new certificate was issued, as required.

### 3. Identification of certificate scope – Proposed § 1110.11(a)(3)

Proposed § 1110.11(a)(3) would require the certificate to: “[i]dentify the scope of finished product(s) or component part(s) for which the certificate applies, such as by a start date, a start and end date, by a lot number, starting serial number, serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate.” This would be a new content requirement on the certificate that would assist the Commission in understanding the scope of the products covered by a certificate. By adding this requirement, the Commission does not intend to require certifiers to modify or create certificates to change the scope of the certificate for each shipment. Certifiers can identify the scope of products covered by a certificate through any reasonable means, such as a date or dates, lot numbers, or serial numbers, providing such information will assist the Commission in understanding the scope of each certificate. Certifiers are required to maintain information on the scope of certificates for children's products, pursuant to § 1107.26 of the Testing Rule and § 1109.5(g) and (j) of the Component Part Rule, when applicable.

### 4. List of rules being certified – Proposed § 1110.11(a)(4)

Existing § 1110.11(b) requires: “Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified. Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product

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Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.” Proposed § 1110.11(a)(4) would incorporate the statutory requirement in section 14(a) of the CPSA to specify each rule on a certificate, but it would broaden the nature of the “product” that can be covered by the certificate to include component parts of a product. Accordingly, the first sentence in proposed § 1110.11(a)(4) would require the certifier to: “State each consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any law enforced by the Commission, to which the finished product(s) or component part(s) are being certified.”

Moreover, proposed § 1110.11(a)(4) would clarify the different requirements for finished product certificates versus component part certificates. A finished product certificate would need to “identify separately all applicable rules, bans, standards, or regulations.” A finished product certifier is responsible for knowing what rules, bans, standards, or regulations apply to each product and for listing all of them on the certificate, or providing a certificate for each applicable rule. However, a component part certifier would have the option to certify a component part to specific rules or parts of rules, even though such certification may not ultimately cover all applicable rules. This is because the component part certifier might not know the final use of the component part, and thus, not know the scope of all applicable rules or because additional tests may be required to be conducted on a finished product. Accordingly, a component part certificate would need to “identify all rules, or parts of rules, standards, bans, or regulations for which the component part(s) are being certified.” The proposed component part requirement recognizes that some component parts can be certified to portions of a standard. For example, an accessory used on a children’s product may be tested separately from the children’s product with regard to lead in paint. It would remain the responsibility of a finished product

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certifier, relying on a component part test or certification, to ensure that all component parts of a finished children's product are tested and certified not only to the lead in paint standard, but also to all other applicable rules, bans, standards, and regulations.

### 5. Identification of the certifying party – Proposed § 1110.11(a)(5)

Existing § 1110.11(c) requires: "Identification of the importer or domestic manufacturer certifying compliance of the product, including the importer or domestic manufacturer's name, full mailing address, and telephone number." Proposed § 1110.11(a)(5) would incorporate the statutory requirement in section 14(g)(1) of the CPSA to "identify the manufacturer or private labeler issuing the certificate" and provide "each party's name, full mailing address, telephone number," but would broaden the requirement to include certificates for both finished products and component parts. Regardless of the type of certificate being issued, proposed § 1110.11(a)(5) would require the certificate to "[i]dentify the party certifying compliance of the finished product(s) or component part(s), including the party's name, electronic mail (e-mail) address, full mailing address, including the street address, and telephone number." Note that the proposed rule would broaden the identification requirement to include an electronic mail (e-mail) address and a street address. The e-mail address would provide CPSC with an additional means of contacting and communicating with certifiers, including those located overseas or in different time zones. Providing a street address would ensure that CPSC staff can locate the certifier's place of business should an investigation require a site visit.

### 6. Contact information for records custodian – Proposed § 1110.11(a)(6)

Existing § 1110.11(d) requires: "Contact information for the individual maintaining records of test results, including the custodian's name, e-mail address, full mailing address, and telephone number. (CPSC suggests that each issuer maintain test records supporting the

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certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 CFR 1508.10 for full-size baby cribs.)”

Proposed § 1110.11(a)(6) would incorporate the statutory requirement in section 14(g)(1) of the CPSA to provide contact information for the individual maintaining records of test results but would broaden it to include contact information for the custodian of all records required for each type of certificate, as set forth in the Testing Rule and the Component Part Rule. Proposed § 1110.11(a)(6)(ii) would require contact information for the individual “maintaining records of test results and other records on which a CPC is based.” Proposed § 1110.11(a)(6)(iii) would require contact information for the individual “maintaining records of test results and other records on which a component part certificate is based.” As in proposed § 1110.11(a)(5), proposed § 1110.11(a)(6) would require the record custodian’s e-mail address, in addition to a full mailing address and telephone number to provide additional means for CPSC to contact the custodian of records. Further, the proposed rule would delete the portion of existing § 1110.11(d) that requires records be maintained “for at least three years” for all records, because the 1107 and 1109 rules require certificates and test results to be maintained for 5 years. For GCCs, the recommendation to maintain records for 3 years has been retained in some circumstances, but this information has been moved to proposed § 1110.17, which summarizes existing recordkeeping requirements for certificates. Recordkeeping requirements are discussed in section II.I of this preamble.

### 7. Date and place of manufacture – Proposed § 1110.11(a)(7)

Existing § 1110.11(e) requires: “Date (month and year at a minimum) and place (including city and state, country, or administrative region) where the product was manufactured.

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If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.”

In addition to requiring that a certificate contain the date and place of manufacture of a product, proposed § 1110.11(a)(7) would use the newly defined term “finished product” and broaden the nature of the “product” to include component parts. Moreover, proposed § 1110.11(a)(7) would interpret “place” to include a street address in all circumstances, not just when a manufacturer operates more than one location in the same city. A post office box would be insufficient to meet this requirement. In addition, the proposed rule would clarify that “place” also includes either the name of a state or a province, as well as either the name of a country or an administrative region. To clarify where a product has been “manufactured,” the definition of “manufactured” is included in the proposed rule. Section 3(a)(10) of the CPSA states: “manufactured” means “to manufacture, produce, or assemble.” The Commission is also requesting comment on the possibility of requiring additional information on a certificate, such as the name of the manufacturer, including foreign manufacturers. Please see section III.1 of this preamble for further discussion of this issue.

### 8. Date and place of testing to support the certificate – Proposed § 1110.11(a)(8)

Existing § 1110.11(f) requires: “Date and place (including city and state, country or administrative region) where the product was tested for compliance with the regulation(s) cited above in subsection (b).” In addition to requiring that a certificate contain the date and place where the product was tested, proposed § 1110.11(a)(8) would use the newly defined term “finished product” and broaden the nature of the “product” to include component parts. Moreover, proposed § 1110.11(a)(8) would make the words “date” and “place” plural, recognizing that finished products and component parts may be tested in multiple or different

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locations. The Commission’s preference is that all required information be condensed into one certificate, but we acknowledge that section 14(a)(2) of the CPSA allows for a certificate for each applicable standard. Supporting documentation, such as test results, component part certificates, and other finished product certificates, should be available for review upon request, or may be bundled with the required certificate but do not take the place of a required certificate that contains the 10 elements in proposed § 1110.11(a). The proposed rule would also require “place” to include a street address, city, state, or province, and country or administrative region. Thus, proposed § 1110.11(a)(8) would state: “Provide the dates and places (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in § 1110.11(a)(4) of this part.”

9. Identification of parties that conducted testing to support the certificate – Proposed § 1110.11(a)(9)

Existing § 1110.11(g) requires: “Identification of any third party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.” In addition to requiring that a certificate identify and provide contact information for any third party conformity assessment body on whose testing the certificate depends, proposed § 1110.11(a)(9) would use the statutory language for a third party laboratory, *i.e.*, “third party conformity assessment body,” and would broaden the scope to include all parties who conducted testing on which the certificate depends. This provision would allow all parties, including the CPSC, to identify whether a GCC or a CPC is based on first or third party testing. Finally, required contact information would be broadened to include an e-mail address and a street address, in addition to a name, mailing address, and telephone number. Providing an e-mail address would provide CPSC with additional means of contacting and communicating with

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parties conducting testing, including those located overseas or in different time zones. Providing a street address would ensure that CPSC staff can locate the third party conformity assessment body if an on-site visit becomes necessary.

### 10. Attestation of Compliance – Proposed § 1110.11(a)(10)

Proposed § 1110.11(a)(10) would be a new section of the certificate that would require an attestation that the finished products or component parts covered by the certificate are compliant with the applicable rules. The attestation would be made by the party identified as the certifier under proposed § 1110.11(a)(5). The certifier would attest that the finished products or component parts covered under the certificate comply with the rules, bans, standards, and regulations stated in the certificate, at proposed § 1110.11(a)(4), and that the information in the certificate is true and accurate to the best of the certifier's knowledge, information, and belief. Finally, the certifier would acknowledge an understanding that it is a federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statements, representations, or omissions, on the certificate. The proposed language stems from 18 U.S.C. 1001. The language in this section serves several purposes. First, the certificate is an attestation of compliance. The existing certificate requirements do not state explicitly what attestation or affirmation the certifier is making with regard to the products covered by the certificate. Thus, the proposed language would make plain to everyone the scope and gravity of the obligation being made. Second, requiring each certificate to include this language would educate the certifier, including foreign certifiers, of the certifier's obligations under United States law. Finally, some portions of the applicable consumer product safety rules that require compliance, such as certain labeling requirements, are not subject to testing. The attestation is an affirmation by the certifier that the

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product complies with all the requirements of the applicable rules, not only those provisions for which there are test results.

### 11. Electronic access to records – Proposed § 1110.11(b)

Proposed § 1110.11 would contain a new subsection (b) regarding electronic access to records. This new provision would allow a certificate to include a Web address that links to required records, in addition to identification of the custodian of records, as described in proposed § 1110.11(a)(6). Providing contact information for a custodian of records is a statutory requirement, but certifiers may find it efficient for business and regulatory purposes also to provide a direct link to the required records. For example, § 1109.5(g) of the Component Part Rule requires that “testing parties” and “certifiers,” as defined in that rule, must provide certain documentation, which may include, for example, a component part certificate to certifiers intending to rely upon such documentation to certify a product. Thus, to the extent that such records already exist in an easily accessible electronic format to meet recordkeeping requirements in other rules, access to this same electronic format can be provided on a certificate.

### 12. Exceptions – Proposed § 1110.11(c)

Proposed § 1110.11(c) is a new provision that would describe what certifiers must put on a certificate when a product is subject to more than one consumer product safety rule and the certifier is claiming a testing exception for some, but not all, of the applicable rules. In such a case, the certifier must list all of the applicable rules, and then state when the product is not subject to testing for a specific rule, and the basis for such claim, instead of providing the date and place where testing was conducted. Certifiers are already doing this in many instances, but this requirement would ensure that certifiers are consistent in how they document exceptions on a certificate. So, for example, if a manufacturer makes a children’s product (not a toy) that is

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made entirely of untreated wood, but the product is painted, then the certifier will need to issue a certificate of compliance stating that the paint on the product is compliant with 16 CFR part 1303, the Commission's rule on lead in paint. The children's product is also subject to the lead content requirement in section 101 of the CPSIA, but the manufacturer can rely on the Commission's determination at 16 CFR § 1500.91 that untreated wood does not contain more than 100 ppm lead content. The manufacturer must list both the lead in paint and the lead content rule on the certificate. Applicable information on the date and place of testing, and the third party conformity assessment body that conducted testing, must be provided for the testing conducted on lead in paint. For lead content testing, however, the certifier must state on the certificate that it is relying on § 1500.91 to meet the requirement.

If a product is not required to be tested or certified, the proposed rule would not require a certificate to be issued. A consumer product that is not regulated by the CPSC would not require a certificate. Certain products subject to a ban, such as the Commission's rule at 16 CFR part 1306 on hazardous lawn darts, do not require testing or certification. Banned products cannot be sold in the United States, but manufacturers are not required to test and certify that their product is not a banned product. Similarly, although products must be compliant with the Federal Hazardous Substances Act (FHSA), the Commission does not require testing and certification for products requiring special labeling under section 3(b) of the FHSA. Finally, products that are wholly comprised of materials that either do not require testing, or that have been determined not to contain lead in excess of 100 ppm under the Commission's regulation at 16 CFR § 1500.91, do not require testing or certification. An example of this would be a child's purse, made of untreated and unadorned cotton fabric. Although the product is a children's product that must be compliant with the lead content requirement in section 101 of the CPSIA, the cotton fabric has

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been determined by the Commission not to contain lead in excess of the applicable limit, and does not need to be tested or certified to prove that the material is cotton.

13. Duplicative testing not required – Proposed § 1110.11(d)

Finally, proposed § 1110.11(d) is a new section of the rule that would explain that “[a]lthough certificates must list each applicable rule, ban, standard, or regulation separately, finished product certifiers are not required to conduct duplicative third party testing for any rule that refers to or incorporates fully another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any law enforced by the Commission.” It has come to the attention of the Commission that some standards, such as some of the durable infant and toddler standards, may fully incorporate or refer to an existing mandatory rule for children’s products, such as the rule on lead in paint, codified at 16 CFR part 1303, and the rule on small parts, codified at 16 CFR part 1501. Some testing laboratories have advised their clients that such testing must be conducted twice; once as a standalone requirement and once as part of another, larger standard. This is not the position of the Commission. Although each applicable standard must be listed on the certificate, a certifier may certify compliance to both the standalone rule and the rule as incorporated into another standard, by testing it once as part of the larger standard where it is incorporated. For example, the mandatory standard for toddler beds, codified at 16 CFR part 1217, incorporates the Commission’s standard for lead in paint (§ 1303) and for small parts (§ 1501). A certificate for a toddler bed must list all three mandatory standards, but may rely on the lead in paint and small parts testing conducted as part of the testing for the toddler bed standard to meet the requirements for § 1303 and § 1501.

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*G. When Must Certificates Be Made Available? – Proposed § 1110.13*

Existing § 1110.13 states the requirement in section 14(g)(3) of the CPSA that certificates required by section 14(a) “accompany” each product or product shipment and be “furnished to each distributor and retailer of the product in question.” Existing § 1110.13 states that an electronic certificate satisfies the “accompany” requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection. The existing section also states that an electronic certificate satisfies the “furnish” requirement if the distributor(s) and retailer(s) of the product are provided a reasonable means to access the certificate and it further provides that “[a]n electronic certificate shall have a means to verify the date of its creation or last modification.”

Proposed § 1110.13 would modify the existing section in several ways, and incorporate the concept of availability in existing § 1110.7(c). Unlike the current provision, proposed § 1110.13 would not be limited to requirements for electronic certificates because requirements for electronic certificates generally have been moved to proposed § 1110.9(c). Accordingly, proposed § 1110.13 would set forth requirements for when certificates must accompany regulated products, and when they must be made available to CPSC and furnished to retailers or distributors.

The proposed rule would describe requirements for when a certificate must accompany a finished product or finished product shipment that is required to be certified pursuant to § 1110.5. It would require that such certificates be issued by a finished product certifier and state

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that only finished products would be required to be accompanied by a certificate. The Commission would limit the requirement for products to be accompanied by a certificate to finished products because component part certification is voluntary, and not all component parts are certified. Component part certificates must be maintained as supporting documentation, as described in the 1109 rule, if such component part certificates are being relied upon by a required finished product certifier to issue a finished product certificate.

1. Accompanying certificates for imported products – Proposed § 1110.13(a)(1)

Proposed § 1110.13(a)(1) would require that for finished products that are manufactured outside the United States and are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. Such a change would aid the Commission in enforcing the requirement to certify regulated products that require a certificate; and, if the certificate were required to be filed with CBP in the form of data elements, would aid the Commission to search the data elements on a certificate by uploading the information into a database. A database containing certificate information would enhance the Commission’s ability to target shipments for inspection and track the accuracy of certificates. Because the proposed rule would require filing certificates electronically with CBP, the certificate, of necessity, would be available to the Commission and to CBP upon import; accordingly, the “accompany” requirement does not need to be restated as in the existing version of § 1110.13(a)(1).

Note that the requirements for certificates filed electronically with CBP in proposed § 1110.13(a)(1) would be specifically excluded from electronic certificate requirements for all other purposes as described in proposed § 1110.9(c). The Commission would leave the technical

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requirements for filing certificates electronically with CBP broad, to accommodate CBP's system resources. The Commission's ultimate goal would be to require filing of certificates with CBP in the form of data elements so that certificate contents can be uploaded into a database for targeting purposes. However, we realize that such a requirement may require software upgrades by CBP, CPSC, and stakeholders that must be completed in stages. Additionally, CPSC requires the assistance and cooperation of CBP to implement and maintain the receipt of certificates in an electronic format, and the CPSC must be mindful of resource limitations and stakeholder adjustments in implementing this new requirement. Initially, if the Commission requires electronic filing of certificates at the point of entry, we would likely allow such filing of certificates in two ways: (1) inserting an electronic copy of the certificate with the entry, such as a pdf file of the document; or (2) uploading the 10 required data points on a certificate into CBP's designated system of record.<sup>1</sup>

We welcome comments on the resources required to file the certificates electronically with CBP. Stakeholders are encouraged to comment on the format for filing certificates with CBP, including the two formats discussed (pdf format versus data elements format). The Commission is requesting comment on an additional option for filing electronic certificates at an earlier point in the import process, at manifest, in section III.2 of this preamble.

### 2. Accompanying certificates for products made in the United States – Proposed § 1110.13(a)(2)

Proposed § 1110.13(a)(2) would require that in the case of finished products manufactured in the United States, certificates shall not be filed with CPSC. Instead, the “accompany” requirement is met if a finished product certifier, as defined in proposed §

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<sup>1</sup> Electronic filing of entries is required by CBP rule, titled, *Importer Security Filing and Additional Carrier Requirements* commonly known as “10+2.”

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1110.3(11), makes a certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce. Pursuant to proposed § 1110.9(b), this may be accomplished, for example, by placing a copy of the certificate in the shipping container with the product, or by meeting the requirements for an electronic certificate. Unlike imported products, we do not want certificates for products made in the United States to be filed with the government as a matter of course. We do not have the infrastructure in place to accommodate or review certificates for all regulated products made in the United States. Enforcement of these certificates will continue to be based on Commission resources and targeting efforts.

3. Accompanying certificates for imported products delivered directly to consumers in the United States – Proposed § 1110.13(a)(3)

Proposed § 1110.13(a)(3) would require that in the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, that are delivered directly to consumers in the United States, the foreign manufacturer or the importer, as provided in § 1110.7(a), has the option to either file the required GCC or CPC electronically with the CBP as provided for in paragraph (1), or may make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce as provided in paragraph (2). Whether the certificates are filed with CBP depends on whether formal entry is made. If no formal entry is made for these products with CBP, then the certificate must still be made available to the Commission, either in hard copy or electronically, as set forth in § 1110.9, on or before the products are distributed into United States commerce.

4. Furnishing certificates – Proposed § 1110.13(b)

Existing § 1110.13(b) states that an electronic certificate must have a means to verify the date of its creation or the last modification. The proposed rule would delete this provision because proposed § 1110.11(a)(2) would require the certificate to state the date of initial

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certification. Proposed § 1110.13(b) would state the statutory requirement in section 14(g)(3) of the CPSA that a copy of the certificate shall be furnished to each distributor or retailer of the product. The proposed rule would clarify who must provide such a certificate (a “finished product certifier,” which is defined in § 1110.3(11) as a party that is required to issue a finished product certificate pursuant to § 1110.7), and for what types of products (finished products).

### 5. Availability of certificates – Proposed § 1110.13(c)

Proposed § 1110.13(c) is a new section that would state the requirement contained in sections 14(g)(3) and (g)(4) of the CPSA, that certificates must be provided to the Commission and to CBP upon request. The proposed rule would state: “Certifiers must make certificates available for inspection immediately upon request by CPSC or CBP.” This provision would apply to all types of certifiers, to all types of certificates (GCCs, CPCs, and component part), and at any time after a product is offered for import or distributed in commerce. The Commission interprets the word “immediately” consistent with other CPSC rules, to mean “within 24 hours.” However, we would expect that GCCs and CPCs would be made available to CPSC in a very short time, either at the time of request, or shortly afterward, because finished products are required to be accompanied by a certificate that is generated before importation or distribution in commerce, and must be either in hard copy with the product, or electronically available, as described in proposed § 1110.9(c).

### *H. Who Is Responsible for the Information in a Certificate? – Proposed § 1110.15*

Existing § 1110.15 states: “Any entity or entities may maintain an electronic certificate platform and may enter the requisite data. However, the entity or entities required by CPSA section 14(a) to issue the certificate remain legally responsible for the accuracy and completeness of the certificate information required by statute and its availability in timely

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fashion.” This provision was intended to allow third parties to assist with electronic certificate maintenance, while ensuring that the party certifying the product remained responsible for its contents.

Proposed § 1110.15 would maintain this concept but would broaden it to include component part certifiers by using the term “certifiers” in the first sentence. Certifiers may have any entity maintain an electronic certificate platform, or enter the requisite data, but the certifier would remain responsible for the contents of a certificate. The description of the certifier’s responsibility with regard to certificate content would be broadened in the proposed rule to include its validity, accuracy, completeness, and availability, as applicable.

*I. What Recordkeeping Requirements Apply to Certificates? - § 1110.17*

Proposed part 1110 imposes no new recordkeeping burdens. Proposed § 1110.17 would be a new provision intended to summarize the existing recordkeeping requirements that apply to certificates. The requirement to create and maintain certificates based on third party testing of children’s products arises from § 1107.26 of the Testing Rule. Recordkeeping for component part certificates, and reliance on another party’s certificate or testing to certify a finished product, arises out of §§ 1109.5(g) and 1109.5(j) of the Component Part Rule. Moreover, some consumer product safety rules, and other similar rules, bans, standards, or regulations, already have a recordkeeping requirement. However, some GCCs for non-children’s products may not be subject to a recordkeeping provision in any other regulation. For example, the Commission’s safety standard for bicycle helmets (16 CFR part 1203) contains a recordkeeping provision, but the safety standard for swimming pool slides (16 CFR part 1207) does not.

To assist stakeholders in understanding the various recordkeeping provisions that apply to certificates, proposed § 1110.17 restates such requirements. If a standard does not contain a

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recordkeeping requirement, the Commission maintains the suggestion from existing § 1110.11(d), that each issuer maintain certificates and test records supporting the certificate for at least 3 years, as is currently required by certain consumer product safety rules. Maintenance of such records, for example, may aid both the certifier and the Commission in the event of an investigation or product recall.

### *J. What Requirements Apply to Component Part Certificates? - § 1110.19*

Proposed § 1110.19 would be a new provision to explain which requirements in part 1110 apply to component part certificates. It would state that component part certificates are voluntary and that component parts of consumer products would not be required to be accompanied by a certificate, nor would such certificates need to be furnished to retailers and distributors, as described in proposed § 1110.13(b). CPSC also would not want component part certificates to be filed with CBP upon importation of component parts. Instead, certifiers of component parts would need to meet the requirements in the Component Part Rule, and component part certificates would also need to meet the form, content, and availability requirements described in the proposed rule in sections 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17.

### **III. Request for Comments**

The Commission encourages stakeholders to comment on all sections of the proposed amendments to 16 CFR part 1110, and specifically request comment on the following additional issues. Comments should be submitted in accordance with the instructions in the ADDRESSES section at the beginning of this notice.

1. The Commission is considering requiring certificates to state not only the place of manufacture in proposed § 1110.11(a)(7), but also to identify the name of the manufacturer,

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including foreign manufacturers. Stakeholders have argued in other contexts that the name of a foreign manufacturer is proprietary. This information, however, would be useful to the Commission and distributors in recall situations, and it would also be useful to the Commission for enforcement purposes. Investigating facts and limiting recalls would be enhanced, and thus, enforcement would be enhanced. We welcome comments on the nature of the information, whether, why, and how it may be confidential, and how the information being available outside the Commission advances, or does not advance, safety. The Commission is also interested in ideas that would allow manufacturers to be named on a certificate for disclosure to the Commission, but would protect their name from others, should it be an issue. The Commission, for example, could allow a private labeler or distributor to redact the name of a foreign manufacturer or supplier, as long as this information is readily available to CPSC. What reasons are there for retailers or others to know the names of suppliers on a certificate, if the CPSC has ready access to this information?

2. The Commission is also considering allowing, but not requiring, certificates to be filed electronically with CBP in advance of filing an entry, such as at the time of manifest. We welcome stakeholder input on this concept.

#### **IV. Environmental Impact**

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 certificate requirements in the proposed rule are not expected to have an adverse impact on the environment, and fall within the categorical exclusion in 16 CFR 1021.5(c)(2) for product certification rules. Accordingly, an environmental assessment or environmental impact statement is not required.

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### V. Executive Order 12988 (Preemption)

Executive Order 12988 (February 5, 1996) requires agencies to state in clear language the preemptive effect, if any, of new regulations. The proposed rule would be issued under the authority of the CPSA and the CPSIA. The CPSA provision on preemption appears at section 26 of the CPSA. The CPSIA provision on preemption appears at section 231 of the CPSIA. The preemptive effect of this rule would be determined in an appropriate proceeding by a court of competent jurisdiction.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. In addition, the IRFA must contain a description of any significant alternatives to the proposed rule that would minimize any significant economic impact of the proposed rule on small entities. This section summarizes CPSC staff's initial regulatory flexibility analysis for the proposed rule amending 16 CFR part 1110.

#### A. *Reasons for Agency Action and Objective of the Proposed Rule*

The proposed revisions to *16 CFR Part 1110: Certificates of Compliance* are needed to add definitions, clarify language, and make the requirements consistent with new regulations, *Testing and Labeling Pertaining to Certification* (16 CFR part 1107) and *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements* (16 CFR part 1109). The proposed rule would also implement part of section 14(g) of the CPSA by

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requiring that importers of regulated finished products file the required certificate electronically with CBP.

More specifically, the proposed rule revises the existing regulation by adding ~~4213~~ new definitions. The new definitions clarify the three different types of certificates of compliance: General Conformity Certificates, Children's Product Certificates, and component part certificates. The definitions also clarify the types of products that can be certified as either finished products or component parts. The proposed rule clarifies when certificates are required to accompany a finished product, who must certify a finished product, as well as the form and content requirements for certificates. Among these clarifications is new language holding foreign manufacturers responsible for certification of products delivered directly to consumers in the United States, such as products purchased through an Internet website, unless private labelers certify the products. The proposed rule revises the certificate requirement for domestically manufactured products to require a private labeler to certify a privately labeled product, unless a domestic manufacturer certifies the product. Finally, the proposed rule requires importers of regulated finished products manufactured outside of the United States to file the required certificate electronically with CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

### *B. Small Entities Subject to the Proposed Rule*

The proposed revisions to part 1110 will apply to importers and domestic manufacturers, and will be extended to include private labelers for privately labeled domestic products (unless certificates are provided by manufacturers). It is difficult to know the number of small businesses that would, with certainty, be affected by the rule. Research of CBP data by CPSC staff found that during 2009, there were 231,094 distinct importers of products categorized in

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import codes likely to include products under CPSC's jurisdiction. The great majority of these firms (perhaps 90 percent or more) are likely to be small businesses under U.S. Small Business Administration (SBA) size standards for manufacturers, wholesalers, or retailers. On the basis of this information, each year as many as 210,000 small businesses might import products under CPSC jurisdiction that would make them subject to the proposed rule. However, firms that only import consumer products that are not subject to product safety rules requiring certification would not be affected by the electronic filing requirement.

In most cases, domestic manufacturers will continue to have the responsibility of providing certificates for products subject to a consumer product safety rule under the CPSA or other laws enforced by the Commission. According to Census of Manufactures data for 2007, about 104,000 companies manufactured products in the North American Industry Classification System (NAICS) codes that are likely to have included products under CPSC jurisdiction.<sup>2</sup> Although more than 90 percent of these firms (*i.e.*, close to 100,000) are considered small businesses under SBA guidelines, a significant percentage probably are not engaged in manufacturing products that are subject to a product safety rule. Still, tens of thousands of small manufacturers currently are responsible for providing certificates. Under the proposed rule, some of the burden of providing certificates could be transferred to small private labelers.

### *C. Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule*

The proposed revisions to part 1110 include the imposition of the new reporting requirement on importers of regulated finished products to file certificates of compliance

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<sup>2</sup> U.S. Census Bureau, 2007 Economic Census, Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007.  
[http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_3111&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table)

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(General Conformity Certificates or Children’s Product Certificates) electronically with CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. This electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. It is important to note that many importers, including those that are small businesses, already make electronic certificates available under the existing part 1110, to satisfy the requirement that certificates accompany products, are furnished to distributors and retailers, and are available to the CPSC “as soon as the product or shipment is available for inspection.” Thus, for these firms, the incremental requirement would simply call for these certificates also to be provided electronically to the CBP.

Because the proposed requirement for electronic filing of certificates for imported products does not specify how that is to be accomplished, importers will have some flexibility in their method of compliance. For example, the preamble of the proposed rule discusses that certificates could be maintained as pdf files, or certificates could be provided in the form of data elements and uploaded to CBP’s system of records. Importers relying on paper certificates of compliance for distributors and retailers would have to create electronic certificates; however, these firms are likely to have the necessary office equipment and personnel to create and transmit these certificates electronically. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship’s arrival at a U.S. port, pursuant to CBP’s rule titled, *Importer Security Filing and Additional Carrier Requirements* (commonly known as “10+2”). Small importers often hire Customs brokers licensed by CBP to handle the procedures that must be followed to import

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goods; the proposed requirement of electronic filing of certificates will likely be added to the duties performed by these brokers.

Based on the current business practices of small businesses that import consumer products, the incremental costs of the requirement to file an electronic certificate of compliance should be minor. If electronic filing costs are similar to typical fees reportedly charged by Customs brokers for filing the required Importer Security Filing data elements, they might be \$25 or less, per filing. CBP estimated that “in 2005, more than 70 to 85 percent of all importers imported fewer than 12 shipments.”<sup>3</sup> Assuming this applies to importers of consumer products, annual incremental costs of electronic filing of certificates of compliance could be less than \$275 for most small businesses that import products that require certificates of compliance. This estimate is based on the assumption that one certificate of conformance would be required per shipment. If multiple certificates are required per shipment, costs could be higher. As noted by CBP in its assessment of costs of security filing requirements, some small importers of consumer products subject to electronic filing of certificates under part 1110 could choose to file the certificates electronically themselves with CBP, if their own filing costs are lower than fees charged by brokers.<sup>4</sup>

Another proposed revision to part 1110 revises the requirement for certification of domestically manufactured products to require that privately labeled products be certified by the private labeler, unless the domestic manufacturer issues a certificate. This amendment would result in a shift in the obligation to provide certificates from some small manufacturers to some

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<sup>3</sup> Department of Homeland Security, Bureau of Customs and Border Protection, *Importer Security Filing and Additional Carrier Requirements*, Interim final rule. *Federal Register*, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>4</sup> Industrial Economics, Incorporated, *Importer Security Filing and Additional Carrier Requirements: Regulatory Assessment and Final Regulatory Flexibility Analysis for the Interim Final Rule*, November 6, 2008, p. 4-7 (97 of 266). Retrieved from [http://www.cbp.gov/linkhandler/cgov/trade/cargo\\_security/carriers/security\\_filing/ra.ctt/ra.pdf](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/ra.ctt/ra.pdf).

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small private labelers. However, these small private labelers can choose to continue to rely on the certificates that the manufacturers are currently required to provide, or they can use such certificates as a basis for issuing their own certificates. Moreover, the revisions would grant private labelers the authority to issue certificates, which some may prefer. While some private labelers may experience some impact, this impact should not be significant because it is expected that some manufactures will continue to issue certificates as they are now legally required to do.

### *D. Other Federal Rules*

For small businesses importing consumer products by containerized shipping vessel, this electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship's arrival at a U.S. port. One of the elements required to be filed under the CBP's rule (*Importer Security Filing and Additional Carrier Requirements*, or "10+2 rule") is the name and address of the manufacturer or supplier of the finished goods in the country or origin, although alternative forms of manufacturer identification, such as identification numbers, are also acceptable. This CBP element is similar, but not identical, to the required information on date and place of manufacture required by certificates of compliance.

### *E. Alternatives to the Proposed Rule*

One alternative to the proposed rule would be *allowing*, rather than *requiring* certificates for imported products to be filed at entry. If this alternative were to be adopted, the certificate would still have to be available for inspection upon request, as it is now. Allowing, instead of requiring certificates to be filed electronically at entry would reduce the burden on small

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businesses, but it might not enhance the Commission's ability to target shipments for inspection and to track the accuracy of certificates.

### VII. Paperwork Reduction Act

This proposed rule to amend 16 CFR part 1110 would not create a new recordkeeping burden for certificates, but the proposed rule would create a new reporting requirement by mandating that certificates for imported products be filed electronically with CBP. Accordingly, this proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Although the only new reporting burden associated with the proposed rule would be the filing of electronic certificates with CBP for regulated imported products, our burden estimates presented below provide additional estimates to cover categories of burdens omitted in previous information collections. The existing 1110 rule was issued by direct final rule in November 2008, and implemented the requirements in sections 14(a) and (g) of the CPSA to issue certificates for regulated products. At that time, a burden analysis for the creation and disclosure of certificates was not conducted. The recordkeeping burden analysis for the creation and maintenance of certificates based on third party testing of regulated children's products, CPCs, was set forth in the Testing Rule and the Component Part Rule, culminating in a collection of information titled, Third Party Testing of Children's Products. That analysis did not cover third party disclosure of certificates for regulated children's products. Moreover, the analysis did not address the creation of certificates for regulated non-children's products, GCCs, or third party disclosure of such certificates. Therefore, we provide here a comprehensive burden analysis for

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certificates for regulated non-children's products, as well as estimates of the burden of third party disclosure of certificates for regulated children's products.

Pursuant to section 14(a)(1) of the CPSA, non-children's products that are subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, must be certified as compliant with such rules, bans, standards or regulations. Certificates must meet the content, form, and availability requirements in the 1110 rule. For non-children's products that are required to be certified, the CPSC intends to create a new collection of information to estimate the burden of: recording test results or other information to support GCCs; creating GCCs; and disclosing certificates to retailers or distributors, CPSC, and CBP. Some of the applicable underlying rules already have certificate and recordkeeping requirements that have previously been described in an information collection request to OMB, but many do not. The proposed rule would require that where an underlying rule contains a record retention period, certificates and supporting test records be maintained for that period of time. Otherwise, the proposed rule imposes no additional record retention period.

Even where some rules have certificate requirements, such certificate requirements are not uniform and do not meet the minimum certificate content requirements set forth in section 14(g) of the CPSA, as implemented in the 1110 rule. Pursuant to section 14(g) of the CPSA, each certificate must accompany the applicable product or product shipment, be furnished to each distributor or retailer of the product, and furnished to CPSC, upon request. Additionally, each certificate must identify: the issuer of the certificate; any third party conformity assessment body that performed testing on which the certificate relies; the date and place of manufacture; the date and place of testing; each party's name, full mailing address, telephone number; and contact information for the individual responsible for maintaining records of test results. Thus, the

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certificate requirement in section 14(g) of the CPSA, as implemented in the 1110 rule, may be seen as an additional requirement for rules that require an on-product certificate, such as 16 CFR part 1205, *Safety Standard for Walk-Behind Power Lawn Mowers*. The statutory certificate requirement also may be seen as adding content requirements to the certificates described in rules that already require a certificate, such as 16 CFR part 1204, *Safety Standard for Omnidirectional Citizens Band Base Station Antennas*.

The recordkeeping burden for the creation and maintenance of certificates required by sections 14(a) and (g) of the CPSA for children’s products is already described in the collection of information on Third Party Testing of Children’s Products. We propose to amend the collection of information on Third Party Testing of Children’s Products to estimate the increase in burden for third party disclosure of CPCs to retailers, distributors, and to CBP, as set forth in the proposed rule.

We invite comments on: (1) whether the amendment to the collection of information on Third Party Testing of Children’s Products, and the new collection of information on Certification of Non-Children’s Products, are 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.

*Title: Non-Children’s Products – Certification of Non-Children’s Products*

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Children's Products – Amendment to collection on Third Party Testing of Children's Products (OMB control number 3041-0159).

Description: We would create a new collection of information for regulated non-children's products describing the annual reporting burden to: document test results or other information on which the certificate is based; create GCCs; and furnish GCCs to retailers or distributors, the CPSC and file electronically with CBP. We would also amend the collection of information related to Third Party Testing of Children's Products to estimate the increase in the annual reporting burden for certifiers of children's products to furnish CPCs to retailers and distributors, and for importers of children's products to file electronic CPCs with CBP.

The burden analysis for GCCs is comprehensive: it includes not only the new burdens associated with the proposed rule but also covers burdens not accounted for in previous rulemakings or in burden analysis submissions to OMB. As noted above, the only new disclosure requirement in the proposed rule is a reporting requirement that applies to finished products manufactured outside the United States. When such products are imported for consumption or warehousing, the importer would be required to file either a CPC or GCC electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together. Such a requirement would implement section 14(g)(4) of the CPSA, which states that the Commission, in consultation with the Commissioner of Customs, may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. All other burdens for GCCs are due to the statutory requirements for certificates, as set forth in the direct final rule for part 1110 issued in November 2008.

The burden estimates provided below are broken into three main categories: Creating GCCs for Non-Children's Products; Furnishing Certificates to Third Parties; and Filing

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Certificates for Imported Products with CBP. These estimates reflect the burden to the finished product certifier only. We have made no attempt to estimate the additional burden, if any, to the federal government. Our estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

*Description of the Respondents:* Finished product certifiers of products subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing, or are distributed in commerce.

*Estimate of the Burden:*

A. *Creating GCCs for Non-Children's Products*

The estimates provided are intended to reflect the recordkeeping burden per product per year. In the collection of information for children's products, we estimated that the recordkeeping burden was about 3 to 5 hours per product, per year, on average. For non-children's products, we generally estimate that the recordkeeping burden to create GCCs and to document testing or other information on which the certificate is based is about 1.5 hours per product per year. This estimate reflects the fact that non-children's products are subject to fewer product safety rules than are children's products. Moreover, although some non-children's products manufacturers use third party testing, non-children's products are not subject to mandatory third party certification, material change, and periodic testing. The 1.5 hours per product estimate is consistent with comments that were received in response to the notice of proposed rulemaking for the Testing Rule. However, where we have information for specific products or rules that deviate from the general estimate, we use the more specific information.

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Like children's products, great diversity exists among regulated non-children's products. Thus, certifiers of non-children's products have significant flexibility in procedures for testing and certifying their products. Although each regulated product must have a GCC, the reasonable testing program that generates test results or other information upon which a GCC relies may vary greatly. For example, the criteria for meeting the requirements of 16 CFR part 1202, *Safety Standard for Matchbooks*, can likely be met out of a quality assurance or quality management program, in contrast to the specific testing program that is required in 16 CFR part 1209, *Interim Safety Standard for Cellulose Insulation*. For this reason, as with children's products, we do not have a strong basis for estimating the recordkeeping burden based on specific records for each product or rule.

For each product or rule where no certificate or other recordkeeping requirement is currently in place, or where we have not previously provided an estimate of the recordkeeping burden to OMB, we estimate the burden to document testing or other information on which the certificate is based and to create GCCs to generally be 1.5 hours on average per product. For rules that already have a certificate requirement based on a testing program, we use estimates of less than 1.5 hours, generally 15 to 30 minutes per product, to create the GCC required by part 1110. The reduced burden for these rules reflects the fact that the recordkeeping burden associated with just creating a GCC in the required format should be less than the burden associated with both documenting the results of a reasonable testing program and creating a GCC.

We further note that in many, if not most cases, these records might be prepared several times a year per product. Thus, even if completing the required records for a single set of tests or preparing one GCC might seem to take only a few minutes, if multiple batches are certified

annually, or the product is manufactured at more than one location, then the total burden during the year will be higher.

1. Glazing Materials (16 CFR part 1201)

Glazing materials used in or intended for use in doors and storm doors (including combination doors), bathtub doors and enclosures, shower doors and enclosures, and patio type sliding glass doors, are subject to the safety standard for architectural glazing materials (16 CFR part 1201). Part 1201 requires that manufacturers and private labelers of glazing materials certify their products in accordance with the requirements of section 14 of the CPSA. Although the Commission has previously submitted recordkeeping burden estimates to OMB, OMB approval of this collection of information expired in 1985. Accordingly, we will estimate the burden of creating GCCs for compliance with part 1201, as well as documenting test results demonstrating compliance.

The Glass Association of North America reports that it has about 400 members that are engaged in the manufacture, fabrication, and installation of glass and glazing products for residential and commercial applications.<sup>5</sup> The Safety Glass Certification Council (SGCC) maintains a third party certification program for glass and glazing products. SGCC states that it has certified 1,726 individual products from 262 individual participant manufacturers. SGCC believes that its members represent about 70% of the square footage of safety glazing materials.<sup>6</sup> Based on the SGCC figures, their 262 industry participants each have an average of just over 6 products. The estimates below are based on the assumption that the firms that do not participate

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<sup>5</sup> Public comment from the Glass Association of North America submitted in response to the notice of proposed rulemaking on the testing and certification rule (16 CFR part 1107).

<sup>6</sup> Information from SGCC provided to Robert Squibb on January 28, 2013.

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in the SGCC program have the same number of products. We are estimating that it takes about 1.5 hours per product to document test results and to create GCCs.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>400</u>	<u>2,400</u>	<u>1.5</u>	<u>3,600</u>

2. Matchbooks (16 CFR part 1202)

Matchbooks are subject to the safety standard for matchbooks (16 CFR part 1202).

Although the Commission has submitted previously recordkeeping burden estimates to OMB, OMB approval of this collection of information expired in 1982.

Part 1202 is relatively straightforward, in that compliance to the standard can be determined by simply examining several samples of the product to ensure, for example, that the friction plate is on the outside back cover of the matchbook and that no match head is bridged, split or crumbling. Although the time spent keeping records of compliance for each batch or lot is probably low, multiple batches or lots of each product are likely manufactured annually.

According to one source, four matchbook manufacturers operate in the United States.<sup>7</sup> Although the printed covers might include a wide variety of designs, depending upon the customers, matchbooks generally come in just a few sizes, such as 20 strike, 30 strike, or 40 strike. We assume for purposes of this analysis that certification is based on the broader category of matchbook size, and not each individual matchbook cover design. Based on this assumption, each manufacturer would be certifying 3 different products or models annually.

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<sup>7</sup> Information about the industry was obtained from a website called, "The Matchcover Vault," which is a site aimed at collectors of matchbook covers. The specific URL for the industry information is <http://matchpro.org/Matchindustryhistory.html> (accessed on 01/16/2013).

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<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>4</u>	<u>12</u>	<u>1.5</u>	<u>18</u>

3. Bicycle Helmets (16 CFR part 1203)

Bicycle helmets are subject to the safety standard for bicycle helmets (16 CFR part 1203). CPSC has provided some estimates of the recordkeeping burden to OMB in an earlier submission, which includes records for a reasonable testing program, the requirement to place a certification label on bicycle helmets, and a 3-year minimum record retention period. A GCC that meets the requirements specified in section 14(g) of the CPSA and the 1110 rule is now additionally required. Although it could take as little as 10 minutes to prepare a GCC for a given model of bicycle helmet, it is likely that models will be recertified several times during a year.

The most recent submission to OMB regarding bicycle helmets estimates that there are about 30 manufacturers and about 200 models of bicycle helmets. If we assume that about 17.5 percent of the models are intended for children aged 12 years or younger (based on the percentage of such children in the population), we can assume that about 165 of the models are not intended for children and require a GCC.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>30</u>	<u>165</u>	<u>0.5</u>	<u>83</u>

4. Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204)

Omnidirectional citizens band base station antennas are subject to a product safety standard that is intended to reduce electrocution hazards associated with the antennas (16 CFR part 1204). Part 1204 requires specific types of testing, certificates, and certain records to be

maintained for 3 years. An estimate of the burden for these requirements has previously been detailed in a submission to OMB. The content of the certificate required in part 1204, however, does not contain all of the information required by section 14(g) of the CPSA and the 1110 rule. Therefore, it is necessary to estimate the increased burden of creating GCCs with all of the required information.

One approach to estimating this burden is to assume that it takes about half an hour to prepare a GCC with the required information. Each certificate might take less time to prepare, but there could be multiple batches or lots of product in a given year that must be certified.

The existing PRA submission indicates that five firms manufacture these products. A Google search indicated that each firm might have more than one model, but only one company appeared to have more than three models. Thus, we estimate that each firm has three models.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>5</u>	<u>15</u>	<u>0.5</u>	<u>8</u>

5. Walk-Behind Power Lawn Mowers (16 CFR part 1205)

Walk behind power lawn mowers are subject to the safety standard for walk-behind power lawn mowers (16 CFR part 1205). Part 1205 prescribes certain testing and recordkeeping requirements, including records of a reasonable testing program and certificates which are on-product labels. Such labels do not require the same content information required by section 14(g) of the CPSA and the 1110 rule. Burden estimates for part 1205 have been submitted to OMB previously. Thus, here we estimate only the increased burden of creating GCCs with all of the required information.

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According to the existing PRA submission for part 1205, 1 hour per production day, per manufacturer, is added to the recordkeeping and testing burden to collect the information required for the certificate and to place it on the label. Our existing OMB submission for part 1205 assumes 130 production days a year. Thus, we assumed that each day's production will be certified individually or that there are multiple batches, and therefore, that multiple certificates will be issued for each model annually. We will use the same methodology to estimate the increased burden of creating the required GCC here. Accordingly, we assume 1 hour per day, per manufacturer to create the required GCCs for 130 production days out of the year. The existing PRA submission estimates that there are 20 manufacturers of walk-behind lawn mowers. If each manufacturer is in production 130 days per year and requires 1 hour per day for recordkeeping, then the annual burden per manufacturer will be 130 hours, or 2,600 hours for all manufacturers together.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Mfr.</u>	<u>Total Hours</u>
<u>20</u>	<u>--</u>	<u>130</u>	<u>2,600</u>

6. Swimming Pool Slides (16 CFR part 1207)

Swimming pool slides are subject to the safety standard for swimming pool slides (16 CFR part 1207). Part 1207 includes requirements for testing swimming pools slides and for issuing a certificate based on a reasonable testing program, but no record retention period is provided. The certificate required in the rule contains fewer data elements than required by section 14(g) of the CPSA and the 1110 rule. We do not appear to have previously reported burden estimates for recordkeeping to OMB for part 1207. Therefore, we estimate the burden for recording test results for a reasonable testing program on which the GCC relies and for creating a GCC.

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A retailer's website, which states that it offers swimming pool slides from most major manufacturers, has between 100 and 120 different models of pool slides. Some slide models appeared to be duplicates, however, and some of the products might not actually be covered by the standard. Given that the retailer might not offer all models, and allowing for duplicates and for the proposition that some products are not subject to the standard, we assume that there are a total 120 models of swimming pool slides.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>a few</u>	<u>120</u>	<u>1.5</u>	<u>180</u>

7. Cellulose Insulation (16 CFR part 1209)

Cellulose insulation is subject to the interim cellulose insulation standard (16 CFR part 1209). Part 1209 includes comprehensive testing, recordkeeping, and certification requirements, including a 2-year record retention period. The certification required in part 1209 is in the form of a label on the product, and includes the day, month, and year of production. No prior OMB submission exists for this product, likely because part 1209 was implemented before enactment of the PRA. Therefore, for part 1209, we estimate the burden of documenting test results from the testing program required in part 1209, and creating a GCC.

Thirty-six producer members of the Cellulose Insulation Manufacturers Association (CIMA) were listed on its website (www.cellulose.org). Additionally, in 2000, CPSC staff identified a few manufacturers that were not members of CIMA, bringing the total estimated number of manufacturers to 44. Because the on-product certificate requirement in part 1209 requires specification of the date, month, and year of manufacture, and because the testing interval required in part 1209 must be short enough to demonstrate compliance with the standard, testing and certification of cellulose insulation is likely to occur several times a year. Thus, the

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recordkeeping for the required reasonable testing program and for certification is likely to take several hours each year for each manufacturer. Assuming that each manufacturer must issue a new certificate with the date of manufacture, that each manufacturer is in production 240 days a year, and that the recordkeeping requires 15 minutes per day, then the burden per manufacturer per year would be 60 hours.

The estimate of 44 manufacturers is significantly lower than the estimates of the number of firms in the market in the late 1970s. In 1976, there were 100 manufacturers with 125 plants. In 1978, the Federal Trade Commission compiled a list of more than 700 manufacturers.<sup>8</sup> If the current estimate of 44 manufacturers is an underestimate, or if some manufacturers have more than one plant, the total recordkeeping burden would also be underestimated.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Mfr.</u>	<u>Total Hours</u>
<u>44</u>	<u>n.a.</u>	<u>60</u>	<u>2,640</u>

8. Cigarette Lighters (16 CFR part 1210) and Multipurpose Lighters (16 CFR part 1212)

Cigarette lighters and multipurpose lighters are subject to the child-resistance requirements established by 16 CFR parts 1210 and 1212, respectively. Parts 1210 and 1212 set forth comprehensive testing, certification, and recordkeeping requirements, including a 3-year minimum retention period. Estimates of the recordkeeping burden for parts 1210 and 1212 have been submitted to OMB previously. Here, we estimate the incremental burden associated with creating a certificate containing the information required by section 14(g) of the CPSA and the 1110 rule because the certificates provided in parts 1210 and 1212 require less information.

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<sup>8</sup> Robert D. Kurtz, "Environmental and Economic Impacts of the Interim Safety Standard for Cellulosic Insulation," U.S. Consumer Product Safety Commission, Office of Hazard Identification (June 15, 1978).

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Before a manufacturer or importer can distribute a lighter model in the United States, it must first file a report with the CPSC. From October, 2005 to February 12, 2013, CPSC has accepted 6,667 reports of new cigarette or multipurpose lighter models from a total 145 companies. We believe this is a reasonable estimate for the number of lighter models for which GCCs will be required in a given year for the following reasons. First, once CPSC accepts a report of a new model, the lighter model can continue to be distributed without future reports. Second, although only one or two lots of some lighter models might be manufactured or imported, multiple lots of some lighter models might be manufactured in some years. Finally, there are probably some lighter models that were reported to CPSC prior to FY 2005, which are still being distributed. More than 600 million individual lighters are manufactured or imported into the United States annually.

We estimate the burden to create a GCC to be about 15 minutes per model. Once the certificates are modified, the incremental cost of including additional data could be negligible.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>145</u>	<u>6,667</u>	<u>0.25</u>	<u>1,667</u>

9. Residential Automatic Garage Door Openers (16 CFR part 1211)

The automatic residential garage door opener standard (16 CFR part 1211) contains guidance for a reasonable testing program, an on-product certificate requirement, and recordkeeping requirements, including a minimum 3-year record retention period. The on-product certificate required by part 1211 does not contain all of the data elements required for a GCC in section 14(g) of the CPSA and the 1110 rule. Moreover, an exemption for on-product certificates is provided under certain circumstances. An estimate of the recordkeeping burden of the rule has been provided to OMB previously. The most recent PRA submission to OMB

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estimates that there are 21 respondents that require about 40 hours each for maintaining the records required by the regulation. Therefore, here we will estimate only the burden of issuing certificates with the required information. We estimate the annual burden of creating compliant GCCs, separate from the label, to be about 30 minutes per model.

Based on a review of the garage door openers available at some home or building supply retailers, each manufacturer could offer a few different models (e.g., 1/2 horsepower, 3/4 horsepower, with and without battery backup). For purposes of these estimates, we assume that each manufacturer has about four different models.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>21</u>	<u>84</u>	<u>0.5</u>	<u>42</u>

10. Furniture (16 CFR parts 1303 and 1213)

General use furniture, which is furniture that is not designed or primarily intended for children 12 years of age or younger, is subject to the rule banning the use of lead paint in excess of 90 parts per million (ppm) (16 CFR part 1303). General use bunk beds are also subject to a standard intended to reduce entrapment hazards (16 CFR part 1213). Neither of these rules has explicit recordkeeping or certification requirements, and no recordkeeping burden estimates have previously been submitted to OMB. Furniture subject to parts 1303 and 1213 must be certified as compliant, based on a test of each product, or on a reasonable testing program pursuant to section 14(a)(1) of the CPSA.

16 CFR part 1303 – Lead-in-paint

When we estimated the recordkeeping burden for testing and certification of furniture that would be considered a children’s product in 16 CFR part 1107, we estimated that there were 54,000 models of furniture intended for children 12 years of age or younger. We estimated

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54,000 models by counting the models of children’s furniture offered by one large online retailer and estimating that it carried only about one-quarter of all the models of furniture available. If we assume that 54,000 models represents about 17.5 percent of all furniture models intended for children and adults, based on the percentage of the U.S. population that is 12 years of age or younger, one could infer that approximately 250,000<sup>9</sup> furniture models are intended for people over 12 years of age. Metal furniture and furniture that does not have a paint or coating are not subject to part 1303. Unless the bunk bed standard applies, such furniture does not require a certificate. We assume that about half of the furniture items might be subject to the part 1303 lead-in-paint requirement. Based on a comment from a furniture industry trade association, which was submitted in response to the proposed Testing Rule, we derived an estimate of 30 to 45 minutes per model for the recordkeeping associated with a reasonable testing program for part 1303.<sup>10</sup> For purposes of these estimates, we have used the low end of this range.

*16 CFR part 1213 – Bunk beds*

One large online retailer had about 1,200 items listed under “bunk bed.” If this retailer carries about one-quarter of all bunk bed models, this indicates that there are approximately 4,800 bunk bed models available. A review of the first 75 models indicates that about 12% of the models might be appropriate for people over the age of 12 years. Accordingly, there may be about 600 general use bunk bed models intended for people over the age of 12 years. We estimate the cost to document the reasonable testing program for bunk beds and to create a certificate to be 1.5 hour per model.

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<sup>9</sup> The calculation is  $(54,000/0.175) \times 0.825 = 254,571$ . This could be a low estimate because most children’s furniture is limited to the bedroom furniture category. However, general use furniture also includes categories such as “dining room” and “living room” furniture. The estimate in the memorandum has been rounded.

<sup>10</sup> To derive the estimate, we had to make assumptions concerning the employee compensation and the number of models per manufacturer that were not explicitly stated in the comment.

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<u>Regulation</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>1303</u>	<u>125,000</u>	<u>0.5</u>	<u>62,500</u>
<u>1213</u>	<u>600</u>	<u>1.5</u>	<u>900</u>
<u>Total</u>			<u>63,400</u>

11. Consumer Paints and Coatings (16 CFR part 1303)

In addition to paints and coatings applied to some furniture, paints and coatings for consumers' use are also subject to the 90 ppm lead limit (16 CFR part 1303). Exemptions to the scope of the paint lead limit include: coatings that are not intended for consumer use, agricultural and industrial products, mirrors, some metal furniture with factory-applied coatings, and artist paints. The recordkeeping burden to create GCCs for consumer paints and coatings has not been submitted to OMB previously.

Based on information available from the American Coatings Association (<http://www.paint.org/about-our-industry/types-of-coatings.html>), just over 50 percent of the paints, by value, would be subject to part 1303. Products subject to part 1303 include architectural coatings and aerosol coatings. Products that are not subject to part 1303 include industrial paints, marine paints, automotive paints, and industrial maintenance coatings.<sup>11</sup> The Bureau of the Census reports that there are 1,002 manufacturers of paint and coatings in the United States.<sup>12</sup> Based on data from the ACA, we assume that half of these manufacturers, 501,

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<sup>11</sup> Technically some industrial coatings might be subject to the limits on lead in paint in Part 1303 if they are applied on a consumer product. However, in these cases it would be the product manufacturer (e.g., furniture or children's product manufacturer) that would be responsible for the certification.

<sup>12</sup> United States Department of Commerce, Bureau of the Census, 2010 County Business Patterns.

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create paints and coating that are subject to part 1303.<sup>13</sup> One large manufacturer lists 82 different consumer products on its website. While this estimate might not account for all different colors offered by this manufacturer, some smaller manufacturers might not have the full range of products that a large manufacturer might have. Therefore, we estimate that the average number of products, per manufacturer, is 82.

The testing of paint is reasonably simple; therefore, maintaining the records of a reasonable testing program and preparing the required certificate should not be overly time consuming. However, each batch is probably certified and dated, and multiple batches of each product are likely to be produced annually. Accordingly, we assume that 30 minutes, per product, to document testing and to create a GCC.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>501</u>	<u>41,082</u>	<u>0.5</u>	<u>20,541</u>

12. All-Terrain Vehicles (ATVs) (16 CFR part 1420)

The CPSIA mandated that the Commission adopt the voluntary standard for ATVs as a mandatory standard. The mandatory standard for ATVs is codified at 16 CFR part 1420. No PRA submission has been made previously to OMB regarding part 1420 because that part does not contain specific recordkeeping or certification requirements. Pursuant to section 14(a)(1) of the CPSA, however, ATV manufacturers and private labelers are required to certify that their products meet the requirements of part 1420, based on a reasonable testing program or a test of each product.

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<sup>13</sup> In fact, many large paint manufacturers manufacture both industrial and consumer paints.

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While ATV testing is likely to take a minimum of several hours and could take more than a day, documenting the results of testing will likely take less time. We estimate that the burden to document a reasonable testing program for ATVs and to create the required GCC will be about 1.5 hours. One and a half hours could be a low estimate if multiple lots or shipments of ATVs are tested and certified annually. Based on information from the Motorcycle Industry Council and Power Products Marketing, we estimate that there are 32 manufacturers of ATVs that produce a total of 132 general use, non-children's, ATVs.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>32</u>	<u>132</u>	<u>1.5</u>	<u>198</u>

13. Pools and Spas (16 CFR part 1450)

All pool and spa drain covers must meet the requirements of the Virginia Graeme Baker Pool and Spa Safety Act, which is codified at 16 CFR part 1450. The Commission has not previously estimated a recordkeeping burden associated with testing and certifying drain covers subject to part 1450. Accordingly, we estimate the burden to document a reasonable testing program for drain covers and to create the required GCC. A manufacturer directory, located at [www.poolspanews.com](http://www.poolspanews.com), listed 12 manufacturers of drain covers. An examination of the websites of each of the manufacturers indicates a total of 136 different drain covers that are advertised as being compliant with the VGB requirements. Although this list might not be complete, it likely represents most of the industry. We assume that the recordkeeping burden to document a reasonable testing program and to create the required GCC will be about 1.5 hours per product, per year.

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<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>12</u>	<u>136</u>	<u>1.5</u>	<u>204</u>

14. Fireworks Devices (16 CFR part 1507; 16 CFR sections 1500.17(3) and 1500.17(8))

Fireworks that are not banned are subject to requirements set forth in 16 CFR part 1507 and sections 1500.17(3), and 1500.17(8). These fireworks provisions do not contain specific recordkeeping or certification requirements. Thus, the Commission has not provided a paperwork burden estimate to OMB previously. Here, we estimate the burden to document a reasonable testing program for fireworks and to create the required GCC.

Based on its knowledge of the industry, the Office of Compliance estimates that 115,000 different lots of fireworks devices are certified annually. The recordkeeping burden for documenting the testing and creating the GCCs is estimated to be about one hour per lot.

<u>Firms</u>	<u>Total Lots</u>	<u>Hours/Lot</u>	<u>Total Hours</u>
<u>--</u>	<u>115,000</u>	<u>1</u>	<u>115,000</u>

15. Bicycles (16 CFR part 1512)

Bicycles are subject to the requirements of the safety standard for bicycles, which is codified at 16 CFR part 1512. Part 1512 sets forth test requirements for bicycles and requires certain instructions and an on-product label, but the rule does not provide for specific recordkeeping requirements or a record-retention period. Therefore, no estimate of the recordkeeping burden has been submitted to OMB previously.

When considering children's bicycles previously for part 1107, we estimated that there were approximately 400 models of children's bicycles. Assuming that children's bicycles

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account for 17.5 percent of bicycle models, based on the percentage of the population that is 12 years of age or younger, there are approximately 1,900<sup>14</sup> models of non-children's bicycles. Based on a review of a database of bicycle manufacturers, there may be 150 to 200 bicycle manufacturers whose products are sold in the United States. Testing a bicycle to part 1512 takes about 1 day. However, the time to record test results and to create a compliant GCC is likely about 1.5 hours.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>150</u>	<u>1,900</u>	<u>1.5</u>	<u>2,850</u>

16. Clothing and Apparel (16 CFR parts 1610 and 1611)

Two standards apply to clothing and apparel that are intended to classify fabrics according to their burning rate and prohibit the introduction of dangerously flammable goods into commerce: (1) standard for the flammability of clothing textiles (16 CFR part 1610), and (2) standard for the flammability of vinyl plastic film (16 CFR part 1611). Parts 1610 and 1611 set forth test requirements and recordkeeping requirements for issuing guaranties, not certificates. Both rules contain a 3-year record retention period. We previously estimated the recordkeeping burden for parts 1610 and 1611 to OMB. Although the certificate requirement in section 14 may be based on the testing required in the rules, creating a GCC is an additional recordkeeping burden. Here, we estimate the time required to create the required GCC.

Certain hats, gloves, footwear, and interlining fabrics are excluded from the scope of part 1610, as set forth in § 1610.1(c). No certificate is required for apparel that is not subject to part 1610. Many fabrics are within the scope of part 1610, but are exempt from testing because they

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<sup>14</sup> This estimate is rounded.

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meet the standard based on construction and fabric weight, or fiber content, regardless of construction or fabric weight, as set forth in § 1610.1(d). A GCC is required for all apparel within the scope of the rule, regardless of whether the fabric is exempt from testing.

Accordingly, many certificates might state that the fabric is in compliance with part 1610 because the fabric meets one of the testing exemptions specified in § 1610.1(d).

The American Apparel and Footwear Association (AAFA) estimates that there are 20 billion units of clothing sold annually. A representative of AAFA estimated that on average each SKU of clothing has only about 100 units. On the assumption that one SKU is a size and color combination of a particular item, and further based on a review of several catalogs, we estimate an average of about 30 SKUs per clothing item. Based on this assumption, we estimate that approximately 6.7 million apparel items must be certified annually. We further assume that 17.5 percent of the 6.7 million apparel items are intended for people 12 years of age or younger (based on their percentage of the general population). Thus, we estimate that about 5.5 million apparel items require GCCs.

Given that many clothing items are likely produced seasonally, and the total number of units of some apparel items is fairly low, we assume that only a few batches of many items will be certified each year. Many apparel items will be exempt from testing under part 1610 based on the exemptions in § 1610.1(d), and other apparel items will be certified based on testing, guaranties, or certificates from fabric suppliers. Therefore, we assume that the recordkeeping burden per apparel item might be as little as 15 minutes. If multiple certificates must be issued for some apparel items or models, perhaps because different colors or sizes are produced on different dates or at different locations, the estimate could be low.

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<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>(thousands)</u>	<u>5.5 million</u>	<u>0.25</u>	<u>1,375,000</u>

17. Carpets and Rugs (16 CFR parts 1630 and 1631)

Carpets and rugs are subject to flammability requirements codified at 16 CFR parts 1630 and 1631. Parts 1630 and 1631 set forth testing and recordkeeping requirements, including a 3-year record retention period. However, the recordkeeping requirements apply to persons furnishing guaranties, not necessarily to manufacturers and private labelers. Although the existing OMB submission on these rules discusses the requirement to issue certificates, the burden estimate includes the burden associated with third party testing and certification of children's products only, and does not consider certification of general use carpets and rugs. Accordingly, here we provide an estimate for documenting a reasonable testing program and for creating the required GCC for non-children's carpets and rugs.

The existing PRA submission to OMB on carpets and rugs estimates that there are 120 firms subject to the information collection requirements, and that each of these firms is required to conduct between 0 and 200 tests per year. We use the midpoint of 100 tests per year per firm for the current burden estimate. The 2010 County Business Patterns report from the Census Bureau shows that there are close to 240 carpet and rug mills. The lower estimate in the PRA submission is based on an assumption that only half of the firms would either issue guaranties or certify children's products. We estimate that the time to create the certificate and the records of the tests on which it is based is about 1.5 hours per style. The time to conduct the tests is not included in this estimate.

On the assumption that GCCs for non-children's products could simply replace guaranties, one could use most of the assumption in the existing PRA submission, but assume

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that all firms will have to conduct testing and issue GCCs. Thus, there would be approximately 240 firms conducting about 100 tests annually. However, these estimates are only for domestic manufacturers. If there are a significant number of carpets and rugs that are imported, these estimates are low.

<u>Firms</u>	<u>Total Styles</u>	<u>Hours/Style</u>	<u>Total Hours</u>
<u>240</u>	<u>24,000</u>	<u>1.5</u>	<u>36,000</u>

18. Mattresses (16 CFR parts 1632 and 1633)

Mattresses are subject to two flammability standards: (1) a smoldering ignition resistance standard codified at 16 CFR part 1632, and (2) an open-flame ignition resistance standard codified at 16 CFR part 1633. Parts 1632 and 1633 have comprehensive testing and recordkeeping requirements, including a 3 year minimum record retention requirement. Part 1633 has an on-product certificate requirement. The Commission previously provided a burden estimate for the recordkeeping requirements in parts 1632 and 1633 to OMB. Accordingly, here we only estimate the burden of creating the GCC required by section 14(g) of the CPSA and the 1110 rule.

The burden for all recordkeeping in these two rules except the generation of a GCC has already been included in the previous PRA submission to OMB. Because the only additional burden is to generate a GCC, we estimate this task to take 15 minutes per mattress. Estimates of the number of manufacturers and models are taken from the existing PRA submission for parts 1632 and 1633.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>671</u>	<u>13,420</u>	<u>0.25</u>	<u>3,355</u>

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19. Poison Prevention Packaging Act (16 CFR part 1700)

The Commission enforces the Poison Prevention Packaging Act (PPPA), which requires special packaging for some hazardous products to reduce the risk of children under 5 years of age from accidentally coming into contact with, or ingesting the product, but still allows seniors the ability to access their medication. The Commission has promulgated 32 regulations that require a wide variety of products to be in special packaging. Products requiring special packaging include: all oral prescription drugs, oral prescription drugs that have been switched from requiring a prescription to being available for sale over-the-counter (OTC), many types of OTC drug products and preparations, some personal care products (including baby oil and many mouthwashes), and some hazardous household products (including many drain openers, furniture polishes, kindling and illuminating preparations, methanol, and kerosene). The full list of substances that require special packaging is codified at 16 CFR § 1700.14.

The finished product certifier that must issue a GCC is the importer or the domestic party that packages a PPPA regulated substance in special packaging. Each distinct product subject to the PPPA must be covered by a GCC. For example, if a company sells a regulated OTC drug in four different types of special packaging, the company might require four different GCCs to cover each package type. A GCC is required for each type of child-resistant packaging.

We do not have a comprehensive database of all products, by all manufacturers (including but not limited to product manufacturers, packagers, package manufactures, and contract repackers), that require special packaging. However, based on knowledge we have gained through various actions over the years concerning affected markets, we believe there could be more than 1,000 companies that might be responsible for issuing a GCC for covered

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products. The number of products that require GCCs may be between 100,000 and 200,000. This includes different packages of the same brand of a product packaged by one company.

The child resistance and senior use effectiveness of each special package type must be established by testing with panels of children and adults according to the protocols codified at 16 CFR § 1700.20. We estimate that the record keeping burden associated with the testing is about 20 hours per package type based on the burden estimate used for the cigarette lighter standard.<sup>15</sup>

One package might be used for many different products. Therefore, the recordkeeping burden could be spread over many different final products. A regulatory summary of the PPPA on the CPSC's website that was prepared by Commission staff states:

The importer or the domestic party that packages a PPPA regulated substance in special packaging must issue the general conformity certificate. The child resistance and senior friendly testing data (also known as protocol data) obtained in accordance with the procedures described under 16 C.F.R. 1700.20 may be used by the importer or domestic packager to support its certification. The packager can rely upon this data as the basis for the reasonable testing program. There is no expiration date on these tests and no requirement to retest so long as the tests adequately reflect the current packaging used.

<http://www.cpsc.gov/en/Regulations-Laws--Standards/Statutes/Poison-Prevention-Packaging-Act/>. This means that a manufacturer of a PPPA-regulated product can rely on test data provided by the package manufacturer. Finished product certifiers that rely on another party's testing or certification to issue a finished product certificate must follow the Component Part Rule, 16 CFR part 1109.

Furthermore, each package does not have to be retested at regular intervals. Testing will generally occur only when a change is made to an existing package that could affect its compliance or a new package is introduced. Sometimes the manufacturer or packager of the

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<sup>15</sup> This estimate could be low because the cigarette lighter standard does not include an adult use effectiveness protocol. The total time to conduct the tests would exceed 90 hours per package type.

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final product (i.e., the drug or household substance) will conduct its own compliance testing to ensure that its products meet the requirements of the PPPA. Likewise, the GCCs might not need to be revised or reissued at regular intervals. Manufacturers of a product regulated under the PPPA may be able to rely upon the same GCC for a product until it changes the package or the certification or testing of the package changes.

We do not have concrete data regarding the average number of products for which a typical package is used; nor do we have concrete data on how frequently packages are retested, or how often manufacturers, importers, or private labelers of the final products will issue new GCCs. For purposes of this analysis, however, we are assuming that, on average, each different package is used for 100 different products. We are also assuming that, on average, each package is used for 4 years before it is retested because of a material change, the manufacturer has substituted a new package, or for any other reason. We assume further that the manufacturers, importers, or private labelers of the final products, on average, only issue new GCCs for a product once every 4 years.

As noted above, the recordkeeping burden associated with the protocol testing of a package is about 20 hours. If each package is used for 100 different products, and the testing is conducted, on average, every 4 years, then the average recordkeeping burden of the testing is about 3 minutes annually, per final regulated consumer product (e.g., drug or household product). We believe that it might take about 15 minutes to create and maintain the GCC for each consumer product regulated under the PPPA. If the GCC is created only once every 4 years for the average regulated product, then the annual recordkeeping burden for creating and maintaining the GCC will be about 4 minutes. Therefore, on average, the total recordkeeping burden per product regulated under the PPPA will be about 7 minutes. This includes the time

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required to create and maintain the records of the protocol testing of the packages and the time to create and maintain the GCC.

<u>Firms</u>	<u>Total Products</u>	<u>Minutes/Product</u>	<u>Total Hours</u>
<u>1,000</u>	<u>150,000</u>	<u>7</u>	<u>17,500</u>

These estimates above are probably low, especially if the month and date of production must be included on the certificates. If so, at least one new certificate would have to be created each year that a product is in production, more if the product is in production more than 1 month per year. If so, the estimate above would be low, by at least a factor of 4.

20. Refrigerators (16 CFR part 1750)

Refrigerators are subject to the Refrigerator Safety Act. A standard to permit the opening of household refrigerator doors from the inside is codified at 16 CFR part 1750. Part 1750 contains a test procedure but does not contain specific recordkeeping or retention requirements. Regardless of the lack of specific recordkeeping requirements, it is likely that most manufacturers keep records demonstrating compliance with part 1750. Because of the lack of recordkeeping requirements in part 1750, we estimate the burden to record results of a reasonable testing program and to create a GCC.

According to the 2010 census, there are 19 manufacturers of household refrigerators and freezers. One major manufacturer had 120 different models of refrigerators listed on a major retailer's website, including similar models in different capacities. Assuming that each model requires testing and certification, there could be as many as 2,280 different models of refrigerators that need certification to the Refrigerator Safety Act. If the recordkeeping burden is about 1.5 hours, the total burden for the entire industry would be about 4,200 hours. The number of models estimated here could be high if some smaller manufacturers do not have as many

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individual models, or if the same component part is used on more than one model, and may be certified based on the same testing. The number of models estimated could be low if some refrigerator manufacturers are not domestic companies and are not listed as refrigerator manufacturers in the 2010 census.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>19</u>	<u>2,280</u>	<u>1.5</u>	<u>3,420</u>

21. Candles with Metal Core Wicks (16 CFR § 1500.17(a)(13))

Under the Federal Hazardous Substances Act (FHSA), candles with metal core wicks that contain lead content greater than 0.06 percent of the weight of the metal core are banned. (16 CFR § 1500.17(a)(13)). The outer package or wrapper of candles and candle wicks subject to the ban, meaning candles with metal core wicks and metal-cored wicks sold separately, and shipping cartons, must be labeled “Conforms to 16 CFR 1500.17(a)(13).” When the regulation was initially proposed, the proposal contained requirements that would have obligated candle manufacturers and importers to test or maintain records of testing performed by the supplier of the metal cored wicks and to label each shipping container with a statement that the candles conformed to the regulation, including a means to identify the test results applicable to that shipment of candles. 67 FR 20062, 20069 (Apr. 24, 2002). Certification and recordkeeping were dropped from the final rule. 68 FR 19142 (Apr. 18, 2003). Accordingly, we have not submitted a burden analysis for § 1500.17(a)(13) previously to OMB for review.

We estimate the recordkeeping burden associated with documenting test records and creating GCCs for metal-cored candle wicks to be 40 hours per firm, based on the analysis presented in the 2002 proposed rule on metal-cored candle wicks. The National Candle Association states that there are more than 400 commercial, religious, and institutional

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manufacturers of candles in the United States. The National Candle Association states that the major manufacturers have between 1,000 and 2,000 varieties of candles, which implies that the number of varieties offered by the smaller manufacturers would be less. In comments submitted in response to the proposed rule on metal-cored candle wicks, the National Candle Association estimated that between 10 to 20 percent of the market used metal-core wicks. If we assume that the average candle manufacturer has about 1,000 varieties (to allow for the fact that the non-major manufacturers would be expected to have fewer varieties than the major manufacturers) and that 15 percent of those have metal cores, then the average manufacturer would have approximately 150 varieties that would be subject to the regulation.

<u>Firms</u>	<u>Total Lines</u>	<u>Hours/Firm</u>	<u>Total Hours</u>
<u>400</u>	<u>60,000</u>	<u>40</u>	<u>16,000</u>

The estimates above assume that all manufacturers of candles use metal wicks in some of their products. To the extent that some manufacturers do not use metal core wicks at all, these estimates could be high. On the other hand, the estimates do not include any importers of candles. To the extent that importers of candles use metal-core wicks, the estimates above would be low.

22. Ban of Unstable Refuse Bins (16 CFR part 1301)

The rule banning unstable refuse bins (16 CFR part 1301) applies to metal refuse bins having an internal volume of one cubic yard or greater, which are produced or distributed for the personal use of consumers for in or around a residence, school, in recreation, or otherwise. If such a bin will tip when tested according to the method described in the rule, it is banned. If it does not tip, it must be so certified, based upon a reasonable test program, or a test of each

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product. Although part 1301 contains test criteria, it does not contain specific recordkeeping provisions. Accordingly, CPSC has not previously submitted a burden estimate to OMB regarding part 1301. A very small subset of refuse bins are not subject to the rule. CPSC staff was unable to find any metal refuse bin that met the criteria for exclusion from part 1301.

In the course of an Internet search on February 8, 2013, we identified 19 suppliers of refuse bins and a total of 358 individual bin models that could be used for refuse collection or storage around a residence, such as an apartment building, or a school or recreation area. Refuse bins that appeared to be intended for industrial or nonresidential use, based on CPSC staff's judgment, were not included. However, many refuse bins may have both consumer and industrial use. Thus, it is possible that some of the suppliers included within this count do not sell refuse bins for consumer use. Moreover, we may not have discovered all suppliers during the Internet search.

The test method in part 1301 is fairly straightforward. We estimate that the recordkeeping for documenting test results and creating a GCC will take an average of 30 minutes per model refuse bin.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>19</u>	<u>358</u>	<u>0.5</u>	<u>179</u>

23. Ban of Lawn Darts (16 CFR part 1306)

Here, we estimate the burden to document testing and to create a GCC for the ban on general use lawn darts in 16 CFR part 1306. We do not estimate the burden for lawn darts intended for children, which are banned by 16 CFR § 1500.18. Recordkeeping related to the creation of certificates for children's products is covered in the Testing Rule.

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The purpose of part 1306 is to prohibit the sale of lawn darts that have been found to present an unreasonable risk of skull puncture injuries to children. The rule also states that “any lawn dart is a banned hazardous product.” For purposes of these estimates, we have counted as lawn darts, products that appear to be intended to be used in a similar manner as the banned lawn darts in that they consist of an elongated projectile that can be thrown toward a target on the ground and that contact the ground tip first. We have attempted to eliminate any product that appears to be primarily intended for children. Moreover, we have not included games such as horse shoes and ring toss. We estimate that the recordkeeping burden for recording test results and creating a GCC is about 1.5 hours per product.

A search of several large Internet retailers on February 13, 2013, turned up six products by six different manufacturers that could be considered to be lawn darts; although none of the products appeared to have sharp tips designed to stick into the ground. Other similar products may be available that were not discovered during this Internet search. The actual number of lawn dart products available could be higher if some of the available products were not found during the Internet search. The number of products could be lower if some products that were found are intended for children 12 years of age and younger.<sup>16</sup>

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>6</u>	<u>6</u>	<u>1.5</u>	<u>9</u>

<sup>16</sup> One product was found that was obviously intended for children under the age of 13 years and is not included in these estimates.

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24. Ban of Artificial Emberizing Materials Containing Asbestos  
(16 CFR part 1305)

Artificial emberizing materials are used in decorative gas fireplace systems to simulate the ashes and embers in wood-burning fireplaces. The use of respirable, free-form asbestos in these products is banned by 16 CFR part 1305. Not banned are emberizing materials that consist of other materials, such as vermiculite, rock wool, mica, or synthetic fibers. The emberizing materials that are not banned must be certified as not containing respirable, free-form asbestos, based on a test of each product or on a reasonable testing program. We estimate that the recordkeeping burden for recording test results and creating GCCs is about 1.5 hours per product per year.

Included in these estimates are any materials that are intended for use with fireplace logs to simulate ashes or embers. An Internet search on November 14, 2013, identified a total of 56 different products, by 14 different suppliers, that could be used to simulate ashes or embers in non-working fireplaces. Because there are likely many products that were not identified during this search, this is probably a low estimate.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>14</u>	<u>56</u>	<u>1.5</u>	<u>84</u>

25. Ban of Patching Compounds Containing Respirable Free-Form Asbestos  
(16 CFR part 1304)

Part 1304 bans any patching compounds to which asbestos has been added deliberately as an ingredient or contained in the final product as the result of knowingly using a raw material containing asbestos. "Patching compounds" are described as being mixtures of talc, pigments, clays, casein, ground marble, mica, or other similar materials, and a binding material. Patching compounds are used to cover, seal, or mask cracks, joints, holes, and similar openings in the

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trim, walls, and ceilings of building interiors. They are applied in a wet form, and after drying, are sanded to a smooth finish. They are commonly referred to as “spackling,” “joint compounds,” and “mud.” In the past, asbestos was sometimes used as the binding material.

Part 1304 does not contain a test method. However, all certifiers of patching compounds intended for consumer use must certify that asbestos has not been added intentionally as an ingredient, and that the final product does not contain asbestos as the result of knowingly using a raw material containing asbestos. We estimate that the recordkeeping burden to create GCCs will be at least 15 minutes per product annually.

A total of 148 patching compounds by about 35 different manufacturers were found during an Internet search on February 21, 2013. If we failed to identify all patching compounds available, 148 products would be a low estimate of the total number of patching compounds available. Assuming that the time required preparing a GCC for each product averaged 15 minutes per year, the total recordkeeping burden would be about 37 hours.

<u>Firms</u>	<u>Total Models</u>	<u>Hours/Model</u>	<u>Total Hours</u>
<u>35</u>	<u>148</u>	<u>0.25</u>	<u>37</u>

*B. Furnishing Certificates to Third Parties*

Section 14(g)(3) of the CPSA, as amended by the CPSIA, requires that every certificate required in section 14(a) of the CPSA “accompany the applicable product or shipment of products covered by the same certificate” and that “a copy of the certificate . . . be furnished to each distributor or retailer of the product.” Moreover, manufacturers and private labelers must furnish a copy of the certificate to the Commission upon request.

The draft proposed rule amending continues to allow manufacturers, importers, and private labelers flexibility in how to provide certificates to retailers or distributors, and to the

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CPSC. Section 1110.9 provides that, except for the certificate that is required to be filed with CBP for imported products in § 1110.13(a)(1), certificates may be provided in hard copy or electronically. Electronic certificates are acceptable if they are identified “prominently on the finished product, shipping carton, or invoice by a unique identifier, and they can be accessed via” the Internet or other electronic means. The draft proposed rule further states that an electronic certificate must be available, without password protection, on or before the date the finished product is distributed in commerce. In practice, “hard copy” certificates are usually in the form of a paper certificate that physically accompanies each shipment by being placed in a shipping container. Certifiers using electronic certificates often place a Web address to access the certificate on the product, shipping carton, or invoice.

We do not have a strong basis for estimating the average third party reporting burden per product because the requirement to disclose certificates applies to a very diverse group of consumer products and manufacturers. Moreover, the reporting burden is most likely related to the number of shipments of the product from the manufacturers, importers, or private labelers to the distributors or retailers, which is information that is not available. For purposes of preparing this initial estimate of the third party reporting burden, we are estimating that the burden is 15 minutes per product, per year to place a paper copy of the certificate in the shipping carton, or provide a Web address for certificates on the product, carton, or invoice, and to maintain the website. We welcome comments on the accuracy of this estimate.

1. Non-children’s products

As summarized in Table A below, we estimate that there are about 6 million<sup>17</sup> non-children’s products for which GCCs are required. Thus, we estimate the total burden hours for

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<sup>17</sup> This estimate is rounded.

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third party disclosure of GCCs to be 1.5 million hours (6,000,000 models x .25 hours = 1.5 million burden hours). We are estimating that the cost per hour of the recordkeeping and reporting burden is \$37.34<sup>18</sup> an hour, which represents a mixture of professional and administrative staff labor. Accordingly, the estimated cost of third party disclosures for GCCs is \$56,010,000 (1,500,000 burden hours x \$37.34 per hour = \$56,010,000).

2. Children's products

The collection of information on Third Party Testing of Children's Products currently does not include an estimate for third party disclosure of CPCs to retailers, distributors, or the CPSC. In that collection, we estimated that there were a total of 1.6 million children's products for which CPCs would be required. The number of children's products includes 1.3 million apparel and footwear products and 0.3 million non-apparel products. If the burden of providing a CPC to retailers, distributors, and the CPSC is an estimated 15 minutes per product, per year, then the total burden would be approximately 400,000 hours (1.6 million models x 0.25 hours = 400,000). We propose to amend the collection of information on Third Party Testing of Children's Products to increase the burden hours by 400,000 to account for third party disclosures of CPCs. The estimated cost of third party disclosure of CPCs is \$14,936,000 (400,000 burden hours x \$37.34 per hour = \$14,936,000).

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<sup>18</sup> The hourly compensation rate used is based on the hourly compensation rate used for estimating the recordkeeping burden in the 1107 and 1109 rules, which relate to the testing and certification of children's products and component part testing. In order to recognize that both clerical and professional staff could be involved in recordkeeping, we assumed that personnel in "management, professional, and related occupations" would be responsible for half of the activities involving the recordkeeping and that personnel in "office and administrative support" occupations would be responsible for the other half. We assume that the same occupational mix of employees will also be involved in performing the tasks necessary to file certificates electronically with CBP (as required by the proposed amendments to part 1110). As of June 2012 total compensation (i.e. wages and benefits) for these occupational categories averaged \$37.34 per hour.

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### C. Filing Certificates for Imported Products with CBP

Section 14(g)(4) of the CPSA provides that the Commission, by rule, in consultation with CBP, may provide for electronic filing of certificates for imported products up to 24 hours before arrival of the imported product. The draft proposed rule would require that importers of regulated finished products file the required GCC or CPC electronically with CBP at the time of filing the CBP entry or the time of filing the entry and the entry summary, if both are filed together. The rule does not specify the electronic format for certificates filed with CBP, but we anticipate that importers will be able to file the certificate information in the form of data elements or by filing the certificate in a PDF format through CBP's system of records. The increased time required to file certificates electronically with CBP would be attributable to associating the proper certificates to individual shipments for import, converting certificates to an electronic format, and transmitting the certificates to CBP (or to a customs broker, if the importer does not self-file).

#### 1. Non-children's products

The initial regulatory flexibility analysis for this draft proposed rule cites research of CBP data by CPSC staff, which found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products under the CPSC's jurisdiction.<sup>19</sup> Data on the number of importers of children's versus non-children's products is not publicly available. However, based on inspection of product trade codes, we know that the number of distinct products or models requiring GCCs exceeds the number of children's product models

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<sup>19</sup> Blachere, John, International Trade Specialist, Office of Import Surveillance, CPSC. December 8, 2010, e-mail to Charles Smith, Directorate for Economic Analysis, CPSC.

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requiring CPCs.<sup>20</sup> Thus, there might be on the order of 100,000 importers of children's products and 150,000 importers of non-children's products.

If 150,000 firms import products subject to electronic filing of GCCs, and these firms average 20 shipments with products requiring certificates, the annual number of electronic filings of GCCs with CBP could total 3 million.<sup>21</sup> According to a customs broker contacted by the Directorate for Economic Analysis, all importers might average about three product lines per Customs entry. If electronic filing requires an average of 30 minutes per shipment, the estimated annual incremental burden would be about \$56 million, using an estimated average employee compensation cost of \$37.34 per hour (3 million electronic filings x 0.5 hours per filing x \$37.34 per hour).<sup>22</sup>

### 2. Children's products

Research of CBP data by CPSC staff found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products under the CPSC's jurisdiction. Data on the number of importers of children's versus non-children's products is not publicly available. However, as stated above for non-children's products, we know that the number of children's products requiring certificates of conformance is substantially lower than the number of non-children's products requiring general certificates of conformance. Thus, we assume 100,000 importers of children's products in this analysis.

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<sup>20</sup> A large percentage of these firms (such as importers of adult clothing) also would be included in the estimate of importers of products requiring CPCs.

<sup>21</sup> In the paperwork burden analysis for 16 CFR Part 1110, we found that there are about 3.75 products requiring GCCs for every product requiring a CPC. The estimate of 20 shipments per importer was used to generally maintain this relationship between GCCs and CPCs. See Robert Franklin, Directorate for Economic Analysis, CPSC, Recordkeeping Burden Associated with Direct Final Rule for 16 CFR Part 1110 Issued in November 2008 (March 14, 2013).

<sup>22</sup> In the paperwork burden analysis for 16 CFR Part 1110, third party disclosure was estimated to require about 15 minutes per product. In this case, it is reasonable for this estimate to reflect efficiency in filing multiple electronic certificates simultaneously and with other paperwork required for entry. For this reason, we use an estimate of 10 minutes per product rather than 15 minutes per product. *Id.*

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CBP estimated that “in 2005 more than 70 to 85 percent of all importers imported fewer than 12 shipments.”<sup>23</sup> Based on this information, if 100,000 firms import children’s products annually that are subject to electronic filing of certificates, and these firms average 10 shipments a year, the annual number of electronic filings of CPCs with CBP could total 1 million. According to a customs broker contacted by the Directorate for Economic Analysis, all importers might average about three product lines per Customs entry. If electronic filing requires an average of 30 minutes per shipment, total incremental costs of recordkeeping for the Testing Rule would be about \$18.7 million (1 million electronic filings x 0.5 hours per filing x \$37.34 per hour).<sup>24</sup>

These costs would be in addition to the estimated recordkeeping costs already described in the collection of information on Third Party Testing of Children’s Products as well as the increased burden described for third party disclosures to retailers, distributors, and the CPSC. Total estimated incremental costs for disclosing CPCs to third parties is summarized in Table B.

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<sup>23</sup> Department of Homeland Security, Bureau of Customs and Border Protection, Importer Security Filing and Additional Carrier Requirements, Interim final rule. Federal Register, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>24</sup> As with non-children’s products, it is reasonable for this estimate to reflect efficiency in filing multiple electronic certificates simultaneously and with other paperwork required for entry. For this reason, we use an estimate of 10 minutes per product rather than 15 minutes per product.

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**Table A: Summary of PRA Burden Estimates by Rule for Non-Children’s Products that Require a General Conformity Certificate (GCC)**

<u>Product Categories</u>	<u>Number of Mfrs</u>	<u>Number of Models*</u>	<u>Hours per Model</u>	<u>Total Estimated Burden Hours</u>
<u>Architectural Glazing Materials</u>	<u>400</u>	<u>2,400</u>	<u>1.5</u>	<u>3,600</u>
<u>Matchbooks</u>	<u>4</u>	<u>12</u>	<u>1.5</u>	<u>18</u>
<u>Bicycle Helmets</u>	<u>30</u>	<u>165</u>	<u>0.5</u>	<u>83</u>
<u>CB Band Base Station Antennas</u>	<u>5</u>	<u>15</u>	<u>0.5</u>	<u>8</u>
<u>Walk Behind Power Mowers</u>	<u>20</u>	<u>--</u>	<u>130</u>	<u>2,600</u>
<u>Swimming Pool Slides</u>	<u>--</u>	<u>120</u>	<u>1.5</u>	<u>180</u>
<u>Cellulose Insulation</u>	<u>44</u>	<u>--</u>	<u>60</u>	<u>2,640</u>
<u>Cigarette and Multipurpose Lighters</u>	<u>145</u>	<u>6,667</u>	<u>0.25</u>	<u>1,667</u>
<u>Garage Door Openers</u>	<u>21</u>	<u>84</u>	<u>0.5</u>	<u>42</u>
<u>Furniture (paint)</u>	<u>--</u>	<u>125,000</u>	<u>0.5</u>	<u>62,500</u>
<u>Furniture (bunk beds)</u>	<u>--</u>	<u>600</u>	<u>1.5</u>	<u>900</u>
<u>Paints and Coatings</u>	<u>501</u>	<u>41,082</u>	<u>0.5</u>	<u>20,541</u>
<u>ATVs</u>	<u>32</u>	<u>132</u>	<u>1.5</u>	<u>198</u>
<u>Pools and Spas (VGB Act)</u>	<u>12</u>	<u>136</u>	<u>1.5</u>	<u>204</u>
<u>Fireworks Devices</u>	<u>44</u>	<u>115,000</u>	<u>1.0</u>	<u>115,000</u>
<u>Bicycles</u>	<u>150</u>	<u>1,900</u>	<u>1.5</u>	<u>2,850</u>
<u>Clothing and Apparel</u>	<u>1,000s</u>	<u>5,500,000</u>	<u>0.25</u>	<u>1,375,000</u>
<u>Carpets and Rugs</u>	<u>240</u>	<u>24,000</u>	<u>1.5</u>	<u>36,000</u>
<u>Mattresses</u>	<u>671</u>	<u>13,420</u>	<u>0.25</u>	<u>3,355</u>
<u>PPPA</u>	<u>1,000</u>	<u>150,000</u>	<u>0.12</u>	<u>17,500</u>
<u>Refrigerators</u>	<u>19</u>	<u>2,800</u>	<u>1.5</u>	<u>3,420</u>
<u>Candles w/Metal Core Wicks</u>	<u>400</u>	<u>60,000</u>	<u>40</u>	<u>16,000</u>
<u>Refuse Bins</u>	<u>19</u>	<u>358</u>	<u>0.50</u>	<u>179</u>
<u>Lawn Darts</u>	<u>6</u>	<u>6</u>	<u>1.5</u>	<u>9</u>
<u>Artificial Emberizing Materials</u>	<u>14</u>	<u>56</u>	<u>1.5</u>	<u>84</u>
<u>Patching Compounds</u>	<u>35</u>	<u>148</u>	<u>0.25</u>	<u>37</u>
<u>Burden Hours to Document Test Results and Create GCCs</u>				<u>1,664,615</u>
<u>Burden Hours for Third Party Disclosure of GCCs</u>		<u>6,000,000</u>	<u>0.25</u>	<u>1,500,000</u>
<u>Subtotal Burden Hours for GCCs</u>				<u>3,164,615</u>
				<b><u>Estimated Cost</u></b>
<u>Subtotal Cost: 3,164,615 Burden Hours x \$37.34 per Burden Hour</u>				<u>\$118,166,724</u>
<u>Estimated Average Cost of Filing GCCs for Imports with CBP**</u>				<u>\$ 56,000,000</u>
<b><u>Total Estimated Cost</u></b>				<b><u>\$174,166,724</u></b>

\* Estimated number of distinct product varieties that require certification.

\*\* Costs attributable to proposed amendment to 16 CFR part 1110.

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**Table B: Summary of Incremental Cost for Third Party Disclosure of CPCs Amending Collection of Information for Third Party Testing of Children’s Products**

<u>Estimated Cost of Third Party Disclosure of CPCs</u>	<u>\$14,936,000</u>
<u>Estimated Average Cost of Filing CPCs for Imports with CBP*</u>	<u>\$18,700,000</u>
<b><u>Total Estimated Incremental Cost</u></b>	<b><u>\$33,636,000</u></b>

\* Costs attributable to proposed amendment to 16 CFR part 1110.

**VIII. Effective Date**

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission proposes that any final rule based on this proposal would become effective 90 days after the final rule is published in the *Federal Register*. Certifiers should not require a lengthy period of time to come into compliance with a final rule because certificates are already required to be issued, and changes to the existing regulation are not extensive but merely clarifying expectations in light of new testing regulations. The most substantive amendment to the existing part 1110 would require that in the case of finished products that are manufactured outside the United States and that are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP. Stakeholders should provide information and evidence if they believe that implementing such a requirement would require longer than 90 days from the issuance of a final rule.

**List of Subjects in 16 CFR Part 1110**

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Regulated products, labeling, certificate, certification, component part certificate.

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For the reasons stated in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations by striking the entirety of existing 16 CFR part 1110, and replacing it with a new part 1110 to read as follows:

**Part 1110—CERTIFICATES OF COMPLIANCE**

Sec.

1110.1 - What is the purpose and scope of this part?

1110.3 - What definitions apply to this part?

1110.5 - When are certificates required?

1110.7 - Who must certify finished products?

1110.9 - What form(s) may the certificate take?

1110.11 - What must the certificate contain?

1110.13 - When must certificates be made available?

1110.15 - Who is responsible for the information in a certificate?

1110.17 - What recordkeeping requirements apply to certificates?

1110.19 - What requirements apply to component part certificates?

AUTHORITY: 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110-314, 122 Stat. 3016, 3017 (2008), Pub. L. 112-28 (2011).

**§ 1110.1 – What is the purpose and scope of this part?**

(a) This part:

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(1) Specifies the entities that must issue certificates for finished products in accordance with section 14(a) of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2063(a);

(2) Clarifies which provisions of this part apply to component part certificates;

(3) Specifies certificate content, form, and availability requirements that must be met to satisfy the requirements of section 14 of the CPSA; and

(4) Requires importers to file certificates electronically with CBP for imported finished products that are required to be certified.

(b) This part does not address issues related to type or frequency of testing necessary to support a certificate.

### **§ 1110.3 – What definitions apply to this part?**

(a) The definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110-314, apply to this part.

(b) Additionally, the following definitions apply for purposes of this part:

(1) “CBP” or “Customs” means United States Customs and Border Protection;

(2) “Certificate” or “certificate of compliance” means a certification that the finished products or component parts within the scope of the certificate comply with the consumer product safety rules under the CPSA, or similar rules, bans, standards, or regulations under any other law enforced by the Commission, as set forth on the certificate. “Certificate” and “certificate of compliance” generally refer to all three types of certificates: General Conformity Certificates, Children’s Product Certificates, and component part certificates;

(3) “Certifier” means the party who issues a certificate of compliance;

(4) “Children’s Product Certificate” (CPC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(2) of the CPSA and part 1107 of this chapter;

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(5) “Commission” or “CPSC” means the United States Consumer Product Safety Commission;

(6) “Component part” means a component part of a consumer product or other product or substance regulated by the Commission, as defined in § 1109.4(b) of this chapter, that is intended to be used in the manufacture or assembly of a finished product, and is not intended for sale to, or use by, consumers as a finished product;

(7) “Component part certificate” means a certificate of compliance for a component part of a consumer product, as defined in paragraph(b)(6) of this section;

(8) “Electronic certificate” means a set of information available in, and accessible by, electronic means that sets forth the information required by sections 14(a) and 14(g) of the CPSA, § 1110.11, and that meets all other certificate requirements set forth in this part;

(9) “Finished product” means a consumer product or other product or substance regulated by the Commission that is imported for consumption or warehousing or is distributed in commerce. Parts of consumer products that are imported for consumption or warehousing or are distributed in commerce that are packaged, sold, or held for sale to, or use by, consumers are considered finished products;

(10) “Finished product certificate” means a certificate of compliance for a finished product, as defined in paragraph(b)(9) of this section. There are two types of finished product certificates: Children’s Product Certificates and General Conformity Certificates;

(11) “Finished product certifier” means a party who is required to issue a finished product certificate pursuant to § 1110.7;

(12) “General Conformity Certificate” (GCC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(1) of the CPSA; and

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(13) “Importer” means importer of record as defined under the Tariff Act of 1930 (19 U.S.C.

1484(a)(2)(B));

~~(13)~~(14) “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.

**§ 1110.5 – When are certificates required?**

Finished products subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing or are distributed in commerce, must be accompanied by a GCC or a CPC, as applicable.

**§ 1110.7 - Who must certify finished products?**

(a) *Imports.* Except as otherwise provided in a specific rule, ban, standard, or regulation, for a finished product manufactured outside of the United States that must be accompanied by a certificate, as set forth in § 1110.5, the importer must issue a certificate that meets the requirements of this part. However, if a finished product manufactured outside the United States is delivered directly to a consumer in the United States, such as products purchased through an Internet website, the foreign manufacturer must issue a certificate that meets the requirements of this part, unless the product bears a private label. The private labeler must issue a certificate that meets the requirements of this part for such products that bear a private label and are delivered directly to a consumer in the United States, unless the foreign manufacturer issues the certificate.

(b) *Domestic products.* Except as otherwise provided in a specific rule, ban, standard, or regulation, for a finished product manufactured in the United States that must be accompanied by a certificate, as set forth in § 1110.5, the manufacturer must issue a certificate that meets the

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requirements of this part. However, if a finished product manufactured in the United States is privately labeled, the private labeler must issue a certificate that meets the requirements of this part, unless the manufacturer issues the certificate.

### **§ 1110.9 – What form(s) may the certificate take?**

(a) *Language.* Certificates must be in the English language and may also contain the same content in any other language.

(b) *Format.* Except as required in § 1110.13(a)(1), certificates may be provided in hard copy or electronically.

(c) *Electronic certificates.* An electronic certificate meets the requirements of §§ 1110.13(a)(2), 1110.13(a)(3), 1110.13(b), and 1110.13(c) if it is identified prominently on the finished product, shipping carton, or invoice by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means, provided that the certificate, the URL or other electronic means, and the unique identifier are accessible, along with access to the electronic certificate itself, without password protection, to the Commission, CBP, distributors, and retailers, on or before the date the finished product is distributed in commerce.

### **§ 1110.11 – What must the certificate contain?**

(a) *Content requirements.* Each certificate must:

(1) Identify the component part(s) or finished product(s) covered by the certificate and state whether the certificate is for a finished product or a component part. A model, style, or other unique identifier of the product should be provided, if any, along with a description of the finished product or component part. Certifiers may also include an identifier, such as a universal

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product code (UPC), a global trade item number (GTIN), or other identifying code that may assist with product identification;

(2) State the date of initial certification of the finished product(s) or component part(s) to which the certificate refers;

(3) Identify the scope of finished product(s) or component part(s) for which the certificate applies, such as by a start date, start and end date, lot number, starting serial number or serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate;

(4) State each consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any law enforced by the Commission, to which the finished product(s) or component part(s) are being certified. Finished product certificates must identify separately all applicable rules, bans, standards, or regulations. Component part certificates must identify all rules, or parts of rules, bans, standards, or regulations for which the component part(s) are being certified;

(5) Identify the party certifying compliance of the finished product(s) or component part(s), including the party's name, electronic mail (e-mail) address, full mailing address, including the street address, and telephone number;

(6) Identify and provide contact information (consisting, at a minimum, of the individual's name, e-mail address, full mailing address, and telephone number) for the individual:

(i) maintaining records of test results on which a GCC is based, and records described in §§ 1109.5(g) and (j) of this chapter (where applicable); or

(ii) maintaining records of test results and other records on which a CPC is based, as required by §§ 1107.26, § 1109.5(g) and (j) of this chapter (where applicable); or

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(iii) maintaining records of test results and other records on which a component part certificate is based, as required by §§1109.5(g) and (j) of this chapter;

(7) Provide the date (month and year, at a minimum) and place (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were manufactured, produced, or assembled;

(8) Provide the dates and places (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in §1110.11(a)(4) of this part;

(9) Identify all parties, including third party conformity assessment bodies, on whose testing the certificate depends, including name, e-mail address, full mailing address, including the street address, and telephone number; and

(10) Include the following attestation:

I hereby certify that the finished product(s) or component part(s) covered by this certificate comply with the rules, bans, standards, and regulations stated herein, and that the information in this certificate is true and accurate to the best of my knowledge, information, and belief. I understand and acknowledge that it is a United States federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statements, representations, or omissions, on this certificate.

(b) *Electronic Access to Records.* In addition to identification of the custodian of records, as described in § 1110.11(a)(6), a certificate may include a World Wide Web URL, or other electronic means, which provides electronic access to the required records.

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(c) *Exceptions*: If the product being certified is subject to more than one consumer product safety rule or similar rule, ban, standard, or regulation, and a certifier is claiming a testing exception to some, but not all, applicable regulations, the certifier shall list all applicable regulations on the certificate. For those regulations that do not require testing, the certifier shall state the basis for not testing to such regulation on the certificate, instead of providing the date and place where testing was conducted for that regulation in § 1110.11(a)(8). If a finished product is not required to be tested or certified, then no certificate is required to be issued.

(c) *Duplicative Testing Not Required*. Although certificates must list each applicable rule, ban, standard, or regulation separately, finished product certifiers are not required to conduct duplicative third party testing for any rule that refers to, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission.

### **§ 1110.13 – When must certificates be made available?**

(a) *Accompanying Certificates*. A certificate issued by a finished product certifier must accompany each finished product or finished product shipment required to be certified pursuant to § 1110.5 .

(1) In the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together.

(2) In the case of finished products manufactured in the United States, certificates shall not be filed with CPSC. A finished product certifier, pursuant to § 1110.7(b), must make the

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required GCC or CPC available for inspection by the CPSC on or before the date the finished product is distributed in commerce.

(3) In the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, that are delivered directly to a consumer in the United States, the foreign manufacturer or the private labeler, as set forth in § 1110.7(a), must either file the required GCC or CPC electronically with CBP as described in paragraph (1), or make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce, as described in paragraph (2).

(b) *Furnishing Certificates.* A finished product certifier must furnish a required GCC or CPC to each distributor or retailer of the finished product.

(c) *Availability.* Certifiers must make certificates available for inspection immediately upon request by CPSC or CBP.

### **§ 1110.15 – Who is responsible for the information in a certificate?**

Certifiers may have any entity maintain an electronic certificate platform and enter the requisite data. However, the certifier is responsible for the information in a certificate, including its validity, accuracy, completeness, and availability, as applicable.

### **§ 1110.17 – What recordkeeping requirements apply to certificates?**

For CPCs and component part certificates, certifiers must follow the recordkeeping provisions contained in §§ 1107.26, 1109.5(g), and 1109.5(j) of this chapter, as applicable. For GCCs, the certificate and supporting test records should be maintained based on recordkeeping provisions within the applicable substantive standard. If a standard does not contain a recordkeeping requirement, the Commission suggests that each issuer maintain certificates and test records for at least 3 years, as is currently required by certain consumer product safety rules.

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**§ 1110.19 – What requirements apply to component part certificates?**

Pursuant to part 1109 of this chapter, component part certificates are voluntary. Accordingly, component parts of consumer products, as defined in § 1110.3(b)(6) , are not required to be accompanied by a certificate, and component part certificates are not required to be furnished to retailers and distributors, as described in § 1110.13(b). Component part certificates shall not be filed with CBP upon importation of component parts. Instead, certifiers of component parts must meet the requirements in part 1109 of this chapter, and component part certificates must also meet the form, content, and availability requirements described in §§ 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17

Dated \_\_\_\_\_

\_\_\_\_\_  
Todd A. Stevenson,  
Secretary, Consumer Product Safety Commission.

**Clean Copy of Staff's Revisions to  
Draft Proposed Rule Amending 16 CFR part 1110**

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Billing Code 6355-01-P

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1110**

**[CPSC Docket No. CPSC-2012-xxxx]**

**Amendment to Regulation on Certificates of Compliance**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Consumer Product Safety Commission (Commission, CPSC, or we) is issuing a proposed rule that would amend the existing regulation on certificates of compliance at 16 CFR part 1110. The proposed amendment is intended to update the rule to clarify requirements in light of new regulations on testing and labeling pertaining to product certification, and component part testing, codified at 16 CFR parts 1107 and 1109, respectively. The proposed amendment would, among other things, use newly defined terms such as “finished product certificate” and “component part certificate”; require that regulated finished products that are privately labeled be certified by the private labeler for products manufactured in the United States; clarify requirements for the form, content, and availability of certificates of compliance; and require that importers of regulated finished products manufactured outside of the United States file the required certificate electronically with U.S. Customs and Border Protection (CBP) at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

**DATES:** Written comments must be received by [INSERT DATE THAT IS 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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**ADDRESSES:** You may submit comments, identified by Docket No. [insert CPSC docket number], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through [www.regulations.gov](http://www.regulations.gov).

Written Submissions

Submit written submissions in the following way:

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

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to:

<http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

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

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**FOR FURTHER INFORMATION CONTACT:** Carol Cave, Director, Office of Import Surveillance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; ccave@cpsc.gov; telephone (301) 504-7677.

### SUPPLEMENTARY INFORMATION:

#### I. INTRODUCTION

##### A. *Background on 16 CFR part 1110*

The Commission promulgated a direct final rule on “certificates of compliance,” also referred to as “certificates,” on November 18, 2008 (73 FR 68328), which is codified at 16 CFR part 1110 (the existing 1110 rule). The Commission published the existing 1110 rule shortly after the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted on August 14, 2008, to clarify for stakeholders the certificate requirements imposed by the newly amended section 14(a) of the Consumer Product Safety Act (CPSA) and section 14(g) of the CPSA. The CPSIA amended section 14(a) of the CPSA to require that manufacturers and private labelers of children’s products subject to a children’s product safety rule certify such products as compliant based on testing conducted by a third party conformity assessment body, and that manufacturers and private labelers of regulated non-children’s products certify compliance based on a test of each product, or on a reasonable testing program. Section 14(g) of the CPSA states requirements for certificate content. Thus, the existing part 1110 rule sets forth certificate requirements, such as:

- limiting the parties who must issue a certificate to the importer, for products manufactured outside the United States, and, in the case of domestically manufactured products, to the manufacturer;
- allowing certificates to be in hard copy or electronic form;
- clarifying requirements for an electronic form of certificate; and
- providing certificate content requirements.

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*B. Why is the Commission proposing to amend the 1110 rule now?*

The Commission is proposing to amend the 1110 rule now to clarify certificate requirements in light of new rules related to testing and certification of consumer products and to implement section 14(g)(4) of the CPSA, which allows the Commission, in consultation with the Commissioner of Customs, to require that certificates for imported products be filed electronically with CBP up to 24 hours before arrival of an imported product.

Since the existing 1110 rule was promulgated in 2008, the Commission has been working diligently to implement the requirements of the CPSIA, including the requirements in section 14 of the CPSA for testing, labeling, and certification of consumer products. Recently, the Commission issued two key rules: (1) *Testing and Labeling Pertaining to Product Certification*, 16 CFR part 1107 (the Testing Rule or the 1107 rule), and (2) *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements*, 16 CFR part 1109 (the Component Part Rule or the 1109 rule). Both rules were published in the *Federal Register* on November 8, 2011 (76 FR 69482 & 76 FR 69546, respectively). The Testing Rule sets forth requirements for the testing, certification, and labeling of regulated children's products. It becomes effective on February 8, 2013. The Component Part Rule, which allows for component part testing and certification to meet testing and certification requirements, became effective on December 8, 2011. Amending the existing 1110 rule would allow the Commission to define and use new terms introduced by the 1107 and 1109 rules, and to describe and explain how certificates must be integrated and consistent with these new rules.

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### *C. What statutory requirements apply to certificates of compliance?*

This section of the preamble describes the statutory requirements that apply to certificates and the Commission's authority to implement such requirements. Section 14 (a)(1) of the CPSA, as amended by the CPSIA, requires that except for certificates that apply to children's products, every manufacturer, or private labeler if there is one, of a consumer product that is subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission that is imported for consumption or warehousing, or distributed in commerce, must issue a certificate. Section 3(a)(8) of the CPSA defines "distribute in commerce" to mean "to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." For non-children's products, the certificate must be based on a test of each product or on a reasonable testing program. The certificate must specify each applicable rule, ban, standard, or regulation enforced by the Commission and certify that the product complies with all such listed rules.

Similarly, section 14(a)(2) of the CPSA requires that every manufacturer or private labeler, if there is one, of a children's product that is subject to a children's product safety rule must have the children's product tested by a third party conformity assessment body, and based on such testing, certify that the product is compliant with all applicable rules. Before importing such children's products for consumption or warehousing, or before distributing such children's products in commerce, manufacturers or private labelers must submit sufficient samples of the children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body, whose accreditation has been accepted by the Commission to perform such testing, to be tested for compliance with all applicable children's product safety rules. The manufacturer or private labeler must issue a certificate or certificates

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based on such testing, certifying that the children's products covered by the certificate(s) comply with all applicable children's product safety rules. Section 14(a)(2)(B) of the CPSA states that a certificate can be issued for each applicable children's product safety rule, or one certificate for the product can combine all applicable rules, by listing each applicable children's product safety rule separately and certifying compliance with all of them.

Section 3(a)(11) of the CPSA defines the term "manufacturer" as any person who manufactures *or imports* a consumer product. As such, any statutory obligation assigned to a manufacturer, by definition, applies to an importer. Thus, as written, the statutory obligation to issue a certificate for children's and non-children's products falls to the manufacturer, importer, or the private labeler of a consumer product, if the product is privately labeled under section 3(a)(12) of the CPSA. Section 14(a)(4) of the CPSA provides that in the case of a consumer product that has more than one manufacturer or private labeler, the Commission may, by rule, designate which person is responsible for issuing a certificate, and exempt all other persons from issuing certificates.

Section 14(g) of the CPSA contains certificate requirements. Section 14(g)(1) of the CPSA requires that a certificate shall identify the manufacturer (including importer) or private labeler issuing the certificate, as well as any third party conformity assessment body on whose testing the certificate depends. At a minimum, certificates are required to include: the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. Additionally, section 14(g)(2) of the CPSA requires that every certificate be legible and that all contents must be in English. Contents may also be in any other language. Moreover, pursuant to section 14(g)(3) of the CPSA, certificates must

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accompany the applicable product or shipment of products covered by the certificate, and a copy of the certificate must be furnished to each distributor or retailer of the product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of the certificate to the Commission. Finally, section 14(g)(4) of the CPSA states that in consultation with the Commissioner of Customs, the CPSC may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of such certificate to the Commission or to CBP.

In addition to the statutory authority to require certificates for regulated products, as outlined in sections 14(a) and (g) of the CPSA, the Commission has general implementing authority with regard to certificates, pursuant to section 3 of the CPSIA, which provides: “[t]he Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.”

## II. Description of the Proposed Rule

Because of the number of proposed changes, the Commission intends to strike the existing 1110 rule in its entirety and replace it with the proposed rule set forth below.

### A. *What Is the Purpose and Scope of this Part? – Proposed § 1110.1*

Proposed § 1110.1 would continue to describe the purpose of part 1110 but does so in language that is clearer and more simple. The changes also clarify which provisions of this part apply to component part certificates. Existing § 1110.1(a)(1) states that the purpose of the rule is to “limit” the entities required to issue certificates because the existing rule does not cover private labelers. The proposed rule would increase the number of entities responsible for issuing certificates and therefore would state that the purpose is to “specify” the entities that must issue

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certificates. The proposed rule also would implement section 14(g)(4) and require certificates for imported products to be filed electronically with CBP. Proposed § 1110.1(b) would reflect this change.

### *B. What Definitions Apply to this Part? – Proposed § 1110.3*

Existing § 1110.3 defines an “electronic certificate,” and incorporates definitions from section 3 of the CPSA as well as definitions set forth in the CPSIA. Proposed § 1110.3 would maintain these provisions, with minor grammatical changes, and would add 13 new definitions. The proposed new definitions would clarify the different types of certificates outlined in the Testing and Component Part Rules, such as “Children’s Product Certificate (CPC),” “General Conformity Certificate (GCC),” “finished product certificate,” and “component part certificate.” For example, two types of finished product certificates would be defined in the proposed rule: CPCs and GCCs. Either a CPC or GCC would only be required for “finished products” but not for “component parts” of consumer products under the proposed rule. Only certain regulated finished products would be required to be certified because our regulations typically are based on finished products. Under the Component Part Rule certification of component parts is voluntary, so not all component parts will be tested or certified, unless and until they become part of a regulated finished product; and component part suppliers may not know how the component part will be used and whether it will become part of a regulated finished product.

The proposed new definitions would also make part 1110 consistent with the Component Part Rule, by including and clarifying terminology used in that rule, such as “component part” and “finished product.” Proposed § 1110.3(b)(6) would define a “component part” as “a component part of a consumer product or other product or substance regulated by the Commission, as defined in § 1109.4(b) of this chapter, that is intended to be used in the

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manufacture or assembly of a finished product, and is not intended for sale to or use by consumers as a finished product.” Thus, the term “component part” would refer only to parts of products that are intended to be used in the manufacture or assembly of a finished product. In contrast, the term “finished product” refers to a product that is “imported for consumption or warehousing or is distributed in commerce.” Under the proposed definition, parts of such products that are packaged, sold, or held for sale to or use by consumers would also be considered finished products.

The distinction between a “component part” and a “finished product” is important because it defines when a product must be accompanied by a certificate under the proposed rule. “Finished products” are intended for sale to, or use by, consumers. “Component parts” are intended for incorporation into a finished product, and are not packaged, sold, or held for sale for use by consumers. In contrast, replacement parts of finished products that are sold separately would be considered finished products under the proposed rule. Because use of the Component Part Rule is voluntary, not every component part will be certified. It is only at the finished product stage that finished product certifiers will know all of the regulations that apply to a product and whether it must be accompanied by a certificate.

For example, doll clothing can be packaged and sold directly to consumers as a doll accessory. Such doll clothing that is packaged for sale to consumers would be considered a finished product under the proposed rule and must be certified. However, the same doll clothing could also be imported for use in the final assembly of a doll. Doll clothing that is imported for the purpose of being assembled with a doll for sale to consumers would be considered a component part under the proposed rule, and it would not be required to be accompanied by a certificate. If such doll clothing is a portion of a children’s product, however, it still must

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comply with the applicable rules. Moreover, such doll clothing would need to be certified as compliant as part of a finished children's product.

Proposed § 1110.3(b)(11) would define a "finished product certifier" as "a party that is required to issue a finished product certificate pursuant to § 1110.7." Note that § 1107.2 of the Testing Rule defines a "manufacturer" as "the parties responsible for certification of a consumer product pursuant to 16 CFR part 1110." Thus, changing the party responsible for issuing a certificate in the proposed rule would also change the party responsible for third party testing under the Testing Rule.

The proposed rule would continue to place on the importer the obligation to certify finished products manufactured outside the United States that are not delivered directly to consumers in the United States. Proposed § 1110.3(b)(13) would define an "importer" as the importer of record, as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)) (Tariff Act). Pursuant to the Tariff Act, the importer of record is either "the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid" customs broker's license, pursuant to 19 U.S.C. 1641.

### *C. When Are Certificates Required? – Proposed § 1110.5*

Existing § 1110.5 states that a certificate that is in hard copy or electronic form "and complies with all applicable requirements of this part 1110 meets the certificate requirements of section 14 of the CPSA," and that such a certificate "does not relieve the importer or domestic manufacturer from the underlying statutory requirements concerning the supporting testing and/or other bases to support certification and issuance of certificates." Requirements for certificate format have been moved to proposed § 1110.9.

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Proposed § 1110.5 would clarify when consumer products are required to be certified. Proposed § 1110.5 would require that only finished products that are subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing or are distributed in commerce, must be accompanied by a GCC or a CPC, as applicable. Component parts of a consumer product are not required to be accompanied by a certificate.

### *D. Who Must Certify Finished Products? – Proposed § 1110.7*

Existing § 1110.7 provides that, except as otherwise provided in a specific standard, in the case of a product manufactured outside the United States, only the importer must certify a product and provide a certificate in accordance with section 14(a) of the CPSA, and that only the manufacturer must certify a product and provide a certificate for products manufactured in the United States. As explained below, the proposed rule would modify this section.

#### 1. Imports – Proposed § 1110.7(a)

Proposed § 1110.7 would retitle the section to read: “Who must certify finished products?” to state more accurately the focus of proposed § 1110.7 and to clarify that only finished products must be certified. Proposed § 1110.7(a) would maintain the requirement that an importer certify products manufactured outside the United States, except in the circumstance of products that are delivered directly to consumers in the United States, such as products purchased through an Internet website. In such a case, the proposed rule would require that the foreign manufacturer certify the product, unless the product bears a private label. The private labeler would be required to issue a certificate for products that bear a private label that are delivered directly to a consumer in the United States, unless the foreign manufacturer issues the certificate.

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The proposed rule would continue to place on the importer the obligation to certify products manufactured outside the United States that are not delivered directly to a consumer. Section 1110.3(b)(13) of the proposed rule would define “importer” to be the importer of record, as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)) (Tariff Act). Pursuant to the Tariff Act, the importer of record is either “the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid” customs broker’s license, pursuant to 19 U.S.C. 1641. Thus, a validly licensed customs broker who serves as the importer of record for the imported products would be responsible for issuing the certificate required by section 14(a) of the CPSA and this rule with respect to the imported products.

Some common carriers, contract carriers, third party logistics providers, and freight forwarders (collectively, carriers), in addition to their delivery and transportation services, also may become licensed customs brokers and may serve as importer of record when bringing goods into the United States. Like any other customs broker that agrees to serve as an importer of record, when such a carrier chooses to serve as the importer, the carrier would be responsible for issuing a required certificate under the proposed rule.

Treating a carrier who also serves as an importer of record as an “importer” under the proposed rule is consistent with section 3(b) of the CPSA, which provides:

A common carrier, contract carrier, third party logistics provider, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer [including importer], distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

This provision protects carriers from being “deemed” a manufacturer, importer, distributor, or retailer, based “solely” on “receiving or transporting a consumer product” in the ordinary course

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of business as a carrier. Under the proposed rule, imposing importer-related certification requirements on a carrier that chooses to become a licensed customs broker and that agrees to serve as the importer of record is based on the carrier's status as importer of record and related customs functions rather than on the carrier's transportation-related functions.

Additionally, the proposed rule would place the obligation to certify products that are delivered directly to consumers in the United States, such as products purchased through an Internet website, on the foreign manufacturer, unless the product bears a private label. This proposed revision would clarify and remove any doubt about which entity has the burden to certify products directly delivered to consumers. The Commission recognizes that when a foreign entity delivers products directly to a consumer in the United States, the consumer could be considered the importer. Placing the obligation to test and certify consumer products on the purchasing consumer would be inconsistent with the goals of the statute, in that it would not protect consumers as intended by the testing and certification scheme set forth by Congress, and implemented by the Commission. Accordingly, the proposed rule would not place the burden of ensuring such compliance on consumers; rather, the Commission believes that the appropriate way to ensure compliance is to require companies that purposefully send their products into the United States to test and certify their products, as required by United States law.

For the vast majority of products imported into the United States through CBP, the proposed rule would continue to require that the importer of record certify the product, to provide a uniform, consistent, and predictable means of enforcing testing and certification requirements for imported products. We understand that some private labelers and brand owners with foreign manufacturing facilities want to test and certify their products. The Component Part Rule, which is already in effect, allows an importer to rely on testing or certification conducted

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by another party, as long as the importer meets the requirements of the 1109 rule, including exercising due care (see 16 CFR §1109.5(i)). Thus, private labelers and brand owners already can test and certify products on which an importer can then rely to issue their own certificate. The proposed rule would clarify that a finished product certificate must be issued by a required finished product certifier. An importer cannot simply pass along a component supplier's certificate. Thus, proposed § 1110.7(a) would ensure that the certificate required by the CPSC must be issued by the importer, who is required to certify the product. The ability of finished product certifiers, such as importers, to rely on another party's testing or certification under the 1109 rule allows a private labeler to test and certify, as needed, while maintaining the Commission's ability to enforce its regulations against the party responsible for importing the product.

### 2. Domestic products – Proposed § 1110.7(b)

For products manufactured in the United States, the proposed rule would continue to place the responsibility for issuing a required finished product certificate on the manufacturer, except in circumstances where a product is privately labeled, as defined in the CPSA. If a product is privately labeled, the proposed rule would place the obligation to certify the product on the private labeler, unless the manufacturer certifies the product. The Commission recognizes that under the existing 1110 rule, privately labeled products are required to be certified by the manufacturer. This relationship may continue as long as the product is certified. The proposed rule, however, would shift the obligation to ensure compliance for privately labeled products on to the private labeler.

Duplication of effort to issue a certificate should not occur by requiring the private labeler to certify privately labeled products. A "private labeler" is a defined term in the CPSA.

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Pursuant to section 3(a)(12) of the CPSA, the term applies only to products that carry the private labeler's brand or trademark on the product and not the manufacturer's brand or trademark.

Therefore, all products manufactured in the United States that contain a brand or trademark in addition to a manufacturer brand or trademark are not considered privately labeled under the CPSA, and the manufacturer would remain the required finished product certifier under the proposed rule. The proposed rule would change only the obligation to certify a product to the private labeler for products manufactured in the United States that bear a private label, which are those products that do not contain the brand or trademark of the manufacturer.

A "brand owner" is not defined in the CPSA. A brand owner would not be a required finished product certifier under the proposed rule, unless that entity imports products, manufactures products in the United States, or meets the definition of a "private labeler" for products made in the United States. We understand that some brand owners license their brand or trademark to appear on consumer products. Like "brand owner," "licensee" and "licensor" are not defined terms under the CPSA, and the Commission cannot require a "licensee" or a "licensor" to issue a certificate. Regardless of who the required finished product certifier is under the proposed rule, brand owners can already test and certify products under § 1109.5(i) of the Component Part Rule. If the product is imported, an importer can rely on a brand owner's testing or certification as a basis to issue the required finished product certificate. Moreover, a domestic manufacturer can rely on a brand owner's testing or certification to issue a required certificate, as long as all parties follow the requirements in the 1109 rule.

The proposed revisions to expand the required finished product certifier to include the private labeler for privately labeled products should not necessarily result in a change to existing relationships with regard to testing products and issuing certificates. Testing and certification

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can already be conducted by other parties under the Component Part Rule, and in both cases, where the private labeler has been included, the manufacturer can continue to issue the certificate.

### *E. What Form(s) May the Certificate Take? – Proposed § 1110.9*

Existing § 1110.9, titled, “Form of certificate,” states that “the information on a hard copy or electronic certificate must be provided in English and may be provided in any other language.” Proposed § 1110.9 would revise and elaborate on this concept, establishing requirements for language, format, and electronic certificates. This section would restate the statutory requirement that certificates must be in English, and may also contain the same content in any other language. The section would state that, except as provided in proposed § 1110.13(a)(1), which requires an electronic certificate for products imported into the United States, certificates may be provided in hard copy or electronically.

Proposed § 1110.9(c) would set forth requirements for electronic certificates in all cases, except certificates that would be required to be filed electronically with CBP at importation. The proposed rule would continue to allow a broad range of formats for electronic certificates, as long as they are identified by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means. However, several changes are proposed. First, proposed § 1110.9(c) would provide requirements for electronic certificates *other than* the filing of certificates electronically with CBP for imported products, which is discussed in detail in proposed § 1110.13(a)(1) in section II.G of this preamble. Accordingly, proposed § 1110.9(c) would apply only to: products manufactured in the United States; foreign-manufactured products that are delivered directly to a consumer in the United States; and

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imported finished products after importation, such as when requested by CPSC or CBP, or when certificates are furnished to retailers and distributors.

Second, proposed § 1110.9(c) would still allow for use of a “unique identifier” to access a certificate electronically, but it would require that the unique identifier be “identified prominently on the finished product, shipping carton, or invoice.” Experience with electronic certificates has shown that they can be effective as long as they are easily accessible. Searching products and paperwork for a certificate identifier should not require significant time and resources because it detracts from the efficiencies achieved by allowing electronic certificates. Requiring the placement of a unique identifier to be “prominent” and limiting the placement to three distinct options is intended to ensure the efficiency of allowing electronic certificates.

Third, proposed § 1110.9(c) would state that electronic certificates must be accessible “without password protection.” This amendment would ensure that access to electronic certificates is easy and efficient and does not require significant CPSC time and resources. If accessing information electronically is cumbersome, it defeats any efficiency achieved by electronic certificates. Thousands of entities, including manufacturers, private labelers, and importers, likely must certify consumer products. Maintenance of password information by the CPSC could become burdensome for CPSC’s import surveillance and other enforcement efforts. Accordingly, we propose that electronic certificates be accessible without password protection.

Finally, existing § 1110.13(a)(1) requires that electronic certificates be available to “the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.” Neither CPSC nor CBP regulations define or interpret this phrase, so it is currently unclear when the obligation to present a certificate on demand actually vests. Proposed § 1110.9(c) would clarify that electronic certificates, the URL, or other electronic means, and the

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unique identifier be accessible to the Commission, CBP, distributors, and retailers, “on or before the date the finished product is distributed in commerce,” to set forth a definite point in a finished product’s distribution chain when the certificate must be available. This requirement is intended to prevent a scenario where the CPSC or a retailer or distributor attempts to access an electronic certificate to find that it does not exist yet or is unavailable.

### *F. What Must the Certificate Contain? – Proposed § 1110.11*

Existing § 1110.11 restates and interprets the requirements for the contents of certificates, as provided in sections 14(a) and 14(g) of the CPSA. Proposed § 1110.11 would revise content requirements to reflect that such content requirements apply to all three types of certificates: GCCs, CPCs, and component part certificates. In addition, proposed § 1110.11 would add three content requirements to a certificate: (a) date of initial certification (proposed § 1110.11(a)(2)); (b) scope of the certificate (proposed § 1110.11(a)(3)); and (c) an attestation of compliance (proposed § 1110.11(a)(10)). Each requirement in the proposed rule is discussed below.

#### 1. Identification of the component part or finished product – Proposed §1110.11(a)(1)

The existing rule requires: “Identification of the product covered by the certificate.” Proposed § 1110.11(a) would state that each certificate must contain the information described therein, and then list each piece of information as numbered items 1 through 10, under proposed § 1110.11(a). Thus, proposed § 1110.11(a)(1) would incorporate the requirement to identify the product being certified, but it would broaden the nature of the “product” that can be covered by a certificate to include component parts as well as finished products. The proposed rule would require the certificate to state whether it covers a finished product or a component part to assist with enforcement and to clarify for all other parties the scope of the certificate.

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Proposed §1110.11(a)(1) would further state that “[a] model number, style, or other unique identifier of the product should be provided, if any, along with a description of the finished product or component part. Certifiers may also include an identifier, such as a universal product code (UPC), a global trade item number (GTIN), or other identifying code that may assist with product identification.” This clarification is intended to provide guidance on the type of information that would be considered to be identifying information for a product. Providing a model number or style number, if they exist, would be the most useful way for the CPSC to identify the product, along with a narrative description of the product. Certifiers may also provide a stock-keeping unit, or SKU, to assist in product identification. Additionally, the CPSC is aware that many manufacturers use codes for purposes of product identification, such as UPC codes and GTINs. This type of information is also useful for CPSC to identify products. Certifiers would be encouraged to include any type of identifying code on the certificate, if it would aid in product identification. UPCs and GTINs are examples of identifying codes. Stakeholders are encouraged to comment on whether other types of codes should be stated specifically in the codified text. Although harmonized tariff codes may be placed on a certificate, they are insufficient, alone, to identify a product on a certificate. Similarly, a registered identification number, or RN, on wearing apparel, alone, is insufficient to identify a product on a certificate. An RN is a number, assigned by the Federal Trade Commission, which identifies a business, and does not distinguish products. This type of information can be used in conjunction with other identifying information to identify a product adequately on a certificate but is not sufficient by itself to identify a product.

Certifiers are reminded that they may rely on one certificate to certify more than one product, if products are manufactured at the same facility and the tests apply to all of the

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products on the certificate. For example, several sizes of a garment may be listed on one certificate, if they were manufactured at the same facility and the testing on the component parts (*e.g.*, fabric, buttons, and zippers) is applicable to each size garment produced. Certificates can be based on the one set of tests. The manufacturer could create one certificate, or it could create a certificate for each product. For example, under the Component Part Rule, a manufacturer of plastic trains that uses the same plastic resin in five different molds to create five different types of trains may test the plastic resin under the 1109 rule and then use those test results to support certification of all products made with the plastic resin. If that were the only testing required, the manufacturer could create one certificate for all five types of trains, or it could create five separate certificates relying on the same testing. The certificate must be explicit as to which product or products it is intended to cover. If additional testing is required that is unique to each product, certifiers should certify each product, but may rely on the same testing, where warranted.

### 2. Date of initial certification – Proposed § 1110.11(a)(2)

Proposed § 1110.11(a)(2) would require the certificate to: “[s]tate the date of initial certification of the finished product(s) or component part(s) to which the certificate refers.” This would be a new content requirement on the certificate, but the requirement is drawn from a current requirement in existing § 1110.13(b), which requires that electronic certificates have a means to verify the date of creation or last modification. In practice, many certificates, regardless of whether they are electronic or paper based, contain a date. The proposed rule would standardize the date required to be provided to reflect the date the product was originally certified. If a children’s product undergoes a material change, a new certificate must be issued, pursuant to the Testing Rule. Accordingly, we anticipate that the certification date would be

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updated after a material change to reflect that the product was subjected to testing for applicable consumer product safety rules affected by the material change, and a new certificate was issued, as required.

### 3. Identification of certificate scope – Proposed § 1110.11(a)(3)

Proposed § 1110.11(a)(3) would require the certificate to: “[i]dentify the scope of finished product(s) or component part(s) for which the certificate applies, such as by a start date, a start and end date, by a lot number, starting serial number, serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate.” This would be a new content requirement on the certificate that would assist the Commission in understanding the scope of the products covered by a certificate. By adding this requirement, the Commission does not intend to require certifiers to modify or create certificates to change the scope of the certificate for each shipment. Certifiers can identify the scope of products covered by a certificate through any reasonable means, such as a date or dates, lot numbers, or serial numbers, providing such information will assist the Commission in understanding the scope of each certificate. Certifiers are required to maintain information on the scope of certificates for children’s products, pursuant to § 1107.26 of the Testing Rule and § 1109.5(g) and (j) of the Component Part Rule, when applicable.

### 4. List of rules being certified – Proposed § 1110.11(a)(4)

Existing § 1110.11(b) requires: “Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified. Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.” Proposed § 1110.11(a)(4) would incorporate the

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statutory requirement in section 14(a) of the CPSA to specify each rule on a certificate, but it would broaden the nature of the “product” that can be covered by the certificate to include component parts of a product. Accordingly, the first sentence in proposed § 1110.11(a)(4) would require the certifier to: “State each consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any law enforced by the Commission, to which the finished product(s) or component part(s) are being certified.”

Moreover, proposed § 1110.11(a)(4) would clarify the different requirements for finished product certificates versus component part certificates. A finished product certificate would need to “identify separately all applicable rules, bans, standards, or regulations.” A finished product certifier is responsible for knowing what rules, bans, standards, or regulations apply to each product and for listing all of them on the certificate, or providing a certificate for each applicable rule. However, a component part certifier would have the option to certify a component part to specific rules or parts of rules, even though such certification may not ultimately cover all applicable rules. This is because the component part certifier might not know the final use of the component part, and thus, not know the scope of all applicable rules or because additional tests may be required to be conducted on a finished product. Accordingly, a component part certificate would need to “identify all rules, or parts of rules, standards, bans, or regulations for which the component part(s) are being certified.” The proposed component part requirement recognizes that some component parts can be certified to portions of a standard. For example, an accessory used on a children’s product may be tested separately from the children’s product with regard to lead in paint. It would remain the responsibility of a finished product certifier, relying on a component part test or certification, to ensure that all component parts of a

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finished children's product are tested and certified not only to the lead in paint standard, but also to all other applicable rules, bans, standards, and regulations.

### 5. Identification of the certifying party – Proposed § 1110.11(a)(5)

Existing § 1110.11(c) requires: "Identification of the importer or domestic manufacturer certifying compliance of the product, including the importer or domestic manufacturer's name, full mailing address, and telephone number." Proposed § 1110.11(a)(5) would incorporate the statutory requirement in section 14(g)(1) of the CPSA to "identify the manufacturer or private labeler issuing the certificate" and provide "each party's name, full mailing address, telephone number," but would broaden the requirement to include certificates for both finished products and component parts. Regardless of the type of certificate being issued, proposed § 1110.11(a)(5) would require the certificate to "[i]dentify the party certifying compliance of the finished product(s) or component part(s), including the party's name, electronic mail (e-mail) address, full mailing address, including the street address, and telephone number." Note that the proposed rule would broaden the identification requirement to include an electronic mail (e-mail) address and a street address. The e-mail address would provide CPSC with an additional means of contacting and communicating with certifiers, including those located overseas or in different time zones. Providing a street address would ensure that CPSC staff can locate the certifier's place of business should an investigation require a site visit.

### 6. Contact information for records custodian – Proposed § 1110.11(a)(6)

Existing § 1110.11(d) requires: "Contact information for the individual maintaining records of test results, including the custodian's name, e-mail address, full mailing address, and telephone number. (CPSC suggests that each issuer maintain test records supporting the

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certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 CFR 1508.10 for full-size baby cribs.)”

Proposed § 1110.11(a)(6) would incorporate the statutory requirement in section 14(g)(1) of the CPSA to provide contact information for the individual maintaining records of test results but would broaden it to include contact information for the custodian of all records required for each type of certificate, as set forth in the Testing Rule and the Component Part Rule. Proposed § 1110.11(a)(6)(ii) would require contact information for the individual “maintaining records of test results and other records on which a CPC is based.” Proposed § 1110.11(a)(6)(iii) would require contact information for the individual “maintaining records of test results and other records on which a component part certificate is based.” As in proposed § 1110.11(a)(5), proposed § 1110.11(a)(6) would require the record custodian’s e-mail address, in addition to a full mailing address and telephone number to provide additional means for CPSC to contact the custodian of records. Further, the proposed rule would delete the portion of existing § 1110.11(d) that requires records be maintained “for at least three years” for all records, because the 1107 and 1109 rules require certificates and test results to be maintained for 5 years. For GCCs, the recommendation to maintain records for 3 years has been retained in some circumstances, but this information has been moved to proposed § 1110.17, which summarizes existing recordkeeping requirements for certificates. Recordkeeping requirements are discussed in section II.I of this preamble.

7. Date and place of manufacture – Proposed § 1110.11(a)(7)

Existing § 1110.11(e) requires: “Date (month and year at a minimum) and place (including city and state, country, or administrative region) where the product was manufactured.

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If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.”

In addition to requiring that a certificate contain the date and place of manufacture of a product, proposed § 1110.11(a)(7) would use the newly defined term “finished product” and broaden the nature of the “product” to include component parts. Moreover, proposed § 1110.11(a)(7) would interpret “place” to include a street address in all circumstances, not just when a manufacturer operates more than one location in the same city. A post office box would be insufficient to meet this requirement. In addition, the proposed rule would clarify that “place” also includes either the name of a state or a province, as well as either the name of a country or an administrative region. To clarify where a product has been “manufactured,” the definition of “manufactured” is included in the proposed rule. Section 3(a)(10) of the CPSA states: “manufactured” means “to manufacture, produce, or assemble.” The Commission is also requesting comment on the possibility of requiring additional information on a certificate, such as the name of the manufacturer, including foreign manufacturers. Please see section III.1 of this preamble for further discussion of this issue.

### 8. Date and place of testing to support the certificate – Proposed § 1110.11(a)(8)

Existing § 1110.11(f) requires: “Date and place (including city and state, country or administrative region) where the product was tested for compliance with the regulation(s) cited above in subsection (b).” In addition to requiring that a certificate contain the date and place where the product was tested, proposed § 1110.11(a)(8) would use the newly defined term “finished product” and broaden the nature of the “product” to include component parts. Moreover, proposed § 1110.11(a)(8) would make the words “date” and “place” plural, recognizing that finished products and component parts may be tested in multiple or different

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locations. The Commission’s preference is that all required information be condensed into one certificate, but we acknowledge that section 14(a)(2) of the CPSA allows for a certificate for each applicable standard. Supporting documentation, such as test results, component part certificates, and other finished product certificates, should be available for review upon request, or may be bundled with the required certificate but do not take the place of a required certificate that contains the 10 elements in proposed § 1110.11(a). The proposed rule would also require “place” to include a street address, city, state, or province, and country or administrative region. Thus, proposed § 1110.11(a)(8) would state: “Provide the dates and places (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in § 1110.11(a)(4) of this part.”

9. Identification of parties that conducted testing to support the certificate – Proposed § 1110.11(a)(9)

Existing § 1110.11(g) requires: “Identification of any third party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.” In addition to requiring that a certificate identify and provide contact information for any third party conformity assessment body on whose testing the certificate depends, proposed § 1110.11(a)(9) would use the statutory language for a third party laboratory, *i.e.*, “third party conformity assessment body,” and would broaden the scope to include all parties who conducted testing on which the certificate depends. This provision would allow all parties, including the CPSC, to identify whether a GCC or a CPC is based on first or third party testing. Finally, required contact information would be broadened to include an e-mail address and a street address, in addition to a name, mailing address, and telephone number. Providing an e-mail address would provide CPSC with additional means of contacting and communicating with

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parties conducting testing, including those located overseas or in different time zones. Providing a street address would ensure that CPSC staff can locate the third party conformity assessment body if an on-site visit becomes necessary.

### 10. Attestation of Compliance – Proposed § 1110.11(a)(10)

Proposed § 1110.11(a)(10) would be a new section of the certificate that would require an attestation that the finished products or component parts covered by the certificate are compliant with the applicable rules. The attestation would be made by the party identified as the certifier under proposed § 1110.11(a)(5). The certifier would attest that the finished products or component parts covered under the certificate comply with the rules, bans, standards, and regulations stated in the certificate, at proposed § 1110.11(a)(4), and that the information in the certificate is true and accurate to the best of the certifier's knowledge, information, and belief. Finally, the certifier would acknowledge an understanding that it is a federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statements, representations, or omissions, on the certificate. The proposed language stems from 18 U.S.C. 1001. The language in this section serves several purposes. First, the certificate is an attestation of compliance. The existing certificate requirements do not state explicitly what attestation or affirmation the certifier is making with regard to the products covered by the certificate. Thus, the proposed language would make plain to everyone the scope and gravity of the obligation being made. Second, requiring each certificate to include this language would educate the certifier, including foreign certifiers, of the certifier's obligations under United States law. Finally, some portions of the applicable consumer product safety rules that require compliance, such as certain labeling requirements, are not subject to testing. The attestation is an affirmation by the certifier that the

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product complies with all the requirements of the applicable rules, not only those provisions for which there are test results.

### 11. Electronic access to records – Proposed § 1110.11(b)

Proposed § 1110.11 would contain a new subsection (b) regarding electronic access to records. This new provision would allow a certificate to include a Web address that links to required records, in addition to identification of the custodian of records, as described in proposed § 1110.11(a)(6). Providing contact information for a custodian of records is a statutory requirement, but certifiers may find it efficient for business and regulatory purposes also to provide a direct link to the required records. For example, § 1109.5(g) of the Component Part Rule requires that “testing parties” and “certifiers,” as defined in that rule, must provide certain documentation, which may include, for example, a component part certificate to certifiers intending to rely upon such documentation to certify a product. Thus, to the extent that such records already exist in an easily accessible electronic format to meet recordkeeping requirements in other rules, access to this same electronic format can be provided on a certificate.

### 12. Exceptions – Proposed § 1110.11(c)

Proposed § 1110.11(c) is a new provision that would describe what certifiers must put on a certificate when a product is subject to more than one consumer product safety rule and the certifier is claiming a testing exception for some, but not all, of the applicable rules. In such a case, the certifier must list all of the applicable rules, and then state when the product is not subject to testing for a specific rule, and the basis for such claim, instead of providing the date and place where testing was conducted. Certifiers are already doing this in many instances, but this requirement would ensure that certifiers are consistent in how they document exceptions on a certificate. So, for example, if a manufacturer makes a children’s product (not a toy) that is

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made entirely of untreated wood, but the product is painted, then the certifier will need to issue a certificate of compliance stating that the paint on the product is compliant with 16 CFR part 1303, the Commission's rule on lead in paint. The children's product is also subject to the lead content requirement in section 101 of the CPSIA, but the manufacturer can rely on the Commission's determination at 16 CFR § 1500.91 that untreated wood does not contain more than 100 ppm lead content. The manufacturer must list both the lead in paint and the lead content rule on the certificate. Applicable information on the date and place of testing, and the third party conformity assessment body that conducted testing, must be provided for the testing conducted on lead in paint. For lead content testing, however, the certifier must state on the certificate that it is relying on § 1500.91 to meet the requirement.

If a product is not required to be tested or certified, the proposed rule would not require a certificate to be issued. A consumer product that is not regulated by the CPSC would not require a certificate. Certain products subject to a ban, such as the Commission's rule at 16 CFR part 1306 on hazardous lawn darts, do not require testing or certification. Banned products cannot be sold in the United States, but manufacturers are not required to test and certify that their product is not a banned product. Similarly, although products must be compliant with the Federal Hazardous Substances Act (FHSA), the Commission does not require testing and certification for products requiring special labeling under section 3(b) of the FHSA. Finally, products that are wholly comprised of materials that either do not require testing, or that have been determined not to contain lead in excess of 100 ppm under the Commission's regulation at 16 CFR § 1500.91, do not require testing or certification. An example of this would be a child's purse, made of untreated and unadorned cotton fabric. Although the product is a children's product that must be compliant with the lead content requirement in section 101 of the CPSIA, the cotton fabric has

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been determined by the Commission not to contain lead in excess of the applicable limit, and does not need to be tested or certified to prove that the material is cotton.

13. Duplicative testing not required – Proposed § 1110.11(d)

Finally, proposed § 1110.11(d) is a new section of the rule that would explain that “[a]lthough certificates must list each applicable rule, ban, standard, or regulation separately, finished product certifiers are not required to conduct duplicative third party testing for any rule that refers to or incorporates fully another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any law enforced by the Commission.” It has come to the attention of the Commission that some standards, such as some of the durable infant and toddler standards, may fully incorporate or refer to an existing mandatory rule for children’s products, such as the rule on lead in paint, codified at 16 CFR part 1303, and the rule on small parts, codified at 16 CFR part 1501. Some testing laboratories have advised their clients that such testing must be conducted twice; once as a standalone requirement and once as part of another, larger standard. This is not the position of the Commission. Although each applicable standard must be listed on the certificate, a certifier may certify compliance to both the standalone rule and the rule as incorporated into another standard, by testing it once as part of the larger standard where it is incorporated. For example, the mandatory standard for toddler beds, codified at 16 CFR part 1217, incorporates the Commission’s standard for lead in paint (§ 1303) and for small parts (§ 1501). A certificate for a toddler bed must list all three mandatory standards, but may rely on the lead in paint and small parts testing conducted as part of the testing for the toddler bed standard to meet the requirements for § 1303 and § 1501.

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*G. When Must Certificates Be Made Available? – Proposed § 1110.13*

Existing § 1110.13 states the requirement in section 14(g)(3) of the CPSA that certificates required by section 14(a) “accompany” each product or product shipment and be “furnished to each distributor and retailer of the product in question.” Existing § 1110.13 states that an electronic certificate satisfies the “accompany” requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection. The existing section also states that an electronic certificate satisfies the “furnish” requirement if the distributor(s) and retailer(s) of the product are provided a reasonable means to access the certificate and it further provides that “[a]n electronic certificate shall have a means to verify the date of its creation or last modification.”

Proposed § 1110.13 would modify the existing section in several ways, and incorporate the concept of availability in existing § 1110.7(c). Unlike the current provision, proposed § 1110.13 would not be limited to requirements for electronic certificates because requirements for electronic certificates generally have been moved to proposed § 1110.9(c). Accordingly, proposed § 1110.13 would set forth requirements for when certificates must accompany regulated products, and when they must be made available to CPSC and furnished to retailers or distributors.

The proposed rule would describe requirements for when a certificate must accompany a finished product or finished product shipment that is required to be certified pursuant to § 1110.5. It would require that such certificates be issued by a finished product certifier and state

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that only finished products would be required to be accompanied by a certificate. The Commission would limit the requirement for products to be accompanied by a certificate to finished products because component part certification is voluntary, and not all component parts are certified. Component part certificates must be maintained as supporting documentation, as described in the 1109 rule, if such component part certificates are being relied upon by a required finished product certifier to issue a finished product certificate.

1. Accompanying certificates for imported products – Proposed § 1110.13(a)(1)

Proposed § 1110.13(a)(1) would require that for finished products that are manufactured outside the United States and are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. Such a change would aid the Commission in enforcing the requirement to certify regulated products that require a certificate; and, if the certificate were required to be filed with CBP in the form of data elements, would aid the Commission to search the data elements on a certificate by uploading the information into a database. A database containing certificate information would enhance the Commission’s ability to target shipments for inspection and track the accuracy of certificates. Because the proposed rule would require filing certificates electronically with CBP, the certificate, of necessity, would be available to the Commission and to CBP upon import; accordingly, the “accompany” requirement does not need to be restated as in the existing version of § 1110.13(a)(1).

Note that the requirements for certificates filed electronically with CBP in proposed § 1110.13(a)(1) would be specifically excluded from electronic certificate requirements for all other purposes as described in proposed § 1110.9(c). The Commission would leave the technical

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requirements for filing certificates electronically with CBP broad, to accommodate CBP's system resources. The Commission's ultimate goal would be to require filing of certificates with CBP in the form of data elements so that certificate contents can be uploaded into a database for targeting purposes. However, we realize that such a requirement may require software upgrades by CBP, CPSC, and stakeholders that must be completed in stages. Additionally, CPSC requires the assistance and cooperation of CBP to implement and maintain the receipt of certificates in an electronic format, and the CPSC must be mindful of resource limitations and stakeholder adjustments in implementing this new requirement. Initially, if the Commission requires electronic filing of certificates at the point of entry, we would likely allow such filing of certificates in two ways: (1) inserting an electronic copy of the certificate with the entry, such as a pdf file of the document; or (2) uploading the 10 required data points on a certificate into CBP's designated system of record.<sup>1</sup>

We welcome comments on the resources required to file the certificates electronically with CBP. Stakeholders are encouraged to comment on the format for filing certificates with CBP, including the two formats discussed (pdf format versus data elements format). The Commission is requesting comment on an additional option for filing electronic certificates at an earlier point in the import process, at manifest, in section III.2 of this preamble.

### 2. Accompanying certificates for products made in the United States – Proposed § 1110.13(a)(2)

Proposed § 1110.13(a)(2) would require that in the case of finished products manufactured in the United States, certificates shall not be filed with CPSC. Instead, the “accompany” requirement is met if a finished product certifier, as defined in proposed §

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<sup>1</sup> Electronic filing of entries is required by CBP rule, titled, *Importer Security Filing and Additional Carrier Requirements* commonly known as “10+2.”

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1110.3(11), makes a certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce. Pursuant to proposed § 1110.9(b), this may be accomplished, for example, by placing a copy of the certificate in the shipping container with the product, or by meeting the requirements for an electronic certificate. Unlike imported products, we do not want certificates for products made in the United States to be filed with the government as a matter of course. We do not have the infrastructure in place to accommodate or review certificates for all regulated products made in the United States. Enforcement of these certificates will continue to be based on Commission resources and targeting efforts.

3. Accompanying certificates for imported products delivered directly to consumers in the United States – Proposed § 1110.13(a)(3)

Proposed § 1110.13(a)(3) would require that in the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, that are delivered directly to consumers in the United States, the foreign manufacturer or the importer, as provided in § 1110.7(a), has the option to either file the required GCC or CPC electronically with the CBP as provided for in paragraph (1), or may make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce as provided in paragraph (2). Whether the certificates are filed with CBP depends on whether formal entry is made. If no formal entry is made for these products with CBP, then the certificate must still be made available to the Commission, either in hard copy or electronically, as set forth in § 1110.9, on or before the products are distributed into United States commerce.

4. Furnishing certificates – Proposed § 1110.13(b)

Existing § 1110.13(b) states that an electronic certificate must have a means to verify the date of its creation or the last modification. The proposed rule would delete this provision because proposed § 1110.11(a)(2) would require the certificate to state the date of initial

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certification. Proposed § 1110.13(b) would state the statutory requirement in section 14(g)(3) of the CPSA that a copy of the certificate shall be furnished to each distributor or retailer of the product. The proposed rule would clarify who must provide such a certificate (a “finished product certifier,” which is defined in § 1110.3(11) as a party that is required to issue a finished product certificate pursuant to § 1110.7), and for what types of products (finished products).

### 5. Availability of certificates – Proposed § 1110.13(c)

Proposed § 1110.13(c) is a new section that would state the requirement contained in sections 14(g)(3) and (g)(4) of the CPSA, that certificates must be provided to the Commission and to CBP upon request. The proposed rule would state: “Certifiers must make certificates available for inspection immediately upon request by CPSC or CBP.” This provision would apply to all types of certifiers, to all types of certificates (GCCs, CPCs, and component part), and at any time after a product is offered for import or distributed in commerce. The Commission interprets the word “immediately” consistent with other CPSC rules, to mean “within 24 hours.” However, we would expect that GCCs and CPCs would be made available to CPSC in a very short time, either at the time of request, or shortly afterward, because finished products are required to be accompanied by a certificate that is generated before importation or distribution in commerce, and must be either in hard copy with the product, or electronically available, as described in proposed § 1110.9(c).

### *H. Who Is Responsible for the Information in a Certificate? – Proposed § 1110.15*

Existing § 1110.15 states: “Any entity or entities may maintain an electronic certificate platform and may enter the requisite data. However, the entity or entities required by CPSA section 14(a) to issue the certificate remain legally responsible for the accuracy and completeness of the certificate information required by statute and its availability in timely

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fashion.” This provision was intended to allow third parties to assist with electronic certificate maintenance, while ensuring that the party certifying the product remained responsible for its contents.

Proposed § 1110.15 would maintain this concept but would broaden it to include component part certifiers by using the term “certifiers” in the first sentence. Certifiers may have any entity maintain an electronic certificate platform, or enter the requisite data, but the certifier would remain responsible for the contents of a certificate. The description of the certifier’s responsibility with regard to certificate content would be broadened in the proposed rule to include its validity, accuracy, completeness, and availability, as applicable.

*I. What Recordkeeping Requirements Apply to Certificates? - § 1110.17*

Proposed part 1110 imposes no new recordkeeping burdens. Proposed § 1110.17 would be a new provision intended to summarize the existing recordkeeping requirements that apply to certificates. The requirement to create and maintain certificates based on third party testing of children’s products arises from § 1107.26 of the Testing Rule. Recordkeeping for component part certificates, and reliance on another party’s certificate or testing to certify a finished product, arises out of §§ 1109.5(g) and 1109.5(j) of the Component Part Rule. Moreover, some consumer product safety rules, and other similar rules, bans, standards, or regulations, already have a recordkeeping requirement. However, some GCCs for non-children’s products may not be subject to a recordkeeping provision in any other regulation. For example, the Commission’s safety standard for bicycle helmets (16 CFR part 1203) contains a recordkeeping provision, but the safety standard for swimming pool slides (16 CFR part 1207) does not.

To assist stakeholders in understanding the various recordkeeping provisions that apply to certificates, proposed § 1110.17 restates such requirements. If a standard does not contain a

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recordkeeping requirement, the Commission maintains the suggestion from existing § 1110.11(d), that each issuer maintain certificates and test records supporting the certificate for at least 3 years, as is currently required by certain consumer product safety rules. Maintenance of such records, for example, may aid both the certifier and the Commission in the event of an investigation or product recall.

### *J. What Requirements Apply to Component Part Certificates? - § 1110.19*

Proposed § 1110.19 would be a new provision to explain which requirements in part 1110 apply to component part certificates. It would state that component part certificates are voluntary and that component parts of consumer products would not be required to be accompanied by a certificate, nor would such certificates need to be furnished to retailers and distributors, as described in proposed § 1110.13(b). CPSC also would not want component part certificates to be filed with CBP upon importation of component parts. Instead, certifiers of component parts would need to meet the requirements in the Component Part Rule, and component part certificates would also need to meet the form, content, and availability requirements described in the proposed rule in sections 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17.

### **III. Request for Comments**

The Commission encourages stakeholders to comment on all sections of the proposed amendments to 16 CFR part 1110, and specifically request comment on the following additional issues. Comments should be submitted in accordance with the instructions in the ADDRESSES section at the beginning of this notice.

1. The Commission is considering requiring certificates to state not only the place of manufacture in proposed § 1110.11(a)(7), but also to identify the name of the manufacturer,

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including foreign manufacturers. Stakeholders have argued in other contexts that the name of a foreign manufacturer is proprietary. This information, however, would be useful to the Commission and distributors in recall situations, and it would also be useful to the Commission for enforcement purposes. Investigating facts and limiting recalls would be enhanced, and thus, enforcement would be enhanced. We welcome comments on the nature of the information, whether, why, and how it may be confidential, and how the information being available outside the Commission advances, or does not advance, safety. The Commission is also interested in ideas that would allow manufacturers to be named on a certificate for disclosure to the Commission, but would protect their name from others, should it be an issue. The Commission, for example, could allow a private labeler or distributor to redact the name of a foreign manufacturer or supplier, as long as this information is readily available to CPSC. What reasons are there for retailers or others to know the names of suppliers on a certificate, if the CPSC has ready access to this information?

2. The Commission is also considering allowing, but not requiring, certificates to be filed electronically with CBP in advance of filing an entry, such as at the time of manifest. We welcome stakeholder input on this concept.

#### **IV. Environmental Impact**

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 certificate requirements in the proposed rule are not expected to have an adverse impact on the environment, and fall within the categorical exclusion in 16 CFR 1021.5(c)(2) for product certification rules. Accordingly, an environmental assessment or environmental impact statement is not required.

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### V. Executive Order 12988 (Preemption)

Executive Order 12988 (February 5, 1996) requires agencies to state in clear language the preemptive effect, if any, of new regulations. The proposed rule would be issued under the authority of the CPSA and the CPSIA. The CPSA provision on preemption appears at section 26 of the CPSA. The CPSIA provision on preemption appears at section 231 of the CPSIA. The preemptive effect of this rule would be determined in an appropriate proceeding by a court of competent jurisdiction.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. In addition, the IRFA must contain a description of any significant alternatives to the proposed rule that would minimize any significant economic impact of the proposed rule on small entities. This section summarizes CPSC staff's initial regulatory flexibility analysis for the proposed rule amending 16 CFR part 1110.

#### A. *Reasons for Agency Action and Objective of the Proposed Rule*

The proposed revisions to *16 CFR Part 1110: Certificates of Compliance* are needed to add definitions, clarify language, and make the requirements consistent with new regulations, *Testing and Labeling Pertaining to Certification* (16 CFR part 1107) and *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements* (16 CFR part 1109). The proposed rule would also implement part of section 14(g) of the CPSA by

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requiring that importers of regulated finished products file the required certificate electronically with CBP.

More specifically, the proposed rule revises the existing regulation by adding 13 new definitions. The new definitions clarify the three different types of certificates of compliance: General Conformity Certificates, Children's Product Certificates, and component part certificates. The definitions also clarify the types of products that can be certified as either finished products or component parts. The proposed rule clarifies when certificates are required to accompany a finished product, who must certify a finished product, as well as the form and content requirements for certificates. Among these clarifications is new language holding foreign manufacturers responsible for certification of products delivered directly to consumers in the United States, such as products purchased through an Internet website, unless private labelers certify the products. The proposed rule revises the certificate requirement for domestically manufactured products to require a private labeler to certify a privately labeled product, unless a domestic manufacturer certifies the product. Finally, the proposed rule requires importers of regulated finished products manufactured outside of the United States to file the required certificate electronically with CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

### *B. Small Entities Subject to the Proposed Rule*

The proposed revisions to part 1110 will apply to importers and domestic manufacturers, and will be extended to include private labelers for privately labeled domestic products (unless certificates are provided by manufacturers). It is difficult to know the number of small businesses that would, with certainty, be affected by the rule. Research of CBP data by CPSC staff found that during 2009, there were 231,094 distinct importers of products categorized in

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import codes likely to include products under CPSC's jurisdiction. The great majority of these firms (perhaps 90 percent or more) are likely to be small businesses under U.S. Small Business Administration (SBA) size standards for manufacturers, wholesalers, or retailers. On the basis of this information, each year as many as 210,000 small businesses might import products under CPSC jurisdiction that would make them subject to the proposed rule. However, firms that only import consumer products that are not subject to product safety rules requiring certification would not be affected by the electronic filing requirement.

In most cases, domestic manufacturers will continue to have the responsibility of providing certificates for products subject to a consumer product safety rule under the CPSA or other laws enforced by the Commission. According to Census of Manufactures data for 2007, about 104,000 companies manufactured products in the North American Industry Classification System (NAICS) codes that are likely to have included products under CPSC jurisdiction.<sup>2</sup> Although more than 90 percent of these firms (*i.e.*, close to 100,000) are considered small businesses under SBA guidelines, a significant percentage probably are not engaged in manufacturing products that are subject to a product safety rule. Still, tens of thousands of small manufacturers currently are responsible for providing certificates. Under the proposed rule, some of the burden of providing certificates could be transferred to small private labelers.

### *C. Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule*

The proposed revisions to part 1110 include the imposition of the new reporting requirement on importers of regulated finished products to file certificates of compliance

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<sup>2</sup> U.S. Census Bureau, 2007 Economic Census, Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007.  
[http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_3111&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table)

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(General Conformity Certificates or Children’s Product Certificates) electronically with CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. This electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. It is important to note that many importers, including those that are small businesses, already make electronic certificates available under the existing part 1110, to satisfy the requirement that certificates accompany products, are furnished to distributors and retailers, and are available to the CPSC “as soon as the product or shipment is available for inspection.” Thus, for these firms, the incremental requirement would simply call for these certificates also to be provided electronically to the CBP.

Because the proposed requirement for electronic filing of certificates for imported products does not specify how that is to be accomplished, importers will have some flexibility in their method of compliance. For example, the preamble of the proposed rule discusses that certificates could be maintained as pdf files, or certificates could be provided in the form of data elements and uploaded to CBP’s system of records. Importers relying on paper certificates of compliance for distributors and retailers would have to create electronic certificates; however, these firms are likely to have the necessary office equipment and personnel to create and transmit these certificates electronically. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship’s arrival at a U.S. port, pursuant to CBP’s rule titled, *Importer Security Filing and Additional Carrier Requirements* (commonly known as “10+2”). Small importers often hire Customs brokers licensed by CBP to handle the procedures that must be followed to import

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goods; the proposed requirement of electronic filing of certificates will likely be added to the duties performed by these brokers.

Based on the current business practices of small businesses that import consumer products, the incremental costs of the requirement to file an electronic certificate of compliance should be minor. If electronic filing costs are similar to typical fees reportedly charged by Customs brokers for filing the required Importer Security Filing data elements, they might be \$25 or less, per filing. CBP estimated that “in 2005, more than 70 to 85 percent of all importers imported fewer than 12 shipments.”<sup>3</sup> Assuming this applies to importers of consumer products, annual incremental costs of electronic filing of certificates of compliance could be less than \$275 for most small businesses that import products that require certificates of compliance. This estimate is based on the assumption that one certificate of conformance would be required per shipment. If multiple certificates are required per shipment, costs could be higher. As noted by CBP in its assessment of costs of security filing requirements, some small importers of consumer products subject to electronic filing of certificates under part 1110 could choose to file the certificates electronically themselves with CBP, if their own filing costs are lower than fees charged by brokers.<sup>4</sup>

Another proposed revision to part 1110 revises the requirement for certification of domestically manufactured products to require that privately labeled products be certified by the private labeler, unless the domestic manufacturer issues a certificate. This amendment would result in a shift in the obligation to provide certificates from some small manufacturers to some

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<sup>3</sup> Department of Homeland Security, Bureau of Customs and Border Protection, *Importer Security Filing and Additional Carrier Requirements*, Interim final rule. *Federal Register*, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>4</sup> Industrial Economics, Incorporated, *Importer Security Filing and Additional Carrier Requirements: Regulatory Assessment and Final Regulatory Flexibility Analysis for the Interim Final Rule*, November 6, 2008, p. 4-7 (97 of 266). Retrieved from [http://www.cbp.gov/linkhandler/cgov/trade/cargo\\_security/carriers/security\\_filing/ra.ctt/ra.pdf](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/ra.ctt/ra.pdf).

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small private labelers. However, these small private labelers can choose to continue to rely on the certificates that the manufacturers are currently required to provide, or they can use such certificates as a basis for issuing their own certificates. Moreover, the revisions would grant private labelers the authority to issue certificates, which some may prefer. While some private labelers may experience some impact, this impact should not be significant because it is expected that some manufactures will continue to issue certificates as they are now legally required to do.

### *D. Other Federal Rules*

For small businesses importing consumer products by containerized shipping vessel, this electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship's arrival at a U.S. port. One of the elements required to be filed under the CBP's rule (*Importer Security Filing and Additional Carrier Requirements*, or "10+2 rule") is the name and address of the manufacturer or supplier of the finished goods in the country or origin, although alternative forms of manufacturer identification, such as identification numbers, are also acceptable. This CBP element is similar, but not identical, to the required information on date and place of manufacture required by certificates of compliance.

### *E. Alternatives to the Proposed Rule*

One alternative to the proposed rule would be *allowing*, rather than *requiring* certificates for imported products to be filed at entry. If this alternative were to be adopted, the certificate would still have to be available for inspection upon request, as it is now. Allowing, instead of requiring certificates to be filed electronically at entry would reduce the burden on small

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businesses, but it might not enhance the Commission's ability to target shipments for inspection and to track the accuracy of certificates.

### **VII. Paperwork Reduction Act**

This proposed rule to amend 16 CFR part 1110 would not create a new recordkeeping burden for certificates, but the proposed rule would create a new reporting requirement by mandating that certificates for imported products be filed electronically with CBP. Accordingly, this proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Although the only new reporting burden associated with the proposed rule would be the filing of electronic certificates with CBP for regulated imported products, our burden estimates presented below provide additional estimates to cover categories of burdens omitted in previous information collections. The existing 1110 rule was issued by direct final rule in November 2008, and implemented the requirements in sections 14(a) and (g) of the CPSA to issue certificates for regulated products. At that time, a burden analysis for the creation and disclosure of certificates was not conducted. The recordkeeping burden analysis for the creation and maintenance of certificates based on third party testing of regulated children's products, CPCs, was set forth in the Testing Rule and the Component Part Rule, culminating in a collection of information titled, Third Party Testing of Children's Products. That analysis did not cover third party disclosure of certificates for regulated children's products. Moreover, the analysis did not address the creation of certificates for regulated non-children's products, GCCs, or third party disclosure of such certificates. Therefore, we provide here a comprehensive burden analysis for

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certificates for regulated non-children's products, as well as estimates of the burden of third party disclosure of certificates for regulated children's products.

Pursuant to section 14(a)(1) of the CPSA, non-children's products that are subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, must be certified as compliant with such rules, bans, standards or regulations. Certificates must meet the content, form, and availability requirements in the 1110 rule. For non-children's products that are required to be certified, the CPSC intends to create a new collection of information to estimate the burden of: recording test results or other information to support GCCs; creating GCCs; and disclosing certificates to retailers or distributors, CPSC, and CBP. Some of the applicable underlying rules already have certificate and recordkeeping requirements that have previously been described in an information collection request to OMB, but many do not. The proposed rule would require that where an underlying rule contains a record retention period, certificates and supporting test records be maintained for that period of time. Otherwise, the proposed rule imposes no additional record retention period.

Even where some rules have certificate requirements, such certificate requirements are not uniform and do not meet the minimum certificate content requirements set forth in section 14(g) of the CPSA, as implemented in the 1110 rule. Pursuant to section 14(g) of the CPSA, each certificate must accompany the applicable product or product shipment, be furnished to each distributor or retailer of the product, and furnished to CPSC, upon request. Additionally, each certificate must identify: the issuer of the certificate; any third party conformity assessment body that performed testing on which the certificate relies; the date and place of manufacture; the date and place of testing; each party's name, full mailing address, telephone number; and contact information for the individual responsible for maintaining records of test results. Thus, the

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certificate requirement in section 14(g) of the CPSA, as implemented in the 1110 rule, may be seen as an additional requirement for rules that require an on-product certificate, such as 16 CFR part 1205, *Safety Standard for Walk-Behind Power Lawn Mowers*. The statutory certificate requirement also may be seen as adding content requirements to the certificates described in rules that already require a certificate, such as 16 CFR part 1204, *Safety Standard for Omnidirectional Citizens Band Base Station Antennas*.

The recordkeeping burden for the creation and maintenance of certificates required by sections 14(a) and (g) of the CPSA for children's products is already described in the collection of information on Third Party Testing of Children's Products. We propose to amend the collection of information on Third Party Testing of Children's Products to estimate the increase in burden for third party disclosure of CPCs to retailers, distributors, and to CBP, as set forth in the proposed rule.

We invite comments on: (1) whether the amendment to the collection of information on Third Party Testing of Children's Products, and the new collection of information on Certification of Non-Children's Products, are 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.

*Title:* Non-Children's Products – Certification of Non-Children's Products

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Children's Products – Amendment to collection on Third Party Testing of Children's Products (OMB control number 3041-0159).

*Description:* We would create a new collection of information for regulated non-children's products describing the annual reporting burden to: document test results or other information on which the certificate is based; create GCCs; and furnish GCCs to retailers or distributors, the CPSC and file electronically with CBP. We would also amend the collection of information related to Third Party Testing of Children's Products to estimate the increase in the annual reporting burden for certifiers of children's products to furnish CPCs to retailers and distributors, and for importers of children's products to file electronic CPCs with CBP.

The burden analysis for GCCs is comprehensive: it includes not only the new burdens associated with the proposed rule but also covers burdens not accounted for in previous rulemakings or in burden analysis submissions to OMB. As noted above, the only new disclosure requirement in the proposed rule is a reporting requirement that applies to finished products manufactured outside the United States. When such products are imported for consumption or warehousing, the importer would be required to file either a CPC or GCC electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together. Such a requirement would implement section 14(g)(4) of the CPSA, which states that the Commission, in consultation with the Commissioner of Customs, may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. All other burdens for GCCs are due to the statutory requirements for certificates, as set forth in the direct final rule for part 1110 issued in November 2008.

The burden estimates provided below are broken into three main categories: Creating GCCs for Non-Children's Products; Furnishing Certificates to Third Parties; and Filing

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Certificates for Imported Products with CBP. These estimates reflect the burden to the finished product certifier only. We have made no attempt to estimate the additional burden, if any, to the federal government. Our estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

*Description of the Respondents:* Finished product certifiers of products subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing, or are distributed in commerce.

*Estimate of the Burden:*

A. *Creating GCCs for Non-Children's Products*

The estimates provided are intended to reflect the recordkeeping burden per product per year. In the collection of information for children's products, we estimated that the recordkeeping burden was about 3 to 5 hours per product, per year, on average. For non-children's products, we generally estimate that the recordkeeping burden to create GCCs and to document testing or other information on which the certificate is based is about 1.5 hours per product per year. This estimate reflects the fact that non-children's products are subject to fewer product safety rules than are children's products. Moreover, although some non-children's products manufacturers use third party testing, non-children's products are not subject to mandatory third party certification, material change, and periodic testing. The 1.5 hours per product estimate is consistent with comments that were received in response to the notice of proposed rulemaking for the Testing Rule. However, where we have information for specific products or rules that deviate from the general estimate, we use the more specific information.

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Like children's products, great diversity exists among regulated non-children's products. Thus, certifiers of non-children's products have significant flexibility in procedures for testing and certifying their products. Although each regulated product must have a GCC, the reasonable testing program that generates test results or other information upon which a GCC relies may vary greatly. For example, the criteria for meeting the requirements of 16 CFR part 1202, *Safety Standard for Matchbooks*, can likely be met out of a quality assurance or quality management program, in contrast to the specific testing program that is required in 16 CFR part 1209, *Interim Safety Standard for Cellulose Insulation*. For this reason, as with children's products, we do not have a strong basis for estimating the recordkeeping burden based on specific records for each product or rule.

For each product or rule where no certificate or other recordkeeping requirement is currently in place, or where we have not previously provided an estimate of the recordkeeping burden to OMB, we estimate the burden to document testing or other information on which the certificate is based and to create GCCs to generally be 1.5 hours on average per product. For rules that already have a certificate requirement based on a testing program, we use estimates of less than 1.5 hours, generally 15 to 30 minutes per product, to create the GCC required by part 1110. The reduced burden for these rules reflects the fact that the recordkeeping burden associated with just creating a GCC in the required format should be less than the burden associated with both documenting the results of a reasonable testing program and creating a GCC.

We further note that in many, if not most cases, these records might be prepared several times a year per product. Thus, even if completing the required records for a single set of tests or preparing one GCC might seem to take only a few minutes, if multiple batches are certified

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annually, or the product is manufactured at more than one location, then the total burden during the year will be higher.

1. Glazing Materials (16 CFR part 1201)

Glazing materials used in or intended for use in doors and storm doors (including combination doors), bathtub doors and enclosures, shower doors and enclosures, and patio type sliding glass doors, are subject to the safety standard for architectural glazing materials (16 CFR part 1201). Part 1201 requires that manufacturers and private labelers of glazing materials certify their products in accordance with the requirements of section 14 of the CPSA. Although the Commission has previously submitted recordkeeping burden estimates to OMB, OMB approval of this collection of information expired in 1985. Accordingly, we will estimate the burden of creating GCCs for compliance with part 1201, as well as documenting test results demonstrating compliance.

The Glass Association of North America reports that it has about 400 members that are engaged in the manufacture, fabrication, and installation of glass and glazing products for residential and commercial applications.<sup>5</sup> The Safety Glass Certification Council (SGCC) maintains a third party certification program for glass and glazing products. SGCC states that it has certified 1,726 individual products from 262 individual participant manufacturers. SGCC believes that its members represent about 70% of the square footage of safety glazing materials.<sup>6</sup> Based on the SGCC figures, their 262 industry participants each have an average of just over 6 products. The estimates below are based on the assumption that the firms that do not participate

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<sup>5</sup> Public comment from the Glass Association of North America submitted in response to the notice of proposed rulemaking on the testing and certification rule (16 CFR part 1107).

<sup>6</sup> Information from SGCC provided to Robert Squibb on January 28, 2013.

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in the SGCC program have the same number of products. We are estimating that it takes about 1.5 hours per product to document test results and to create GCCs.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
400	2,400	1.5	3,600

2. Matchbooks (16 CFR part 1202)

Matchbooks are subject to the safety standard for matchbooks (16 CFR part 1202). Although the Commission has submitted previously recordkeeping burden estimates to OMB, OMB approval of this collection of information expired in 1982.

Part 1202 is relatively straightforward, in that compliance to the standard can be determined by simply examining several samples of the product to ensure, for example, that the friction plate is on the outside back cover of the matchbook and that no match head is bridged, split or crumbling. Although the time spent keeping records of compliance for each batch or lot is probably low, multiple batches or lots of each product are likely manufactured annually.

According to one source, four matchbook manufacturers operate in the United States.<sup>7</sup> Although the printed covers might include a wide variety of designs, depending upon the customers, matchbooks generally come in just a few sizes, such as 20 strike, 30 strike, or 40 strike. We assume for purposes of this analysis that certification is based on the broader category of matchbook size, and not each individual matchbook cover design. Based on this assumption, each manufacturer would be certifying 3 different products or models annually.

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<sup>7</sup> Information about the industry was obtained from a website called, “The Matchcover Vault,” which is a site aimed at collectors of matchbook covers. The specific URL for the industry information is <http://matchpro.org/Matchindustryhistory.html> (accessed on 01/16/2013).

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<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
4	12	1.5	18

3. Bicycle Helmets (16 CFR part 1203)

Bicycle helmets are subject to the safety standard for bicycle helmets (16 CFR part 1203). CPSC has provided some estimates of the recordkeeping burden to OMB in an earlier submission, which includes records for a reasonable testing program, the requirement to place a certification label on bicycle helmets, and a 3-year minimum record retention period. A GCC that meets the requirements specified in section 14(g) of the CPSA and the 1110 rule is now additionally required. Although it could take as little as 10 minutes to prepare a GCC for a given model of bicycle helmet, it is likely that models will be recertified several times during a year.

The most recent submission to OMB regarding bicycle helmets estimates that there are about 30 manufacturers and about 200 models of bicycle helmets. If we assume that about 17.5 percent of the models are intended for children aged 12 years or younger (based on the percentage of such children in the population), we can assume that about 165 of the models are not intended for children and require a GCC.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
30	165	0.5	83

4. Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204)

Omnidirectional citizens band base station antennas are subject to a product safety standard that is intended to reduce electrocution hazards associated with the antennas (16 CFR part 1204). Part 1204 requires specific types of testing, certificates, and certain records to be

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maintained for 3 years. An estimate of the burden for these requirements has previously been detailed in a submission to OMB. The content of the certificate required in part 1204, however, does not contain all of the information required by section 14(g) of the CPSA and the 1110 rule. Therefore, it is necessary to estimate the increased burden of creating GCCs with all of the required information.

One approach to estimating this burden is to assume that it takes about half an hour to prepare a GCC with the required information. Each certificate might take less time to prepare, but there could be multiple batches or lots of product in a given year that must be certified.

The existing PRA submission indicates that five firms manufacture these products. A Google search indicated that each firm might have more than one model, but only one company appeared to have more than three models. Thus, we estimate that each firm has three models.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
5	15	0.5	8

5. Walk-Behind Power Lawn Mowers (16 CFR part 1205)

Walk behind power lawn mowers are subject to the safety standard for walk-behind power lawn mowers (16 CFR part 1205). Part 1205 prescribes certain testing and recordkeeping requirements, including records of a reasonable testing program and certificates which are on-product labels. Such labels do not require the same content information required by section 14(g) of the CPSA and the 1110 rule. Burden estimates for part 1205 have been submitted to OMB previously. Thus, here we estimate only the increased burden of creating GCCs with all of the required information.

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According to the existing PRA submission for part 1205, 1 hour per production day, per manufacturer, is added to the recordkeeping and testing burden to collect the information required for the certificate and to place it on the label. Our existing OMB submission for part 1205 assumes 130 production days a year. Thus, we assumed that each day’s production will be certified individually or that there are multiple batches, and therefore, that multiple certificates will be issued for each model annually. We will use the same methodology to estimate the increased burden of creating the required GCC here. Accordingly, we assume 1 hour per day, per manufacturer to create the required GCCs for 130 production days out of the year. The existing PRA submission estimates that there are 20 manufacturers of walk-behind lawn mowers. If each manufacturer is in production 130 days per year and requires 1 hour per day for recordkeeping, then the annual burden per manufacturer will be 130 hours, or 2,600 hours for all manufacturers together.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Mfr.</b>	<b>Total Hours</b>
20	--	130	2,600

6. Swimming Pool Slides (16 CFR part 1207)

Swimming pool slides are subject to the safety standard for swimming pool slides (16 CFR part 1207). Part 1207 includes requirements for testing swimming pools slides and for issuing a certificate based on a reasonable testing program, but no record retention period is provided. The certificate required in the rule contains fewer data elements than required by section 14(g) of the CPSA and the 1110 rule. We do not appear to have previously reported burden estimates for recordkeeping to OMB for part 1207. Therefore, we estimate the burden for recording test results for a reasonable testing program on which the GCC relies and for creating a GCC.

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A retailer’s website, which states that it offers swimming pool slides from most major manufacturers, has between 100 and 120 different models of pool slides. Some slide models appeared to be duplicates, however, and some of the products might not actually be covered by the standard. Given that the retailer might not offer all models, and allowing for duplicates and for the proposition that some products are not subject to the standard, we assume that there are a total 120 models of swimming pool slides.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
a few	120	1.5	180

7. Cellulose Insulation (16 CFR part 1209)

Cellulose insulation is subject to the interim cellulose insulation standard (16 CFR part 1209). Part 1209 includes comprehensive testing, recordkeeping, and certification requirements, including a 2-year record retention period. The certification required in part 1209 is in the form of a label on the product, and includes the day, month, and year of production. No prior OMB submission exists for this product, likely because part 1209 was implemented before enactment of the PRA. Therefore, for part 1209, we estimate the burden of documenting test results from the testing program required in part 1209, and creating a GCC.

Thirty-six producer members of the Cellulose Insulation Manufacturers Association (CIMA) were listed on its website ([www.cellulose.org](http://www.cellulose.org)). Additionally, in 2000, CPSC staff identified a few manufacturers that were not members of CIMA, bringing the total estimated number of manufacturers to 44. Because the on-product certificate requirement in part 1209 requires specification of the date, month, and year of manufacture, and because the testing interval required in part 1209 must be short enough to demonstrate compliance with the standard, testing and certification of cellulose insulation is likely to occur several times a year. Thus, the

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recordkeeping for the required reasonable testing program and for certification is likely to take several hours each year for each manufacturer. Assuming that each manufacturer must issue a new certificate with the date of manufacture, that each manufacturer is in production 240 days a year, and that the recordkeeping requires 15 minutes per day, then the burden per manufacturer per year would be 60 hours.

The estimate of 44 manufacturers is significantly lower than the estimates of the number of firms in the market in the late 1970s. In 1976, there were 100 manufacturers with 125 plants. In 1978, the Federal Trade Commission compiled a list of more than 700 manufacturers.<sup>8</sup> If the current estimate of 44 manufacturers is an underestimate, or if some manufacturers have more than one plant, the total recordkeeping burden would also be underestimated.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Mfr.</b>	<b>Total Hours</b>
44	n.a.	60	2,640

8. Cigarette Lighters (16 CFR part 1210) and Multipurpose Lighters (16 CFR part 1212)

Cigarette lighters and multipurpose lighters are subject to the child-resistance requirements established by 16 CFR parts 1210 and 1212, respectively. Parts 1210 and 1212 set forth comprehensive testing, certification, and recordkeeping requirements, including a 3-year minimum retention period. Estimates of the recordkeeping burden for parts 1210 and 1212 have been submitted to OMB previously. Here, we estimate the incremental burden associated with creating a certificate containing the information required by section 14(g) of the CPSA and the 1110 rule because the certificates provided in parts 1210 and 1212 require less information.

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<sup>8</sup> Robert D. Kurtz, "Environmental and Economic Impacts of the Interim Safety Standard for Cellulosic Insulation," U.S. Consumer Product Safety Commission, Office of Hazard Identification (June 15, 1978).

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Before a manufacturer or importer can distribute a lighter model in the United States, it must first file a report with the CPSC. From October, 2005 to February 12, 2013, CPSC has accepted 6,667 reports of new cigarette or multipurpose lighter models from a total 145 companies. We believe this is a reasonable estimate for the number of lighter models for which GCCs will be required in a given year for the following reasons. First, once CPSC accepts a report of a new model, the lighter model can continue to be distributed without future reports. Second, although only one or two lots of some lighter models might be manufactured or imported, multiple lots of some lighter models might be manufactured in some years. Finally, there are probably some lighter models that were reported to CPSC prior to FY 2005, which are still being distributed. More than 600 million individual lighters are manufactured or imported into the United States annually.

We estimate the burden to create a GCC to be about 15 minutes per model. Once the certificates are modified, the incremental cost of including additional data could be negligible.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
145	6,667	0.25	1,667

9. Residential Automatic Garage Door Openers (16 CFR part 1211)

The automatic residential garage door opener standard (16 CFR part 1211) contains guidance for a reasonable testing program, an on-product certificate requirement, and recordkeeping requirements, including a minimum 3-year record retention period. The on-product certificate required by part 1211 does not contain all of the data elements required for a GCC in section 14(g) of the CPSA and the 1110 rule. Moreover, an exemption for on-product certificates is provided under certain circumstances. An estimate of the recordkeeping burden of the rule has been provided to OMB previously. The most recent PRA submission to OMB

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estimates that there are 21 respondents that require about 40 hours each for maintaining the records required by the regulation. Therefore, here we will estimate only the burden of issuing certificates with the required information. We estimate the annual burden of creating compliant GCCs, separate from the label, to be about 30 minutes per model.

Based on a review of the garage door openers available at some home or building supply retailers, each manufacturer could offer a few different models (*e.g.*, ½ horsepower, ¾ horsepower, with and without battery backup). For purposes of these estimates, we assume that each manufacturer has about four different models.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
21	84	0.5	42

10. Furniture (16 CFR parts 1303 and 1213)

General use furniture, which is furniture that is not designed or primarily intended for children 12 years of age or younger, is subject to the rule banning the use of lead paint in excess of 90 parts per million (ppm) (16 CFR part 1303). General use bunk beds are also subject to a standard intended to reduce entrapment hazards (16 CFR part 1213). Neither of these rules has explicit recordkeeping or certification requirements, and no recordkeeping burden estimates have previously been submitted to OMB. Furniture subject to parts 1303 and 1213 must be certified as compliant, based on a test of each product, or on a reasonable testing program pursuant to section 14(a)(1) of the CPSA.

*16 CFR part 1303 – Lead-in-paint*

When we estimated the recordkeeping burden for testing and certification of furniture that would be considered a children’s product in 16 CFR part 1107, we estimated that there were 54,000 models of furniture intended for children 12 years of age or younger. We estimated

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54,000 models by counting the models of children's furniture offered by one large online retailer and estimating that it carried only about one-quarter of all the models of furniture available. If we assume that 54,000 models represents about 17.5 percent of all furniture models intended for children and adults, based on the percentage of the U.S. population that is 12 years of age or younger, one could infer that approximately 250,000<sup>9</sup> furniture models are intended for people over 12 years of age. Metal furniture and furniture that does not have a paint or coating are not subject to part 1303. Unless the bunk bed standard applies, such furniture does not require a certificate. We assume that about half of the furniture items might be subject to the part 1303 lead-in-paint requirement. Based on a comment from a furniture industry trade association, which was submitted in response to the proposed Testing Rule, we derived an estimate of 30 to 45 minutes per model for the recordkeeping associated with a reasonable testing program for part 1303.<sup>10</sup> For purposes of these estimates, we have used the low end of this range.

### *16 CFR part 1213 – Bunk beds*

One large online retailer had about 1,200 items listed under "bunk bed." If this retailer carries about one-quarter of all bunk bed models, this indicates that there are approximately 4,800 bunk bed models available. A review of the first 75 models indicates that about 12% of the models might be appropriate for people over the age of 12 years. Accordingly, there may be about 600 general use bunk bed models intended for people over the age of 12 years. We estimate the cost to document the reasonable testing program for bunk beds and to create a certificate to be 1.5 hour per model.

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<sup>9</sup> The calculation is  $(54,000/0.175) \times 0.825 = 254,571$ . This could be a low estimate because most children's furniture is limited to the bedroom furniture category. However, general use furniture also includes categories such as "dining room" and "living room" furniture. The estimate in the memorandum has been rounded.

<sup>10</sup> To derive the estimate, we had to make assumptions concerning the employee compensation and the number of models per manufacturer that were not explicitly stated in the comment.

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<b>Regulation</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
1303	125,000	0.5	62,500
1213	600	1.5	900
<b>Total</b>			<b>63,400</b>

11. Consumer Paints and Coatings (16 CFR part 1303)

In addition to paints and coatings applied to some furniture, paints and coatings for consumers' use are also subject to the 90 ppm lead limit (16 CFR part 1303). Exemptions to the scope of the paint lead limit include: coatings that are not intended for consumer use, agricultural and industrial products, mirrors, some metal furniture with factory-applied coatings, and artist paints. The recordkeeping burden to create GCCs for consumer paints and coatings has not been submitted to OMB previously.

Based on information available from the American Coatings Association (<http://www.paint.org/about-our-industry/types-of-coatings.html>), just over 50 percent of the paints, by value, would be subject to part 1303. Products subject to part 1303 include architectural coatings and aerosol coatings. Products that are not subject to part 1303 include industrial paints, marine paints, automotive paints, and industrial maintenance coatings.<sup>11</sup> The Bureau of the Census reports that there are 1,002 manufacturers of paint and coatings in the United States.<sup>12</sup> Based on data from the ACA, we assume that half of these manufacturers, 501,

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<sup>11</sup> Technically some industrial coatings might be subject to the limits on lead in paint in Part 1303 if they are applied on a consumer product. However, in these cases it would be the product manufacturer (e.g., furniture or children's product manufacturer) that would be responsible for the certification.

<sup>12</sup> United States Department of Commerce, Bureau of the Census, 2010 County Business Patterns.

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create paints and coating that are subject to part 1303.<sup>13</sup> One large manufacturer lists 82 different consumer products on its website. While this estimate might not account for all different colors offered by this manufacturer, some smaller manufacturers might not have the full range of products that a large manufacturer might have. Therefore, we estimate that the average number of products, per manufacturer, is 82.

The testing of paint is reasonably simple; therefore, maintaining the records of a reasonable testing program and preparing the required certificate should not be overly time consuming. However, each batch is probably certified and dated, and multiple batches of each product are likely to be produced annually. Accordingly, we assume that 30 minutes, per product, to document testing and to create a GCC.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
501	41,082	0.5	20,541

12. All-Terrain Vehicles (ATVs) (16 CFR part 1420)

The CPSIA mandated that the Commission adopt the voluntary standard for ATVs as a mandatory standard. The mandatory standard for ATVs is codified at 16 CFR part 1420. No PRA submission has been made previously to OMB regarding part 1420 because that part does not contain specific recordkeeping or certification requirements. Pursuant to section 14(a)(1) of the CPSA, however, ATV manufacturers and private labelers are required to certify that their products meet the requirements of part 1420, based on a reasonable testing program or a test of each product.

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<sup>13</sup> In fact, many large paint manufacturers manufacture both industrial and consumer paints.

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While ATV testing is likely to take a minimum of several hours and could take more than a day, documenting the results of testing will likely take less time. We estimate that the burden to document a reasonable testing program for ATVs and to create the required GCC will be about 1.5 hours. One and a half hours could be a low estimate if multiple lots or shipments of ATVs are tested and certified annually. Based on information from the Motorcycle Industry Council and Power Products Marketing, we estimate that there are 32 manufacturers of ATVs that produce a total of 132 general use, non-children's, ATVs.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
32	132	1.5	198

13. Pools and Spas (16 CFR part 1450)

All pool and spa drain covers must meet the requirements of the Virginia Graeme Baker Pool and Spa Safety Act, which is codified at 16 CFR part 1450. The Commission has not previously estimated a recordkeeping burden associated with testing and certifying drain covers subject to part 1450. Accordingly, we estimate the burden to document a reasonable testing program for drain covers and to create the required GCC. A manufacturer directory, located at [www.poolspanews.com](http://www.poolspanews.com), listed 12 manufacturers of drain covers. An examination of the websites of each of the manufacturers indicates a total of 136 different drain covers that are advertised as being compliant with the VGB requirements. Although this list might not be complete, it likely represents most of the industry. We assume that the recordkeeping burden to document a reasonable testing program and to create the required GCC will be about 1.5 hours per product, per year.

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<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
12	136	1.5	204

14. Fireworks Devices (16 CFR part 1507; 16 CFR sections 1500.17(3) and 1500.17(8))

Fireworks that are not banned are subject to requirements set forth in 16 CFR part 1507 and sections 1500.17(3), and 1500.17(8). These fireworks provisions do not contain specific recordkeeping or certification requirements. Thus, the Commission has not provided a paperwork burden estimate to OMB previously. Here, we estimate the burden to document a reasonable testing program for fireworks and to create the required GCC.

Based on its knowledge of the industry, the Office of Compliance estimates that 115,000 different lots of fireworks devices are certified annually. The recordkeeping burden for documenting the testing and creating the GCCs is estimated to be about one hour per lot.

<b>Firms</b>	<b>Total Lots</b>	<b>Hours/Lot</b>	<b>Total Hours</b>
--	115,000	1	115,000

15. Bicycles (16 CFR part 1512)

Bicycles are subject to the requirements of the safety standard for bicycles, which is codified at 16 CFR part 1512. Part 1512 sets forth test requirements for bicycles and requires certain instructions and an on-product label, but the rule does not provide for specific recordkeeping requirements or a record-retention period. Therefore, no estimate of the recordkeeping burden has been submitted to OMB previously.

When considering children's bicycles previously for part 1107, we estimated that there were approximately 400 models of children's bicycles. Assuming that children's bicycles

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account for 17.5 percent of bicycle models, based on the percentage of the population that is 12 years of age or younger, there are approximately 1,900<sup>14</sup> models of non-children’s bicycles. Based on a review of a database of bicycle manufacturers, there may be 150 to 200 bicycle manufacturers whose products are sold in the United States. Testing a bicycle to part 1512 takes about 1 day. However, the time to record test results and to create a compliant GCC is likely about 1.5 hours.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
150	1,900	1.5	2,850

16. Clothing and Apparel (16 CFR parts 1610 and 1611)

Two standards apply to clothing and apparel that are intended to classify fabrics according to their burning rate and prohibit the introduction of dangerously flammable goods into commerce: (1) standard for the flammability of clothing textiles (16 CFR part 1610), and (2) standard for the flammability of vinyl plastic film (16 CFR part 1611). Parts 1610 and 1611 set forth test requirements and recordkeeping requirements for issuing guaranties, not certificates. Both rules contain a 3-year record retention period. We previously estimated the recordkeeping burden for parts 1610 and 1611 to OMB. Although the certificate requirement in section 14 may be based on the testing required in the rules, creating a GCC is an additional recordkeeping burden. Here, we estimate the time required to create the required GCC.

Certain hats, gloves, footwear, and interlining fabrics are excluded from the scope of part 1610, as set forth in § 1610.1(c). No certificate is required for apparel that is not subject to part 1610. Many fabrics are within the scope of part 1610, but are exempt from testing because they

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<sup>14</sup> This estimate is rounded.

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meet the standard based on construction and fabric weight, or fiber content, regardless of construction or fabric weight, as set forth in § 1610.1(d). A GCC is required for all apparel within the scope of the rule, regardless of whether the fabric is exempt from testing.

Accordingly, many certificates might state that the fabric is in compliance with part 1610 because the fabric meets one of the testing exemptions specified in § 1610.1(d).

The American Apparel and Footwear Association (AAFA) estimates that there are 20 billion units of clothing sold annually. A representative of AAFA estimated that on average each SKU of clothing has only about 100 units. On the assumption that one SKU is a size and color combination of a particular item, and further based on a review of several catalogs, we estimate an average of about 30 SKUs per clothing item. Based on this assumption, we estimate that approximately 6.7 million apparel items must be certified annually. We further assume that 17.5 percent of the 6.7 million apparel items are intended for people 12 years of age or younger (based on their percentage of the general population). Thus, we estimate that about 5.5 million apparel items require GCCs.

Given that many clothing items are likely produced seasonally, and the total number of units of some apparel items is fairly low, we assume that only a few batches of many items will be certified each year. Many apparel items will be exempt from testing under part 1610 based on the exemptions in § 1610.1(d), and other apparel items will be certified based on testing, guaranties, or certificates from fabric suppliers. Therefore, we assume that the recordkeeping burden per apparel item might be as little as 15 minutes. If multiple certificates must be issued for some apparel items or models, perhaps because different colors or sizes are produced on different dates or at different locations, the estimate could be low.

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<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
(thousands)	5.5 million	0.25	1,375,000

17. Carpets and Rugs (16 CFR parts 1630 and 1631)

Carpets and rugs are subject to flammability requirements codified at 16 CFR parts 1630 and 1631. Parts 1630 and 1631 set forth testing and recordkeeping requirements, including a 3-year record retention period. However, the recordkeeping requirements apply to persons furnishing guaranties, not necessarily to manufacturers and private labelers. Although the existing OMB submission on these rules discusses the requirement to issue certificates, the burden estimate includes the burden associated with third party testing and certification of children’s products only, and does not consider certification of general use carpets and rugs. Accordingly, here we provide an estimate for documenting a reasonable testing program and for creating the required GCC for non-children’s carpets and rugs.

The existing PRA submission to OMB on carpets and rugs estimates that there are 120 firms subject to the information collection requirements, and that each of these firms is required to conduct between 0 and 200 tests per year. We use the midpoint of 100 tests per year per firm for the current burden estimate. The 2010 County Business Patterns report from the Census Bureau shows that there are close to 240 carpet and rug mills. The lower estimate in the PRA submission is based on an assumption that only half of the firms would either issue guaranties or certify children’s products. We estimate that the time to create the certificate and the records of the tests on which it is based is about 1.5 hours per style. The time to conduct the tests is not included in this estimate.

On the assumption that GCCs for non-children’s products could simply replace guaranties, one could use most of the assumption in the existing PRA submission, but assume

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that all firms will have to conduct testing and issue GCCs. Thus, there would be approximately 240 firms conducting about 100 tests annually. However, these estimates are only for domestic manufacturers. If there are a significant number of carpets and rugs that are imported, these estimates are low.

<b>Firms</b>	<b>Total Styles</b>	<b>Hours/Style</b>	<b>Total Hours</b>
240	24,000	1.5	36,000

18. Mattresses (16 CFR parts 1632 and 1633)

Mattresses are subject to two flammability standards: (1) a smoldering ignition resistance standard codified at 16 CFR part 1632, and (2) an open-flame ignition resistance standard codified at 16 CFR part 1633. Parts 1632 and 1633 have comprehensive testing and recordkeeping requirements, including a 3 year minimum record retention requirement. Part 1633 has an on-product certificate requirement. The Commission previously provided a burden estimate for the recordkeeping requirements in parts 1632 and 1633 to OMB. Accordingly, here we only estimate the burden of creating the GCC required by section 14(g) of the CPSA and the 1110 rule.

The burden for all recordkeeping in these two rules except the generation of a GCC has already been included in the previous PRA submission to OMB. Because the only additional burden is to generate a GCC, we estimate this task to take 15 minutes per mattress. Estimates of the number of manufacturers and models are taken from the existing PRA submission for parts 1632 and 1633.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
671	13,420	0.25	3,355

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### 19. Poison Prevention Packaging Act (16 CFR part 1700)

The Commission enforces the Poison Prevention Packaging Act (PPPA), which requires special packaging for some hazardous products to reduce the risk of children under 5 years of age from accidentally coming into contact with, or ingesting the product, but still allows seniors the ability to access their medication. The Commission has promulgated 32 regulations that require a wide variety of products to be in special packaging. Products requiring special packaging include: all oral prescription drugs, oral prescription drugs that have been switched from requiring a prescription to being available for sale over-the-counter (OTC), many types of OTC drug products and preparations, some personal care products (including baby oil and many mouthwashes), and some hazardous household products (including many drain openers, furniture polishes, kindling and illuminating preparations, methanol, and kerosene). The full list of substances that require special packaging is codified at 16 CFR § 1700.14.

The finished product certifier that must issue a GCC is the importer or the domestic party that packages a PPPA regulated substance in special packaging. Each distinct product subject to the PPPA must be covered by a GCC. For example, if a company sells a regulated OTC drug in four different types of special packaging, the company might require four different GCCs to cover each package type. A GCC is required for each type of child-resistant packaging.

We do not have a comprehensive database of all products, by all manufacturers (including but not limited to product manufacturers, packagers, package manufactures, and contract repackers), that require special packaging. However, based on knowledge we have gained through various actions over the years concerning affected markets, we believe there could be more than 1,000 companies that might be responsible for issuing a GCC for covered

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products. The number of products that require GCCs may be between 100,000 and 200,000. This includes different packages of the same brand of a product packaged by one company.

The child resistance and senior use effectiveness of each special package type must be established by testing with panels of children and adults according to the protocols codified at 16 CFR § 1700.20. We estimate that the record keeping burden associated with the testing is about 20 hours per package type based on the burden estimate used for the cigarette lighter standard.<sup>15</sup>

One package might be used for many different products. Therefore, the recordkeeping burden could be spread over many different final products. A regulatory summary of the PPPA on the CPSC's website that was prepared by Commission staff states:

The importer or the domestic party that packages a PPPA regulated substance in special packaging must issue the general conformity certificate. The child resistance and senior friendly testing data (also known as protocol data) obtained in accordance with the procedures described under 16 C.F.R. 1700.20 may be used by the importer or domestic packager to support its certification. The packager can rely upon this data as the basis for the reasonable testing program. There is no expiration date on these tests and no requirement to retest so long as the tests adequately reflect the current packaging used.

<http://www.cpsc.gov/en/Regulations-Laws--Standards/Statutes/Poison-Prevention-Packaging-Act/>. This means that a manufacturer of a PPPA-regulated product can rely on test data provided by the package manufacturer. Finished product certifiers that rely on another party's testing or certification to issue a finished product certificate must follow the Component Part Rule, 16 CFR part 1109.

Furthermore, each package does not have to be retested at regular intervals. Testing will generally occur only when a change is made to an existing package that could affect its compliance or a new package is introduced. Sometimes the manufacturer or packager of the

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<sup>15</sup> This estimate could be low because the cigarette lighter standard does not include an adult use effectiveness protocol. The total time to conduct the tests would exceed 90 hours per package type.

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final product (*i.e.*, the drug or household substance) will conduct its own compliance testing to ensure that its products meet the requirements of the PPPA. Likewise, the GCCs might not need to be revised or reissued at regular intervals. Manufacturers of a product regulated under the PPPA may be able to rely upon the same GCC for a product until it changes the package or the certification or testing of the package changes.

We do not have concrete data regarding the average number of products for which a typical package is used; nor do we have concrete data on how frequently packages are retested, or how often manufacturers, importers, or private labelers of the final products will issue new GCCs. For purposes of this analysis, however, we are assuming that, on average, each different package is used for 100 different products. We are also assuming that, on average, each package is used for 4 years before it is retested because of a material change, the manufacturer has substituted a new package, or for any other reason. We assume further that the manufacturers, importers, or private labelers of the final products, on average, only issue new GCCs for a product once every 4 years.

As noted above, the recordkeeping burden associated with the protocol testing of a package is about 20 hours. If each package is used for 100 different products, and the testing is conducted, on average, every 4 years, then the average recordkeeping burden of the testing is about 3 minutes annually, per final regulated consumer product (*e.g.*, drug or household product). We believe that it might take about 15 minutes to create and maintain the GCC for each consumer product regulated under the PPPA. If the GCC is created only once every 4 years for the average regulated product, then the annual recordkeeping burden for creating and maintaining the GCC will be about 4 minutes. Therefore, on average, the total recordkeeping burden per product regulated under the PPPA will be about 7 minutes. This includes the time

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required to create and maintain the records of the protocol testing of the packages and the time to create and maintain the GCC.

<b>Firms</b>	<b>Total Products</b>	<b>Minutes/Product</b>	<b>Total Hours</b>
1,000	150,000	7	17,500

These estimates above are probably low, especially if the month and date of production must be included on the certificates. If so, at least one new certificate would have to be created each year that a product is in production, more if the product is in production more than 1 month per year. If so, the estimate above would be low, by at least a factor of 4.

20. Refrigerators (16 CFR part 1750)

Refrigerators are subject to the Refrigerator Safety Act. A standard to permit the opening of household refrigerator doors from the inside is codified at 16 CFR part 1750. Part 1750 contains a test procedure but does not contain specific recordkeeping or retention requirements. Regardless of the lack of specific recordkeeping requirements, it is likely that most manufacturers keep records demonstrating compliance with part 1750. Because of the lack of recordkeeping requirements in part 1750, we estimate the burden to record results of a reasonable testing program and to create a GCC.

According to the 2010 census, there are 19 manufacturers of household refrigerators and freezers. One major manufacturer had 120 different models of refrigerators listed on a major retailer's website, including similar models in different capacities. Assuming that each model requires testing and certification, there could be as many as 2,280 different models of refrigerators that need certification to the Refrigerator Safety Act. If the recordkeeping burden is about 1.5 hours, the total burden for the entire industry would be about 4,200 hours. The number of models estimated here could be high if some smaller manufacturers do not have as many

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individual models, or if the same component part is used on more than one model, and may be certified based on the same testing. The number of models estimated could be low if some refrigerator manufacturers are not domestic companies and are not listed as refrigerator manufacturers in the 2010 census.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
19	2,280	1.5	3,420

21. Candles with Metal Core Wicks (16 CFR § 1500.17(a)(13))

Under the Federal Hazardous Substances Act (FHSA), candles with metal core wicks that contain lead content greater than 0.06 percent of the weight of the metal core are banned. (16 CFR § 1500.17(a)(13)). The outer package or wrapper of candles and candle wicks subject to the ban, meaning candles with metal core wicks and metal-cored wicks sold separately, and shipping cartons, must be labeled “Conforms to 16 CFR 1500.17(a)(13).” When the regulation was initially proposed, the proposal contained requirements that would have obligated candle manufacturers and importers to test or maintain records of testing performed by the supplier of the metal cored wicks and to label each shipping container with a statement that the candles conformed to the regulation, including a means to identify the test results applicable to that shipment of candles. 67 FR 20062, 20069 (Apr. 24, 2002). Certification and recordkeeping were dropped from the final rule. 68 FR 19142 (Apr. 18, 2003). Accordingly, we have not submitted a burden analysis for § 1500.17(a)(13) previously to OMB for review.

We estimate the recordkeeping burden associated with documenting test records and creating GCCs for metal-cored candle wicks to be 40 hours per firm, based on the analysis presented in the 2002 proposed rule on metal-cored candle wicks. The National Candle Association states that there are more than 400 commercial, religious, and institutional

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manufacturers of candles in the United States. The National Candle Association states that the major manufacturers have between 1,000 and 2,000 varieties of candles, which implies that the number of varieties offered by the smaller manufacturers would be less. In comments submitted in response to the proposed rule on metal-cored candle wicks, the National Candle Association estimated that between 10 to 20 percent of the market used metal-core wicks. If we assume that the average candle manufacturer has about 1,000 varieties (to allow for the fact that the non-major manufacturers would be expected to have fewer varieties than the major manufacturers) and that 15 percent of those have metal cores, then the average manufacturer would have approximately 150 varieties that would be subject to the regulation.

<b>Firms</b>	<b>Total Lines</b>	<b>Hours/Firm</b>	<b>Total Hours</b>
400	60,000	40	16,000

The estimates above assume that all manufacturers of candles use metal wicks in some of their products. To the extent that some manufacturers do not use metal core wicks at all, these estimates could be high. On the other hand, the estimates do not include any importers of candles. To the extent that importers of candles use metal-core wicks, the estimates above would be low.

22. Ban of Unstable Refuse Bins (16 CFR part 1301)

The rule banning unstable refuse bins (16 CFR part 1301) applies to metal refuse bins having an internal volume of one cubic yard or greater, which are produced or distributed for the personal use of consumers for in or around a residence, school, in recreation, or otherwise. If such a bin will tip when tested according to the method described in the rule, it is banned. If it does not tip, it must be so certified, based upon a reasonable test program, or a test of each

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product. Although part 1301 contains test criteria, it does not contain specific recordkeeping provisions. Accordingly, CPSC has not previously submitted a burden estimate to OMB regarding part 1301. A very small subset of refuse bins are not subject to the rule. CPSC staff was unable to find any metal refuse bin that met the criteria for exclusion from part 1301.

In the course of an Internet search on February 8, 2013, we identified 19 suppliers of refuse bins and a total of 358 individual bin models that could be used for refuse collection or storage around a residence, such as an apartment building, or a school or recreation area. Refuse bins that appeared to be intended for industrial or nonresidential use, based on CPSC staff’s judgment, were not included. However, many refuse bins may have both consumer and industrial use. Thus, it is possible that some of the suppliers included within this count do not sell refuse bins for consumer use. Moreover, we may not have discovered all suppliers during the Internet search.

The test method in part 1301 is fairly straightforward. We estimate that the recordkeeping for documenting test results and creating a GCC will take an average of 30 minutes per model refuse bin.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
19	358	0.5	179

23. Ban of Lawn Darts (16 CFR part 1306)

Here, we estimate the burden to document testing and to create a GCC for the ban on general use lawn darts in 16 CFR part 1306. We do not estimate the burden for lawn darts intended for children, which are banned by 16 CFR § 1500.18. Recordkeeping related to the creation of certificates for children’s products is covered in the Testing Rule.

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The purpose of part 1306 is to prohibit the sale of lawn darts that have been found to present an unreasonable risk of skull puncture injuries to children. The rule also states that “any lawn dart is a banned hazardous product.” For purposes of these estimates, we have counted as lawn darts, products that appear to be intended to be used in a similar manner as the banned lawn darts in that they consist of an elongated projectile that can be thrown toward a target on the ground and that contact the ground tip first. We have attempted to eliminate any product that appears to be primarily intended for children. Moreover, we have not included games such as horse shoes and ring toss. We estimate that the recordkeeping burden for recording test results and creating a GCC is about 1.5 hours per product.

A search of several large Internet retailers on February 13, 2013, turned up six products by six different manufacturers that could be considered to be lawn darts; although none of the products appeared to have sharp tips designed to stick into the ground. Other similar products may be available that were not discovered during this Internet search. The actual number of lawn dart products available could be higher if some of the available products were not found during the Internet search. The number of products could be lower if some products that were found are intended for children 12 years of age and younger.<sup>16</sup>

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
6	6	1.5	9

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<sup>16</sup> One product was found that was obviously intended for children under the age of 13 years and is not included in these estimates.

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24. Ban of Artificial Emberizing Materials Containing Asbestos  
(16 CFR part 1305)

Artificial emberizing materials are used in decorative gas fireplace systems to simulate the ashes and embers in wood-burning fireplaces. The use of respirable, free-form asbestos in these products is banned by 16 CFR part 1305. Not banned are emberizing materials that consist of other materials, such as vermiculite, rock wool, mica, or synthetic fibers. The emberizing materials that are not banned must be certified as not containing respirable, free-form asbestos, based on a test of each product or on a reasonable testing program. We estimate that the recordkeeping burden for recording test results and creating GCCs is about 1.5 hours per product per year.

Included in these estimates are any materials that are intended for use with fireplace logs to simulate ashes or embers. An Internet search on November 14, 2013, identified a total of 56 different products, by 14 different suppliers, that could be used to simulate ashes or embers in non-working fireplaces. Because there are likely many products that were not identified during this search, this is probably a low estimate.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
14	56	1.5	84

25. Ban of Patching Compounds Containing Respirable Free-Form Asbestos  
(16 CFR part 1304)

Part 1304 bans any patching compounds to which asbestos has been added deliberately as an ingredient or contained in the final product as the result of knowingly using a raw material containing asbestos. “Patching compounds” are described as being mixtures of talc, pigments, clays, casein, ground marble, mica, or other similar materials, and a binding material. Patching compounds are used to cover, seal, or mask cracks, joints, holes, and similar openings in the

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trim, walls, and ceilings of building interiors. They are applied in a wet form, and after drying, are sanded to a smooth finish. They are commonly referred to as “spackling,” “joint compounds,” and “mud.” In the past, asbestos was sometimes used as the binding material.

Part 1304 does not contain a test method. However, all certifiers of patching compounds intended for consumer use must certify that asbestos has not been added intentionally as an ingredient, and that the final product does not contain asbestos as the result of knowingly using a raw material containing asbestos. We estimate that the recordkeeping burden to create GCCs will be at least 15 minutes per product annually.

A total of 148 patching compounds by about 35 different manufacturers were found during an Internet search on February 21, 2013. If we failed to identify all patching compounds available, 148 products would be a low estimate of the total number of patching compounds available. Assuming that the time required preparing a GCC for each product averaged 15 minutes per year, the total recordkeeping burden would be about 37 hours.

<b>Firms</b>	<b>Total Models</b>	<b>Hours/Model</b>	<b>Total Hours</b>
35	148	0.25	37

*B. Furnishing Certificates to Third Parties*

Section 14(g)(3) of the CPSA, as amended by the CPSIA, requires that every certificate required in section 14(a) of the CPSA “accompany the applicable product or shipment of products covered by the same certificate” and that “a copy of the certificate . . . be furnished to each distributor or retailer of the product.” Moreover, manufacturers and private labelers must furnish a copy of the certificate to the Commission upon request.

The draft proposed rule amending continues to allow manufacturers, importers, and private labelers flexibility in how to provide certificates to retailers or distributors, and to the

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CPSC. Section 1110.9 provides that, except for the certificate that is required to be filed with CBP for imported products in § 1110.13(a)(1), certificates may be provided in hard copy or electronically. Electronic certificates are acceptable if they are identified “prominently on the finished product, shipping carton, or invoice by a unique identifier, and they can be accessed via” the Internet or other electronic means. The draft proposed rule further states that an electronic certificate must be available, without password protection, on or before the date the finished product is distributed in commerce. In practice, “hard copy” certificates are usually in the form of a paper certificate that physically accompanies each shipment by being placed in a shipping container. Certifiers using electronic certificates often place a Web address to access the certificate on the product, shipping carton, or invoice.

We do not have a strong basis for estimating the average third party reporting burden per product because the requirement to disclose certificates applies to a very diverse group of consumer products and manufacturers. Moreover, the reporting burden is most likely related to the number of shipments of the product from the manufacturers, importers, or private labelers to the distributors or retailers, which is information that is not available. For purposes of preparing this initial estimate of the third party reporting burden, we are estimating that the burden is 15 minutes per product, per year to place a paper copy of the certificate in the shipping carton, or provide a Web address for certificates on the product, carton, or invoice, and to maintain the website. We welcome comments on the accuracy of this estimate.

### 1. Non-children’s products

As summarized in Table A below, we estimate that there are about 6 million<sup>17</sup> non-children’s products for which GCCs are required. Thus, we estimate the total burden hours for

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<sup>17</sup> This estimate is rounded.

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third party disclosure of GCCs to be 1.5 million hours (6,000,000 models x .25 hours = 1.5 million burden hours). We are estimating that the cost per hour of the recordkeeping and reporting burden is \$37.34<sup>18</sup> an hour, which represents a mixture of professional and administrative staff labor. Accordingly, the estimated cost of third party disclosures for GCCs is \$56,010,000 (1,500,000 burden hours x \$37.34 per hour = \$56,010,000).

### 2. Children's products

The collection of information on Third Party Testing of Children's Products currently does not include an estimate for third party disclosure of CPCs to retailers, distributors, or the CPSC. In that collection, we estimated that there were a total of 1.6 million children's products for which CPCs would be required. The number of children's products includes 1.3 million apparel and footwear products and 0.3 million non-apparel products. If the burden of providing a CPC to retailers, distributors, and the CPSC is an estimated 15 minutes per product, per year, then the total burden would be approximately 400,000 hours (1.6 million models x 0.25 hours = 400,000). We propose to amend the collection of information on Third Party Testing of Children's Products to increase the burden hours by 400,000 to account for third party disclosures of CPCs. The estimated cost of third party disclosure of CPCs is \$14,936,000 (400,000 burden hours x \$37.34 per hour = \$14,936,000).

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<sup>18</sup> The hourly compensation rate used is based on the hourly compensation rate used for estimating the recordkeeping burden in the 1107 and 1109 rules, which relate to the testing and certification of children's products and component part testing. In order to recognize that both clerical and professional staff could be involved in recordkeeping, we assumed that personnel in "management, professional, and related occupations" would be responsible for half of the activities involving the recordkeeping and that personnel in "office and administrative support" occupations would be responsible for the other half. We assume that the same occupational mix of employees will also be involved in performing the tasks necessary to file certificates electronically with CBP (as required by the proposed amendments to part 1110). As of June 2012 total compensation (*i.e.* wages and benefits) for these occupational categories averaged \$37.34 per hour.

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### *C. Filing Certificates for Imported Products with CBP*

Section 14(g)(4) of the CPSA provides that the Commission, by rule, in consultation with CBP, may provide for electronic filing of certificates for imported products up to 24 hours before arrival of the imported product. The draft proposed rule would require that importers of regulated finished products file the required GCC or CPC electronically with CBP at the time of filing the CBP entry or the time of filing the entry and the entry summary, if both are filed together. The rule does not specify the electronic format for certificates filed with CBP, but we anticipate that importers will be able to file the certificate information in the form of data elements or by filing the certificate in a PDF format through CBP's system of records. The increased time required to file certificates electronically with CBP would be attributable to associating the proper certificates to individual shipments for import, converting certificates to an electronic format, and transmitting the certificates to CBP (or to a customs broker, if the importer does not self-file).

#### 1. Non-children's products

The initial regulatory flexibility analysis for this draft proposed rule cites research of CBP data by CPSC staff, which found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products under the CPSC's jurisdiction.<sup>19</sup> Data on the number of importers of children's versus non-children's products is not publicly available. However, based on inspection of product trade codes, we know that the number of distinct products or models requiring GCCs exceeds the number of children's product models

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<sup>19</sup> Blachere, John, International Trade Specialist, Office of Import Surveillance, CPSC. December 8, 2010, e-mail to Charles Smith, Directorate for Economic Analysis, CPSC.

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requiring CPCs.<sup>20</sup> Thus, there might be on the order of 100,000 importers of children's products and 150,000 importers of non-children's products.

If 150,000 firms import products subject to electronic filing of GCCs, and these firms average 20 shipments with products requiring certificates, the annual number of electronic filings of GCCs with CBP could total 3 million.<sup>21</sup> According to a customs broker contacted by the Directorate for Economic Analysis, all importers might average about three product lines per Customs entry. If electronic filing requires an average of 30 minutes per shipment, the estimated annual incremental burden would be about \$56 million, using an estimated average employee compensation cost of \$37.34 per hour (3 million electronic filings x 0.5 hours per filing x \$37.34 per hour).<sup>22</sup>

### 2. Children's products

Research of CBP data by CPSC staff found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products under the CPSC's jurisdiction. Data on the number of importers of children's versus non-children's products is not publicly available. However, as stated above for non-children's products, we know that the number of children's products requiring certificates of conformance is substantially lower than the number of non-children's products requiring general certificates of conformance. Thus, we assume 100,000 importers of children's products in this analysis.

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<sup>20</sup> A large percentage of these firms (such as importers of adult clothing) also would be included in the estimate of importers of products requiring CPCs.

<sup>21</sup>In the paperwork burden analysis for 16 CFR Part 1110, we found that there are about 3.75 products requiring GCCs for every product requiring a CPC. The estimate of 20 shipments per importer was used to generally maintain this relationship between GCCs and CPCs. See Robert Franklin, Directorate for Economic Analysis, CPSC. Recordkeeping Burden Associated with Direct Final Rule for 16 CFR Part 1110 Issued in November 2008 (March 14, 2013).

<sup>22</sup>In the paperwork burden analysis for 16 CFR Part 1110, third party disclosure was estimated to require about 15 minutes per product. In this case, it is reasonable for this estimate to reflect efficiency in filing multiple electronic certificates simultaneously and with other paperwork required for entry. For this reason, we use an estimate of 10 minutes per product rather than 15 minutes per product. *Id.*

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CBP estimated that “in 2005 more than 70 to 85 percent of all importers imported fewer than 12 shipments.”<sup>23</sup> Based on this information, if 100,000 firms import children’s products annually that are subject to electronic filing of certificates, and these firms average 10 shipments a year, the annual number of electronic filings of CPCs with CBP could total 1 million. According to a customs broker contacted by the Directorate for Economic Analysis, all importers might average about three product lines per Customs entry. If electronic filing requires an average of 30 minutes per shipment, total incremental costs of recordkeeping for the Testing Rule would be about \$18.7 million (1 million electronic filings x 0.5 hours per filing x \$37.34 per hour).<sup>24</sup>

These costs would be in addition to the estimated recordkeeping costs already described in the collection of information on Third Party Testing of Children’s Products as well as the increased burden described for third party disclosures to retailers, distributors, and the CPSC. Total estimated incremental costs for disclosing CPCs to third parties is summarized in Table B.

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<sup>23</sup> Department of Homeland Security, Bureau of Customs and Border Protection, Importer Security Filing and Additional Carrier Requirements, Interim final rule. Federal Register, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>24</sup>As with non-children’s products, it is reasonable for this estimate to reflect efficiency in filing multiple electronic certificates simultaneously and with other paperwork required for entry. For this reason, we use an estimate of 10 minutes per product rather than 15 minutes per product.

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**Table A: Summary of PRA Burden Estimates by Rule for Non-Children’s Products that Require a General Conformity Certificate (GCC)**

<b>Product Categories</b>	<b>Number of Mfrs</b>	<b>Number of Models*</b>	<b>Hours per Model</b>	<b>Total Estimated Burden Hours</b>
Architectural Glazing Materials	400	2,400	1.5	3,600
Matchbooks	4	12	1.5	18
Bicycle Helmets	30	165	0.5	83
CB Band Base Station Antennas	5	15	0.5	8
Walk Behind Power Mowers	20	--	130	2,600
Swimming Pool Slides	--	120	1.5	180
Cellulose Insulation	44	--	60	2,640
Cigarette and Multipurpose Lighters	145	6,667	0.25	1,667
Garage Door Openers	21	84	0.5	42
Furniture (paint)	--	125,000	0.5	62,500
Furniture (bunk beds)	--	600	1.5	900
Paints and Coatings	501	41,082	0.5	20,541
ATVs	32	132	1.5	198
Pools and Spas (VGB Act)	12	136	1.5	204
Fireworks Devices	44	115,000	1.0	115,000
Bicycles	150	1,900	1.5	2,850
Clothing and Apparel	1,000s	5,500,000	0.25	1,375,000
Carpets and Rugs	240	24,000	1.5	36,000
Mattresses	671	13,420	0.25	3,355
PPPA	1,000	150,000	0.12	17,500
Refrigerators	19	2,800	1.5	3,420
Candles w/Metal Core Wicks	400	60,000	40	16,000
Refuse Bins	19	358	0.50	179
Lawn Darts	6	6	1.5	9
Artificial Emberizing Materials	14	56	1.5	84
Patching Compounds	35	148	0.25	37
Burden Hours to Document Test Results and Create GCCs				1,664,615
Burden Hours for Third Party Disclosure of GCCs		6,000,000	0.25	1,500,000
Subtotal Burden Hours for GCCs				3,164,615
<b>Estimated Cost</b>				
Subtotal Cost: 3,164,615 Burden Hours x \$37.34 per Burden Hour				\$118,166,724
Estimated Average Cost of Filing GCCs for Imports with CBP**				\$ 56,000,000
<b>Total Estimated Cost</b>				<b>\$174,166,724</b>

\* Estimated number of distinct product varieties that require certification.

\*\* Costs attributable to proposed amendment to 16 CFR part 1110.

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**Table B: Summary of Incremental Cost for Third Party Disclosure of CPCs Amending Collection of Information for Third Party Testing of Children’s Products**

Estimated Cost of Third Party Disclosure of CPCs	\$14,936,000
Estimated Average Cost of Filing CPCs for Imports with CBP*	\$18,700,000
<b>Total Estimated Incremental Cost</b>	<b>\$33,636,000</b>

\* Costs attributable to proposed amendment to 16 CFR part 1110.

**VIII. Effective Date**

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission proposes that any final rule based on this proposal would become effective 90 days after the final rule is published in the *Federal Register*. Certifiers should not require a lengthy period of time to come into compliance with a final rule because certificates are already required to be issued, and changes to the existing regulation are not extensive but merely clarifying expectations in light of new testing regulations. The most substantive amendment to the existing part 1110 would require that in the case of finished products that are manufactured outside the United States and that are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP. Stakeholders should provide information and evidence if they believe that implementing such a requirement would require longer than 90 days from the issuance of a final rule.

**List of Subjects in 16 CFR Part 1110**

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Regulated products, labeling, certificate, certification, component part certificate.

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For the reasons stated in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations by striking the entirety of existing 16 CFR part 1110, and replacing it with a new part 1110 to read as follows:

**Part 1110—CERTIFICATES OF COMPLIANCE**

Sec.

1110.1 - What is the purpose and scope of this part?

1110.3 - What definitions apply to this part?

1110.5 - When are certificates required?

1110.7 - Who must certify finished products?

1110.9 - What form(s) may the certificate take?

1110.11 - What must the certificate contain?

1110.13 - When must certificates be made available?

1110.15 - Who is responsible for the information in a certificate?

1110.17 - What recordkeeping requirements apply to certificates?

1110.19 - What requirements apply to component part certificates?

AUTHORITY: 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110-314, 122 Stat. 3016, 3017 (2008), Pub. L. 112-28 (2011).

**§ 1110.1 – What is the purpose and scope of this part?**

(a) This part:

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(1) Specifies the entities that must issue certificates for finished products in accordance with section 14(a) of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2063(a);

(2) Clarifies which provisions of this part apply to component part certificates;

(3) Specifies certificate content, form, and availability requirements that must be met to satisfy the requirements of section 14 of the CPSA; and

(4) Requires importers to file certificates electronically with CBP for imported finished products that are required to be certified.

(b) This part does not address issues related to type or frequency of testing necessary to support a certificate.

### **§ 1110.3 – What definitions apply to this part?**

(a) The definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110-314, apply to this part.

(b) Additionally, the following definitions apply for purposes of this part:

(1) “CBP” or “Customs” means United States Customs and Border Protection;

(2) “Certificate” or “certificate of compliance” means a certification that the finished products or component parts within the scope of the certificate comply with the consumer product safety rules under the CPSA, or similar rules, bans, standards, or regulations under any other law enforced by the Commission, as set forth on the certificate. “Certificate” and “certificate of compliance” generally refer to all three types of certificates: General Conformity Certificates, Children’s Product Certificates, and component part certificates;

(3) “Certifier” means the party who issues a certificate of compliance;

(4) “Children’s Product Certificate” (CPC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(2) of the CPSA and part 1107 of this chapter;

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(5) “Commission” or “CPSC” means the United States Consumer Product Safety Commission;

(6) “Component part” means a component part of a consumer product or other product or substance regulated by the Commission, as defined in § 1109.4(b) of this chapter, that is intended to be used in the manufacture or assembly of a finished product, and is not intended for sale to, or use by, consumers as a finished product;

(7) “Component part certificate” means a certificate of compliance for a component part of a consumer product, as defined in paragraph(b)(6) of this section;

(8) “Electronic certificate” means a set of information available in, and accessible by, electronic means that sets forth the information required by sections 14(a) and 14(g) of the CPSA, § 1110.11, and that meets all other certificate requirements set forth in this part;

(9) “Finished product” means a consumer product or other product or substance regulated by the Commission that is imported for consumption or warehousing or is distributed in commerce. Parts of consumer products that are imported for consumption or warehousing or are distributed in commerce that are packaged, sold, or held for sale to, or use by, consumers are considered finished products;

(10) “Finished product certificate” means a certificate of compliance for a finished product, as defined in paragraph(b)(9) of this section. There are two types of finished product certificates: Children’s Product Certificates and General Conformity Certificates;

(11) “Finished product certifier” means a party who is required to issue a finished product certificate pursuant to § 1110.7;

(12) “General Conformity Certificate” (GCC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(1) of the CPSA; and

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(13) “Importer” means importer of record as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B));

(14) “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.

### **§ 1110.5 – When are certificates required?**

Finished products subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing or are distributed in commerce, must be accompanied by a GCC or a CPC, as applicable.

### **§ 1110.7 - Who must certify finished products?**

(a) *Imports.* Except as otherwise provided in a specific rule, ban, standard, or regulation, for a finished product manufactured outside of the United States that must be accompanied by a certificate, as set forth in § 1110.5, the importer must issue a certificate that meets the requirements of this part. However, if a finished product manufactured outside the United States is delivered directly to a consumer in the United States, such as products purchased through an Internet website, the foreign manufacturer must issue a certificate that meets the requirements of this part, unless the product bears a private label. The private labeler must issue a certificate that meets the requirements of this part for such products that bear a private label and are delivered directly to a consumer in the United States, unless the foreign manufacturer issues the certificate.

(b) *Domestic products.* Except as otherwise provided in a specific rule, ban, standard, or regulation, for a finished product manufactured in the United States that must be accompanied by a certificate, as set forth in § 1110.5, the manufacturer must issue a certificate that meets the

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requirements of this part. However, if a finished product manufactured in the United States is privately labeled, the private labeler must issue a certificate that meets the requirements of this part, unless the manufacturer issues the certificate.

### **§ 1110.9 – What form(s) may the certificate take?**

(a) *Language.* Certificates must be in the English language and may also contain the same content in any other language.

(b) *Format.* Except as required in § 1110.13(a)(1), certificates may be provided in hard copy or electronically.

(c) *Electronic certificates.* An electronic certificate meets the requirements of §§ 1110.13(a)(2), 1110.13(a)(3), 1110.13(b), and 1110.13(c) if it is identified prominently on the finished product, shipping carton, or invoice by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means, provided that the certificate, the URL or other electronic means, and the unique identifier are accessible, along with access to the electronic certificate itself, without password protection, to the Commission, CBP, distributors, and retailers, on or before the date the finished product is distributed in commerce.

### **§ 1110.11 – What must the certificate contain?**

(a) *Content requirements.* Each certificate must:

(1) Identify the component part(s) or finished product(s) covered by the certificate and state whether the certificate is for a finished product or a component part. A model, style, or other unique identifier of the product should be provided, if any, along with a description of the finished product or component part. Certifiers may also include an identifier, such as a universal

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product code (UPC), a global trade item number (GTIN), or other identifying code that may assist with product identification;

(2) State the date of initial certification of the finished product(s) or component part(s) to which the certificate refers;

(3) Identify the scope of finished product(s) or component part(s) for which the certificate applies, such as by a start date, start and end date, lot number, starting serial number or serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate;

(4) State each consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any law enforced by the Commission, to which the finished product(s) or component part(s) are being certified. Finished product certificates must identify separately all applicable rules, bans, standards, or regulations. Component part certificates must identify all rules, or parts of rules, bans, standards, or regulations for which the component part(s) are being certified;

(5) Identify the party certifying compliance of the finished product(s) or component part(s), including the party's name, electronic mail (e-mail) address, full mailing address, including the street address, and telephone number;

(6) Identify and provide contact information (consisting, at a minimum, of the individual's name, e-mail address, full mailing address, and telephone number) for the individual:

(i) maintaining records of test results on which a GCC is based, and records described in §§ 1109.5(g) and (j) of this chapter (where applicable); or

(ii) maintaining records of test results and other records on which a CPC is based, as required by §§ 1107.26, § 1109.5(g) and (j) of this chapter (where applicable); or

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(iii) maintaining records of test results and other records on which a component part certificate is based, as required by §§1109.5(g) and (j) of this chapter;

(7) Provide the date (month and year, at a minimum) and place (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were manufactured, produced, or assembled;

(8) Provide the dates and places (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in §1110.11(a)(4) of this part;

(9) Identify all parties, including third party conformity assessment bodies, on whose testing the certificate depends, including name, e-mail address, full mailing address, including the street address, and telephone number; and

(10) Include the following attestation:

I hereby certify that the finished product(s) or component part(s) covered by this certificate comply with the rules, bans, standards, and regulations stated herein, and that the information in this certificate is true and accurate to the best of my knowledge, information, and belief. I understand and acknowledge that it is a United States federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statements, representations, or omissions, on this certificate.

(b) *Electronic Access to Records.* In addition to identification of the custodian of records, as described in § 1110.11(a)(6), a certificate may include a World Wide Web URL, or other electronic means, which provides electronic access to the required records.

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(c) *Exceptions*: If the product being certified is subject to more than one consumer product safety rule or similar rule, ban, standard, or regulation, and a certifier is claiming a testing exception to some, but not all, applicable regulations, the certifier shall list all applicable regulations on the certificate. For those regulations that do not require testing, the certifier shall state the basis for not testing to such regulation on the certificate, instead of providing the date and place where testing was conducted for that regulation in § 1110.11(a)(8). If a finished product is not required to be tested or certified, then no certificate is required to be issued.

(c) *Duplicative Testing Not Required*. Although certificates must list each applicable rule, ban, standard, or regulation separately, finished product certifiers are not required to conduct duplicative third party testing for any rule that refers to, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission.

### **§ 1110.13 – When must certificates be made available?**

(a) *Accompanying Certificates*. A certificate issued by a finished product certifier must accompany each finished product or finished product shipment required to be certified pursuant to § 1110.5 .

(1) In the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together.

(2) In the case of finished products manufactured in the United States, certificates shall not be filed with CPSC. A finished product certifier, pursuant to § 1110.7(b), must make the

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required GCC or CPC available for inspection by the CPSC on or before the date the finished product is distributed in commerce.

(3) In the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, that are delivered directly to a consumer in the United States, the foreign manufacturer or the private labeler, as set forth in § 1110.7(a), must either file the required GCC or CPC electronically with CBP as described in paragraph (1), or make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce, as described in paragraph (2).

(b) *Furnishing Certificates.* A finished product certifier must furnish a required GCC or CPC to each distributor or retailer of the finished product.

(c) *Availability.* Certifiers must make certificates available for inspection immediately upon request by CPSC or CBP.

### **§ 1110.15 – Who is responsible for the information in a certificate?**

Certifiers may have any entity maintain an electronic certificate platform and enter the requisite data. However, the certifier is responsible for the information in a certificate, including its validity, accuracy, completeness, and availability, as applicable.

### **§ 1110.17 – What recordkeeping requirements apply to certificates?**

For CPCs and component part certificates, certifiers must follow the recordkeeping provisions contained in §§ 1107.26, 1109.5(g), and 1109.5(j) of this chapter, as applicable. For GCCs, the certificate and supporting test records should be maintained based on recordkeeping provisions within the applicable substantive standard. If a standard does not contain a recordkeeping requirement, the Commission suggests that each issuer maintain certificates and test records for at least 3 years, as is currently required by certain consumer product safety rules.

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**§ 1110.19 – What requirements apply to component part certificates?**

Pursuant to part 1109 of this chapter, component part certificates are voluntary. Accordingly, component parts of consumer products, as defined in § 1110.3(b)(6) , are not required to be accompanied by a certificate, and component part certificates are not required to be furnished to retailers and distributors, as described in § 1110.13(b). Component part certificates shall not be filed with CBP upon importation of component parts. Instead, certifiers of component parts must meet the requirements in part 1109 of this chapter, and component part certificates must also meet the form, content, and availability requirements described in §§ 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17

Dated \_\_\_\_\_

\_\_\_\_\_  
Todd A. Stevenson,  
Secretary, Consumer Product Safety Commission.

**Staff Memoranda in Support of Revisions to the  
PRA Section of the Draft Proposed Rule Amending 16 CFR part 1110**



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

This document has been electronically  
approved and signed.

## Memorandum

Date: March 14, 2013

TO : The Commission

THROUGH: Todd A. Stevenson, Secretary  
Stephanie Tsacoumis, General Counsel  
Kenneth R. Hinson, Executive Director  
Gregory R. Rodgers, Ph.D., Associate Executive Director, EC  
Deborah V. Aiken, Ph.D., Senior Staff Coordinator, EC

FROM : Robert Franklin  
Economist  
Directorate for Economic Analysis

SUBJECT : Recordkeeping Burden Associated with Direct Final Rule for 16 C.F.R. Part  
1110 Issued in November 2008

## Background

The agency issued a direct final rule for *16 CFR Part 1110: Certificates of Compliance* in November 2008, which implemented the requirements in sections 14(a) and (g) of the CPSA to issue certificates for regulated products. At that time, an accompanying paperwork burden analysis for the creation and disclosure of certificates was not conducted.

The Commission is now considering an amendment to 16 C.F.R. part 1110 that clarifies requirements in light of new regulations on testing and labeling pertaining to product certification, and component part testing, codified at 16 C.F.R. parts 1107 and 1109 [76 FR 69482 (Nov. 8, 2011); 76 FR 69546 (Nov. 8, 2011)]. The *amendment* to 16 C.F.R. part 1110 is the subject of the Regulatory Flexibility Analysis contained elsewhere in the briefing package.

Concurrently with the proposed amendment, the agency is submitting for public notice and comment a comprehensive burden analysis for certificates for regulated non-children's products for the requirements contained in the direct final rule for part 1110 that was issued in 2008. The burden analysis also includes estimates of the burden of third party disclosure of certificates for regulated children's products. However, it does not include the recordkeeping burden associated with creating and maintaining the children's product certificates, which was estimated and reported to the Office of Management and Budget in the supporting statement for 16 C.F.R. part 1107.

The purpose of this memorandum is to provide estimates of recordkeeping and reporting burdens due solely to *16 CFR Part 1110: Certificates of Compliance* as issued November 2008. The memo does not address the burdens associated with the proposed amendment to part 1110 currently before the Commission. The burden analysis presented here has no implication for any prospective analysis of the incremental impacts of the proposed amendment, including the regulatory flexibility analysis contained elsewhere in this briefing package. Rather, this memo examines retrospectively the burden presented by part 1110, as issued in 2008, and the memo corrects the omission of a paperwork burden analysis in that rulemaking.

## **Recordkeeping Burden Associated with Part 1110 as Issued November 2008**

Although many product safety rules issued under the authority of the Consumer Product Safety Act prior to 2008 included certification and other recordkeeping requirements, most of the rules issued under the authority of other statutes, such as the Federal Hazardous Substances Act (FHSA) and the Poison Prevention Packaging Act, did not have such requirements. The Consumer Product Safety Improvement Act (CPSIA), however, extended the certification requirements to all product safety rules issued under the authority of the CPSA “or any other Act enforced by the Commission.”

The Commission has already reported to OMB estimates of the recordkeeping burden for many rules. Below, we provide estimates of the recordkeeping burden attributable to the direct final rule for 16 CFR part 1110, which was promulgated in November 2008. The recordkeeping burdens generally result from one of three requirements. First, for some products or product safety rules, there were no certification or other recordkeeping requirements in place prior to the enactment of the CPSIA. For these products, this memorandum provides estimates of the recordkeeping burden involved in creating the general conformity certificates (GCCs) and documenting the tests upon which the GCC is based. Second, for certain rules, there were some certification or other recordkeeping requirements in place, but the estimates of the burden had not been reported previously to OMB. Again for these rules, this memorandum provides estimates for both creating the GCCs and documenting the tests upon which the GCC is based. Third, there are several product safety rules that had certification and recordkeeping requirements, for which CPSC has already provided estimates of the recordkeeping burden to OMB, but the burden estimates need to be adjusted because of the requirements for GCCs in, the CPSIA and the direct final rule for 16 C.F.R. part 1110. For these rules, this memorandum attempts to provide estimates solely for the creation of the GCC.

This memorandum is concerned only with the recordkeeping burdens associated with non-children’s products. The recordkeeping burden associated with children’s products has been estimated and reported to OMB elsewhere. Generally, the only burdens that are being included in these estimates are the burden associated with preparing certificates and the burden associated with documenting the tests on which certificates are based. The burden associated with the testing itself is not included because the testing is conducted to ensure compliance with the applicable product safety rules and not because of a recordkeeping requirement.

As with the estimates for the recordkeeping burden associated with children's products, the estimates are intended to reflect the recordkeeping burden per product, per year. For children's products, we estimated that the recordkeeping burden was about 3 to 5 hours per product, on average. For non-children's products, we generally estimate that the recordkeeping burden is about 1.5 hours per product, per year. This estimate reflects the fact that non-children's products are subject to fewer product safety rules than are children's products; and non-children's products are not subject to mandatory third party certification and periodic testing, although third party testing is used by some non-children's product manufacturers. This estimate is consistent with comments that we received in response to the notice of proposed rulemaking for the testing and labeling rule (16 C.F.R. part 1107). However, where we have information for specific products or product safety rules that deviate from the general estimate, we use the more specific information.

As with children's products, manufacturers and importers of non-children's products have flexibility in how they test and certify their products. For this reason, as with children's products, we do not have a strong basis for estimating the recordkeeping burden by specific records (*e.g.*, by GCC or test reports). However, for some products or product safety rules listed below, the only estimate required is for a general conformity certificate (GCC) that conforms to the requirements of the CPSIA. For these rules we have used estimates of less than 1.5 hours, generally 15 to 30 minutes. This estimate reflects the fact that the recordkeeping burden associated with just the certificate should be less than the burden associated with both the records of the testing program and the GCCs.

We note that in many, if not most cases, these records might be prepared several times a year, per product. Thus, even if completing the required records for a single set of tests or preparing one GCC might take only a few minutes, if multiple batches are certified annually, or the product is manufactured at more than one location, then the total burden during the year will be higher.

### **Glazing Materials (Part 1201)**

Glazing materials used in or intended for use in doors and storm doors (including combination doors), bathtub doors and enclosures, shower doors and enclosures, and patio type sliding glass doors, are subject to the safety standard for architectural glazing materials (16 C.F.R. part 1201). The standard requires that manufacturers and private labelers of the glazing materials certify their products in accordance with the requirements of Section 14 of the CPSA. Although the Commission has previously submitted recordkeeping burden estimates to OMB, OMB approval of this collection of information expired in 1985.

The Glass Association of North America reports that it has about 400 members that are engaged in the manufacture, fabrication, and installation of glass and glazing products for residential and commercial applications.<sup>1</sup> The Safety Glass Certification Council (SGCC)

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<sup>1</sup> Public comment from the Glass Association of North America submitted in response to the notice of proposed rulemaking on the testing and certification rule (16 C.F.R. part 1107).

maintains a third party certification program for glass and glazing products. It states that it has certified 1,726 individual products from 262 individual participant manufacturers. It believes its members represent about 70 percent of the square footage of safety glazing materials.<sup>2</sup> Based on the SGCC figures, their 262 industry participants each have an average of just over six products. The estimates below are based on the assumption that the firms that do not participate in the SGCC program have the same number of products. We are estimating that it takes about 1.5 hours per product to produce and maintain the certification test reports and the GCC.

Firms	Total Models	Hours/Model	Total Hours
400	2,400	1.5	3,600

### **Matchbooks (Part 1202)**

Matchbooks are subject to the safety standard for matchbooks (16 C.F.R. part 1202). The standard requires certification according to the requirements of Section 14 of the CPSA. Although the Commission has previously submitted recordkeeping burden estimates to OMB, OMB approval of this collection of information expired in 1982.

The standard is relatively straightforward. Compliance can be determined simply by examining several samples of the product to ensure such things as the friction plate being on the outside back cover of the matchbook and no match head is bridged, split or crumbling. Although the recordkeeping burden for each batch or lot is probably low, there are likely to be multiple batches or lots of each product manufactured annually.

According to one source, there are four matchbook manufacturers in the United States.<sup>3</sup> Although the printed covers might include a wide variety of designs, depending upon the customers, matchbooks generally come in just a few sizes, such as 20 strike, 30 strike, or 40 strike. It might be reasonable to assume that certification is based on the broader category and not each individual matchbook cover design. Based on this assumption, each manufacturer would be certifying three different products or models.

Firms	Total Models	Hours/Model	Total Hours
4	12	1.5	18

### **Bicycle Helmets (Part 1203)**

Bicycle helmets are subject to the bicycle helmet standard (16 C.F.R. part 1203). CPSC has provided some estimates of the recordkeeping burden to OMB on an earlier submission. However, prior to the CPSIA, the only certification required was in the form of a label on the

<sup>2</sup> Information from SGCC provided to Robbie Squibb on January 28, 2013.

<sup>3</sup> Information about the industry was obtained from a website called "The Matchcover Vault," which is a site aimed at collectors of matchbook covers. The specific URL for the industry information is <http://matchpro.org/Matchindustryhistory.html> (accessed on 01/16/2013).

helmet. Now a GCC is also required. Although it could take as little as 10 minutes to prepare a GCC for a given product and maintain a record of it for several years, it is likely models could be recertified several times during a year.

The most recent submission to OMB estimates that there are about 30 manufacturers and about 200 models of bicycle helmets. If we assume that about 17.5 percent of the models are intended for children age 12 years or younger (based on their percentage of the population), it suggests that about 165 of the models are not intended for children.

Firms	Total Models	Hours/Model	Total Hours
30	165	0.5	83

### **Omnidirectional Citizens Band Base Station Antennas (Part 1204)**

Omnidirectional citizens band base station antennas are subject to a product safety standard that is intended to reduce electrocution hazards associated with the antennas. The rule prescribes certain testing and general conformity certificates. However, the content of the GCCs specified in the rule does not have all of the information required by the CPSIA. Therefore, it is necessary to estimate the increased burden of the GCCs with all of the information required by the CPSIA. One approach to estimating this burden is to assume that it takes about half an hour to prepare a certificate and maintain the record for several years. Each certificate might take less time to prepare, but there could be multiple batches in a given year.

The existing PRA submission indicates that there are five firms that manufacturer these products. A Google search indicated that each firm might have more than one model, but only one company appeared to have more than three models. Thus, it might be reasonable to estimate that each firm has three models.

Firms	Total Models	Hours/Model	Total Hours
5	15	0.5	8

### **Walk Behind Power Lawn Mowers (Part 1205)**

Walk-behind power lawn mowers are subject to the safety standard for walk behind power lawn mowers (16 C.F.R. part 1205). This standard prescribes certain testing and recordkeeping requirements. However, the certificate is required to be a label on the product, and it does not contain all of the data elements required by the CPSIA.

According to the existing PRA submission, 1 hour per day, per manufacturer is added to the recordkeeping and testing burden to collect the information required for the certificate and place it on the label. It assumes 130 production days a year. This suggests that each day's production will be certified individually or that there are multiple batches and, therefore, multiple certificates issued for each model annually. It might be appropriate to use the same methodology used for the certification label for the GCC, as well and assume 1 hour per day, per

manufacturer is required for the GCCs for 130 days out of the year. The current PRA submission estimates that there are 20 manufacturers of walk-behind lawn mowers. If each manufacturer is in production 130 days per year and requires 1 hour per day for recordkeeping, then the annual burden per manufacturer will be 130 hours, or 2,600 hours for all manufacturers together.

Firms	Total Models	Hours/Mfr	Total Hours
20	--	130	2,600

### **Swimming Pool Slides (Part 1207)**

Swimming pool slides are subject to the safety standard for swimming pool slides (16 C.F.R. part 1207). The standard includes a requirement for a GCC, but it contains fewer data elements than required by the CPSIA. The rule does not include a specific recordkeeping requirement for the testing program. However, we do not appear to have reported any estimates of the recordkeeping burden to OMB. Therefore, estimates of the burden of both preparing the certificate and making it available and preparing the records of the testing used for certification purposes are needed.

A quick review of a website of a retailer that claimed to offer swimming pool slides from most major manufacturers had between 100 and 120 different models. However, some appeared to be duplicates and some of the products might not actually be covered by the standard. Given that the retailer might not offer all models, and allowing for duplicates and some products not subject to the standard on the website, it seems reasonable to assume that there are a total 120 models of swimming pool slides. We estimate that the recordkeeping burden associated with a reasonable testing program and the certificates is about 1.5 hours per model.

Firms	Total Models	Hours/Model	Total Hours
a few	120	1.5	180

### **Cellulose Insulation (Part 1209)**

Cellulose insulation is subject to the interim cellulose insulation standard (16 C.F.R. part 1209). The regulation includes comprehensive recordkeeping and certification requirements. However, the certification is required to be in the form of a label on the product and include the day, month, and year of production. There is no existing OMB PRA submission on this product. Therefore, the full recordkeeping costs, including costs for the reasonable testing program and the certificate must be accounted for.

Thirty-six producer members of the Cellulose Insulation Manufacturers Association (CIMA) were listed on its website ([www.cellulose.org](http://www.cellulose.org)). Additionally, in 2000, CPSC staff identified a few manufacturers that were not members of CIMA, bringing the total estimated number of manufacturers to 44. Because the requirement is that manufacturers specify the date, month, and year of manufacture, and because the testing interval is required to be short enough

to demonstrate that the product meets the standard, testing and certification is likely to occur several times a year. Thus, the recordkeeping for the reasonable testing program and certification is likely to take several hours each year for each manufacturer. Assuming that each manufacturer must issue a new certificate with the date of manufacture on each GCC; each manufacturer was in production 240 days a year; and the recordkeeping required is 15 minutes a day, then the burden per manufacturer, per year would be 60 hours.

The estimate of 44 manufacturers is significantly lower than the estimates of the number of firms in the market in the late 1970s. In 1976, there were 100 manufacturers with 125 plants. In 1978, the Federal Trade Commission compiled a list of more than 700 manufacturers.<sup>4</sup> If the current estimate of 44 manufacturers is an underestimate, or if some manufacturers have more than one plant, the total recordkeeping burden would also be underestimated.

Firms	Total Models	Hours/Mfr	Total Hours
44	n.a.	60	2,640

### **Cigarette Lighters (Part 1210) and Multipurpose Lighters (Part 1212)**

Cigarette and multipurpose lighters are subject to the child resistance requirements established by 16 C.F.R. part 1210. The standard has comprehensive certification and recordkeeping requirements, and estimates of the burden have been submitted to OMB previously. However, the certificate requirements in the regulation do not contain all of the information required by the CPSIA. Therefore, it is necessary to estimate the burden associated with the new certificate.

Before a manufacturer or importer can distribute a lighter model in the United States, they must first file a report with the CPSC. From October 2005 to February 12, 2013, CPSC accepted 6,667 reports of new cigarette or multipurpose lighter models from a total 145 companies. We believe this is a reasonable estimate for the number of lighter models for which GCCs will be required in a given year for the following reasons. First, once CPSC accepts a report of a new model, the lighter model can continue to be distributed without future reports. Second, although only one or two lots of some lighter models might be manufactured or imported, multiple lots of some lighter models might be manufactured in some years. Finally, there are probably some lighter models that were reported to CPSC prior to FY 2005 that are still being distributed. More than 600 million individual lighters are manufactured or imported into the United States annually.

We estimate this burden to be about 15 minutes per model. Once the certificates are modified, the cost of adding on to the data could be negligible.

Firms	Total Models	Hours/Model	Total Hours
145	6,667	0.25	1,667

<sup>4</sup> Robert D. Kurtz, "Environmental and Economic Impacts of the Interim Safety Standard for Cellulosic Insulation," U.S. Consumer Product Safety Commission, Office of Hazard Identification (June 15, 1978).

## Residential Automatic Garage Door Openers (Part 1211)

The automatic residential garage door opener standard (16 C.F.R. part 1211) contains comprehensive recordkeeping requirements. However, the certificate required by the regulation is a label on the product that does not contain all of the data elements required for a GCC in the CPSIA. An estimate of the recordkeeping burden of the rule has been provided to OMB previously. The most recent PRA submission estimates that there are 21 respondents that require about 40 hours each for maintaining the records required by the regulation. The only new estimate required is for the annual burden of creating and maintaining GCCs that are distinct from the label on the products. We estimate this burden to be about 30 minutes per model annually.

Based on a review of the garage door openers available at some home or building supply retailers, each manufacturer could offer a few different models (*e.g.*, ½ horsepower, ¾ horsepower, with and without battery backup). For purposes of these estimates, we assume that each manufacturer has about four different models.

Firms	Total Models	Hours/Model	Total Hours
21	84	0.5	42

## Furniture (Parts 1303 and 1213)

Furniture that is not intended for children under the age of 13 years is subject to the rule banning the use of lead paint (16 C.F.R. part 1303). Bunk beds are also subject to a standard intended to reduce entrapment hazards (16 C.F.R. part 1213). Neither of these rules has explicit recordkeeping or certification requirements and no recordkeeping burden estimates have been submitted to OMB previously. Furniture subject to these standards will have to be certified as meeting the rules based on a test of each product or a reasonable testing program.

In estimating the recordkeeping burden of the testing and certification rule for children's products, we estimated that there were 54,000 models of furniture intended for children under the age of 13 years. This was estimated by counting the models of children's furniture offered by one large online retailer and estimating that it carried only about one-quarter of all the models of furniture available. If we assume furniture intended for children represents about 17.5 percent of all furniture models, based on the percentage of the population that is under the age of 13 years, one could infer that there are approximately 250,000<sup>5</sup> furniture models intended for people 13 years of age and older. It should be noted that metal furniture and furniture that does not have a paint or coating would not be subject to this requirement and might not require any recordkeeping or certificates. We assume that about half of the furniture items might be subject to the lead-in-paint requirements.

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<sup>5</sup> The calculation is  $(54,000/0.175) \times 0.825 = 254,571$ . This could be a low estimate because most children's furniture is limited to the bedroom furniture category. However, non-children's use furniture also includes categories such as "dining room" and "living room" furniture. The estimate in the memorandum has been rounded.

One large online retailer had about 1,200 items listed under “bunk bed.” If this retailer carries about one-quarter of all bunk bed models, this indicates that there are about 4,800 bunk bed models available. A quick review of the first 75 models or so indicated that about 12 percent might be appropriate for people over the age of 12 years. This indicates that there might be about 600 bunk beds intended for people over the age of 12 years.

Based on a comment from a furniture industry trade association that was submitted in response to the NPR for the 1107 rule, we derived an estimate of 30 to 45 minutes per model for the recordkeeping per model associated with the reasonable testing program requirements for the lead-in-paint requirement.<sup>6</sup> For purposes of these estimates, we have used the low end of this range. We estimate the cost of the recordkeeping for the reasonable testing program and GCC for the bunk bed standard would be expected to be 1.5 hours per model.

Regulation	Total Models	Hours/Model	Total Hours
1303	125,000	0.5	62,500
1213	600	1.5	900
Total			63,400

### Paints and Coatings (Part 1303)

Paints and coatings are subject to the limits on the amount of lead allowed in paint (16 C.F.R. part 1303). With some exceptions, the lead content of paint cannot exceed 90 parts per million. The exceptions include coatings that are not intended for consumer products and artist paints.

Based on information available from the American Coatings Association (ACA) (<http://www.paint.org/about-our-industry/types-of-coatings.html>), just over 50 percent of the paints, by value, would be subject to the limits on the amount of lead in paint. These include architectural coatings and aerosol coatings. Noncovered coatings include industrial paints, marine paints, automotive paints, and industrial maintenance coatings.<sup>7</sup> The Bureau of the Census reports that there are 1,002 manufacturers of paint and coatings in the United States.<sup>8</sup> Based on the data from the ACA, it is reasonable to assume that 501 of manufacture paints and coating are subject to part 1303.<sup>9</sup> One large manufacturer listed 82 different consumer products on its website. While this estimate might not account for all different colors offered by the manufacturer, some smaller manufacturers might not have the full range of products that a large

<sup>6</sup> To derive the estimate, we had to make assumptions concerning the employee compensation and the number of models per manufacturer that were not explicitly stated in the comment.

<sup>7</sup> Technically some industrial coatings might be subject to the limits on lead in paint in Part 1303 if they are applied on a consumer product. However, in these cases it would be the product manufacturer (*e.g.*, furniture or children’s product manufacturer) that would be responsible for the certification.

<sup>8</sup> United States Department of Commerce, Bureau of the Census, 2010 County Business Patterns.

<sup>9</sup> In fact, many large paint manufacturers manufacture both industrial and consumer paints.

manufacturer might have. Therefore, it might be reasonable to use this as an average of the number of products per manufacturer.

The testing of paint is reasonably simple, and therefore, maintaining the records of a reasonable testing program and preparing the certificate should not take a lot of time. However, each batch is probably certified and dated, and multiple batches of each product are likely produced annually. Therefore, assuming that the recordkeeping requires 30 minutes per product might be reasonable.

Firms	Total Models	Hours/Model	Total Hours
501	41,082	0.5	20,541

### ATVs (Part 1420)

The CPSIA mandated that the CPSC adopt the voluntary standard for ATVs as a mandatory CPSC standard, which was codified at 16 C.F.R. part 1420. Manufacturers of ATVs are required to certify that the ATVs meet the requirements of the standard based on a reasonable testing program or a test of each product. However, no PRA submission has been made to OMB regarding the recordkeeping burden of the ATV standard.

The testing of an ATV is likely to take a minimum of several hours and could take more than a day. However, the recordkeeping itself will probably take less time. We estimate that the recordkeeping burden for both the reasonable testing program and the GCC will be about 1.5 hours. This could be a low estimate if multiple batches or shipments are tested and certified annually. Based on information from the Motorcycle Industry Council and Power Products Marketing, we estimate that there are 32 manufacturers of ATVs that produce a total of 132 (non-children's) ATVs.

Firms	Total Models	Hours/Model	Total Hours
32	132	1.5	198

### Pools and Spas (Part 1450)

All pool and spa drain covers must meet the requirements of the Virginia Graeme Baker Pool and Spa Safety Act, which was codified at 16 C.F.R. part 1450. A manufacturer directory, located at [www.poolspanews.com](http://www.poolspanews.com), listed 12 manufacturers of drain covers. An examination of the websites of each of the manufacturers indicated that there are a total of 136 different drain covers that were advertised as being compliant with the VGB requirements. Although this list might not be complete, it probably represents most of the industry. We assume that the recordkeeping burden will be about 1.5 hours per product, per year.

Firms	Total Models	Hours/Model	Total Hours
12	136	1.5	204

### **Fireworks Devices (Part 1507; Sections 1500.17(3) and 1500.17(8))**

Fireworks that are not banned are subject to various requirements defined in 16 C.F.R. part 1507 and in sections 1500.17(3) and 1500.17(8). These are FHSA regulations and do not have the certification and recordkeeping requirements that CPSA regulations had. No paperwork burden estimate has been provided to OMB. Therefore, the full burden of the recordkeeping for the testing programs and the certificates must be estimated.

Based on its knowledge of the industry, the Office of Compliance estimates that 115,000 different lots of fireworks devices are certified annually. The recordkeeping burden for documenting the testing and creating the GCCs is estimated to be about 1 hour per lot.

Firms	Total Lots	Hours/Lot	Total Hours
--	115,000	1	115,000

### **Bicycles (Part 1512)**

Bicycles are subject to the requirements of the safety standard for bicycles, which is codified at 16 C.F.R. part 1512. The regulation sets forth standards that bicycles must meet, but did not require a certificate or records of a reasonable testing program prior to the enactment of the CPSIA. Therefore, no estimate of the recordkeeping burden has been submitted to OMB.

Testing a bicycle to the bicycle standard will take about 1 day. However, the time to produce and retain the records and the certificates is probably closer to 1.5 hours. Previously, we estimated that there were approximately 400 models of children's bicycles. On the assumption that children's bicycles account for 17.5 percent of the bicycle models, based on the percentage of the population that is under 13 years of age, then there would be about 1,900<sup>10</sup> non-children's bicycles. Based on a quick review of a database of bicycle manufacturers, there may be 150 to 200 bicycle manufacturers whose products are sold in the United States.

Firms	Total Models	Hours/Model	Total Hours
150	1,900	1.5	2,850

### **Clothing and Apparel (Parts 1610 and 1611)**

Clothing and apparel must meet the requirements of two standards intended to classify fabrics according to their burning rate and prohibit the introduction of dangerously flammable goods into commerce. One standard is the standard for the flammability of clothing textiles (16 C.F.R. part 1610), and the other is the standard for the flammability of vinyl plastic film (16 C.F.R. part 1611). Manufacturers must certify that their apparel products meet the requirements of the standards based on a reasonable testing program. However, many fabrics do not require

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<sup>10</sup> This estimate is rounded.

testing because they meet the standard based on construction and fabric weight or fiber content, regardless of construction or fabric weight. These exceptions are found at 16 CFR § 1610.1(d).

We assume that manufacturers must issue a GCC for all clothing, whether testing is required or not. Many certificates, however, might state that the item is in compliance with 16 C.F.R. part 1610 because the fabric meets one of the exceptions.

The American Apparel and Footwear Association (AAFA) estimates that there are 20 billion units of clothing sold annually. A representative of AAFA estimated that on average each SKU of clothing has only about 100 units. On the assumption that one SKU is a size and color combination of a particular item, based on a review of several catalogs, we estimated that there were an average of about 30 SKUs per clothing item. Based on this assumption, there would be about 6.7 million clothing or apparel items. On the assumption that 82.5 percent are intended for people over the age of 12 years (based on their percentage of the general population), we estimate that about 5.5 million clothing and apparel items would require certificates.

Given that many clothing items are probably produced seasonally and the total number of units of some items that are produced is fairly low, it might be reasonable to assume that there will only be a few batches of many items each year. Many items will be exempt from testing and others will be certified based on testing or certificates from fabric suppliers. Therefore, it might be reasonable to assume that the recordkeeping burden might be as little as 15 minutes per item. If multiple certificates must be issued for some apparel items or models, perhaps because different colors or sizes are produced on different dates or at different locations, the estimate could be low.

Firms	Total Models	Hours/Model	Total Hours
(thousands)	5.5 million	0.25	1,375,000

### **Carpets and Rugs (Parts 1630 and 1631)**

Carpets and rugs are subject to flammability requirements at 16 C.F.R. parts 1630 and 1631. The existing OMB submission mentions the CPSIA and the requirement to issue GCCs. However, the burden estimate in item 12 of the PRA submission to OMB only mentions the burden associated with testing to issue guaranties and children’s product certificates. The recordkeeping burden associated with issuing GCCs is not mentioned. Therefore, we are attempting to provide estimates required for the recordkeeping associated with issuing GCCs and any additional testing that would be required.

The current PRA submission estimates that there are 120 firms subject to the information collection requirements and that each of these firms is required to conduct between 0 and 200 tests per year. For purposes of the calculations, the midpoint of 100 tests per year, per firm was used. The 2010 County Business Patterns report from the Census Bureau shows that there are closer to 240 carpet and rug mills. The lower estimate in the PRA submission might have been based on an assumption that only half of the firms would either issue guaranties or certify children’s products. We estimate that the time to create the certificate and the records of the tests

on which it is based is about 1.5 hours per style. The time to conduct the tests is not included in this estimate.

On the assumption that GCCs could simply replace guaranties, one could use most of the assumption in the existing PRA submission, but assume that all firms will have to conduct testing and issue GCCs. Thus, there would be approximately 240 firms conducting about 100 tests annually. However, these estimates are only for domestic manufacturers. If there are a significant number of carpets and rugs that are imported, these estimates are low.

Firms	Total Styles	Hours/Style	Total Hours
240	24,000	1.5	36,000

### **Mattresses (Parts 1632 and 1633)**

Mattresses are subject to two flammability standards. One is a smoldering ignition resistance standard (16 C.F.R. part 1632) and the other is an open flame ignition resistance standard (16 C.F.R. part 1633). The regulations have comprehensive testing and recordkeeping requirements. However, a GCC certificate that meets the requirements for GCCs in the CPSIA is not required. However, statement of compliance is required on the mattress and the manufacturer must certify that the prototype testing was conducted properly. In short, the regulations require everything except a GCC. Burden estimates for these were previously submitted to OMB.

On the expectation that the burden for all recordkeeping except the generation of the GCC has already been included on the previous PRA submissions, the only additional burden estimate required is for the GCC. This might be as little as 15 minutes per mattress. The estimates of the number of manufacturers and models are taken from the existing PRA submission.

Firms	Total Models	Hours/Model	Total Hours
671	13,420	0.25	3,355

### **Poison Prevention Packaging Act (Section 1700.14)**

The CPSC enforces the Poison Prevention Packaging Act (PPPA), through which CPSC requires special packaging for some hazardous products to reduce the risk of children accidentally coming in contact with or ingesting the product. The CPSC has promulgated 32 regulations that together require a wide variety of products to be packaged in special packaging. Products requiring special packaging include all oral prescription drugs, oral drugs that have been switched from requiring a prescription to being available for sale over-the-counter (OTC), many types of OTC drug products and preparations, some personal care products including baby oil and many mouthwashes, and some hazardous household products including many drain openers, furniture polishes, kindling and illuminating preparations, methanol, and kerosene. The full list of substances that require special packaging is codified at 16 C.F.R. § 1700.14.

The importer or the domestic party that packages a PPPA-regulated substance in special packaging must issue the GCC. Each distinct product subject to the PPPA must be covered by a GCC. For example, if a company sells a regulated OTC drug in four different types of packages, the company might require four different GCCs to cover each package type.

The CPSC does not have a comprehensive database of all products by all manufacturers (including, but not limited to, product manufacturers, package manufactures, packagers, and contract repackagers) that require special packaging. However, based on its knowledge of the affected markets that we have gained through various actions over the years, we believe that there could be more than 1,000 companies that might be responsible for issuing a GCC for covered products. The number of products that require GCCs may be between 100,000 and 200,000. This includes different packages of the same brand of a product packaged by one company.

The child resistance and senior use effectiveness of each special package type must be established by testing with panels of children and adults according to the protocols codified at section 1700.20. We estimate that the recordkeeping burden associated with the testing is about 20 hours per package type. This is based on the burden estimate used for the cigarette lighter standard.<sup>11</sup>

One package might be used for many different products. Therefore, the recordkeeping burden could be spread over many different final products. Staff has stated:

The importer or the domestic party that packages a PPPA regulated substance in special packaging must issue the general conformity certificate. The child resistance and senior friendly testing data (also known as protocol data) obtained in accordance with the procedures described under 16 C.F.R. 1700.20 may be used by the importer or domestic packager to support its certification. The packager can rely upon this data as the basis for the reasonable testing program. There is no expiration date on these tests and no requirement to retest so long as the tests adequately reflect the current packaging used.

This means that a manufacturer of a PPPA-regulated product does not have to conduct their own tests, they may use the test data provided by the package manufacturer. Furthermore, each package does not have to be retested at regular intervals. Testing will generally only occur when a change is made to an existing package that could affect its compliance or a new package is introduced. Sometimes the manufacturer or packager of the final product (*i.e.*, the drug or household substance) will conduct its own compliance testing to ensure its products meet the requirements of the PPPA. Likewise, the GCCs might not need to be revised or reissued at regular intervals. A manufacturer of a product regulated under the PPPA may be able to rely upon the same GCC for a product until it changes the package or the certification or testing of the package changes.

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<sup>11</sup> This estimate could be low because the cigarette lighter standard does not include an adult use effectiveness protocol. The total time to conduct the tests would exceed 90 hours per package type.

We do not have concrete data regarding the average number of products for which a typical package is used; nor do we have concrete data on how frequently packages are retested or how often manufacturers, importers, or private labelers of the final products will issue new GCCs. For purposes of this analysis, however, we are assuming that, on average, each different package is used for 100 different products. We are also assuming that on average each package is used for 4 years before it is retested, either because of a material change, the manufacturer has substituted a new package, or for any other reason. We further assume that the manufacturers, importers, or private labelers of the final products only issue new GCCs for a product, on average, once every 4 years. As noted, we do not have a firm basis for these assumptions. Rather, they are intended to recognize that these costs could be incurred less frequently than once a year.

As noted above, the recordkeeping burden associated with the protocol testing of a package is about 20 hours. If each package is used for 100 different products and the testing is conducted on average every four years, then the average recordkeeping burden of the testing is about 3 minutes annually per final regulated consumer product (*e.g.*, drug or household product). We believe that it might take about 15 minutes to create and maintain the GCC for each consumer product regulated under the PPPA. If the GCC is created only once every 4 years for the average regulated product, then the annual recordkeeping burden for creating and maintaining the GCC will be about 4 minutes. Therefore, on average, the total recordkeeping burden per product regulated under the PPPA will be about 7 minutes. This includes the time required to create and maintain the records of the protocol testing of the packages and the time to create and maintain the GCC.

Firms	Total Products	Minutes/Product	Total Hours
1,000	150,000	7	17,500

These estimates above are probably low, especially if the month and date of production must be included on the certificates. If so, at least one new certificate would have to be created each year a product is in production, more if it is in production more than one month per year. If so, the estimate above would be low by at least a factor of 4.

### **Refrigerators (Part 1750)**

Refrigerators are subject to the requirements of the Refrigerator Safety Act. These are codified at 16 C.F.R. part 1750 and establish standards to permit the opening of household refrigerators from the inside. The rule has no specific certification or recordkeeping requirements. However, it is likely that manufacturers are keeping these records.

According to the 2010 census, there are 19 manufacturers of household refrigerators and freezers. One major manufacturer had 120 different models of refrigerators listed on a major retailer's website. These included similar models in different capacities. Assuming that each model requires testing and certification, there could be as many as 2,280 different models of refrigerators that need certification to the Refrigerator Safety Act. If the recordkeeping burden is about 1.5 hours, the total burden for the entire industry would be about 4,200 hours. This could be high if some smaller manufacturers do not have as many individual models or if some

manufacturers are able to use the test results and certificates to cover multiple models. Due to data limitations these estimates may not include imported products and could be low.

Firms	Total Models	Hours/Model	Total Hours
19	2,280	1.5	3,420

### **Candles with Metal Core Wicks (Section 1500.17(a)(13))**

Metal core candle wicks and candles with metal core wicks are banned, unless the lead content of the metal core is not more than 0.06 percent of the weight of the metal core. The outer packages or wrappers of candles subject to the ban (*i.e.*, those with metal core wicks) and metal core candle wicks sold separately must be labeled “Conforms to 16 CFR 1500.17(a)(13).”

When the regulation was proposed, it contained proposed requirements that would have obligated candle manufacturers and importers to test or maintain records of testing performed by the supplier of the metal cored wicks and to label each shipping container with a statement that the candles conformed to the regulation and including a means to identify the test results applicable to that shipment of candles. CPSC estimated that the recordkeeping burden of this requirement would be about 40 hours annually per firm that used metal core wicks. Most of the actual testing was expected to be conducted by the small number of suppliers of metal core wicks. The total cost of the proposed rule was estimated to be approximately \$800,000, including that required by the wick manufacturers and the candle manufacturers or importers.

Industry commented that, although they strongly supported the ban of metal core wicks containing lead, the cost of the proposed rule was “underestimated by an order of magnitude.” The reason they believed the cost of the rule was underestimated is that the estimate of the recordkeeping burden was way too low. Among the reasons given for their belief that that the recordkeeping burden would be much more burdensome than CPSC thought is that typically each lot of candle production uses wicks from multiple lots. Therefore, it would be difficult to trace any particular candle shipment to the test results for a particular lot of wicks. In the final rule, the Commission dropped the certification and recordkeeping requirements from the proposed rule. The final rule required the manufacturer to state that the product conformed to the requirements of the rule but did not require it to issue a certificate traceable to specific certification tests.

The CPSIA essentially reversed the Commission decision regarding the certification and recordkeeping requirements for this regulation. Under the requirements of the CPSIA, manufacturers, importers, and private labelers of candles with metal core wicks must now issue a GCC, based upon a reasonable testing program or a test of each product, that the product conforms to 16 CFR §1500.17(a)(13). The information required on the GCC must identify the manufacturer or private labeler and any third party conformity assessment body on whose testing the certificate depends. The GCC must also include 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.

Although these estimates were described by industry representatives as being low, we are estimating the recordkeeping burden associated with creating and maintaining the GCCs and the certification test records to be 40 hours per firm. The National Candle Association states that there are more than 400 commercial, religious and institutional manufacturers of candles in the United States. The National Candle Association states that the major manufacturers have between 1,000 and 2,000 varieties of candles, which implies that the number of varieties offered by the smaller manufacturers would be less. In their comments submitted in response to the NPR, the National Candle Association estimated that between 10 to 20 percent of the market used metal core wicks. If we assume that the average candle manufacturer has about 1,000 varieties (to allow for the fact that the nonmajor manufacturers would be expected to have fewer varieties than the major manufacturers) and that 15 percent of those have metal cores, then the average manufacturer would have approximately 150 varieties that would be subject to the regulation.

Firms	Total Varieties	Hours/Firm	Total Hours
400	60,000	40	16,000

The estimates above assume that all manufacturers of candles use metal wicks in some of their products. To the extent that some manufacturers do not use metal core wicks at all, these estimates could be high. Due to data limitations, these estimates do not include any importers of candles. To the extent that there are importers of candles that use metal core wicks, the estimates above would be low.

**Ban of Unstable Refuse Bins (Part 1301)**

The rule banning unstable refuse bins (16 C.F.R. part 1301) applies to metal refuse bins having an internal volume of one cubic yard or greater that are produced or distributed for the personal use of consumers or in or around a residence, school, in recreation or otherwise. If such a bin will tip when tested according to the method described in the rule it is banned. If it does not tip it must be so certified, based upon a reasonable test program or a test of each product. A very small subset of refuse bins is not subject to the rule.

In the course of an internet search on February 8, 2013, we identified 19 suppliers of refuse bins and a total of 358 individual bin models that could be used for refuse collection or storage around a residence, such as an apartment building or a school or recreation area. Bins that appeared to be intended for industrial or nonresidential use, based on my judgment, were not included. However, many bins could have both consumer and industrial use. Thus, it is possible that some of the suppliers that I counted do not sell bins for consumer use. It should also be noted that not all suppliers might have been discovered during the Internet search.

The test method is fairly simple. We estimate that the recordkeeping for testing and creating and maintaining the GCCs will take an average of 30 minutes.

Firms	Total Models	Hours/Model	Total Hours
19	358	0.5	179

### **Ban of Lawn Darts (Part 1306)**

If intended for children, lawn darts are covered by 16 C.F.R. § 1500.18. Lawn darts intended for children would also be subject to other rules, such as ASTM F963, the lead content limits and the phthalate content limits. Any recordkeeping requirements that cover the testing and CPC are included in the estimates of the recordkeeping burden associated with the 1107 rule.

Lawn darts intended for general use are banned by 16 C.F.R. part 1306. According to the rule, the purpose is to prohibit the sale of lawn darts, which have been found to present an unreasonable risk of skull puncture injuries to children. The rule also states that “any lawn dart is a banned hazardous product. For purposes of these estimates, we have counted as lawn darts, products which appear to be intended to be used in a similar manner as the banned lawn darts in that they consist of an elongated projectile that can be thrown toward a target on the ground and contact the ground tip first. We have attempted to eliminate any product that appears to be primarily intended for children. We also have not included horse shoe games and ring toss games. We estimate that the recordkeeping burden for creating and maintaining the GCC and the records of the tests on which it is based is about 1.5 hours per product.

A search of several large Internet retailers on February 13, 2013, turned up six products by six different manufacturers that could be considered to be lawn darts, although none of the products appeared to have sharp tips designed to stick into the ground. There may be other similar products available that were not discovered during this Internet search. The actual number of lawn dart products available could be higher if some of the available products were not found during the Internet search. It could be lower if some of products that were found are intended for children under the age of 13 years.<sup>12</sup>

Firms	Total Models	Hours/Model	Total Hours
6	6	1.5	9

### **Ban of Artificial Emberizing Materials Containing Asbestos (Part 1305)**

Artificial emberizing materials are used in decorative gas fireplace systems to simulate the ashes and embers in wood-burning fireplaces. The use of respirable, free-form asbestos in these products is banned by 16 C.F.R. part 1305. Not banned are emberizing materials that consist of other materials such as vermiculite, rock wool, mica, or synthetic fibers. The emberizing materials that are not banned must be certified, based on a reasonable test method or a test of each product, to not contain respirable, free-form asbestos. We estimate that the recordkeeping burden for creating and maintaining the GCC and the records of the tests on which it is based is about 1.5 hours per product per year.

Included in these estimates are any materials that are intended for use with gas logs to simulate ashes or embers. An internet search on November 14, 2013, identified a total of 56

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<sup>12</sup> One product was found that was obviously intended for children under the age of 13 years and is not included in these estimates.

different products, by 14 different suppliers, that could be used to simulate ashes or embers in gas fireplaces. Because there are likely many products that were not identified during this search, this is probably a low estimate.

Firms	Total Models	Hours/Model	Total Hours
14	56	1.5	84

### **Ban of Patching Compounds Containing Respirable Asbestos (Part 1304)**

The rule describes *patching compounds* as being mixtures of talc, pigments, clays, casein, ground marble, mica, or other similar materials and a binding material. In the past, asbestos was sometimes used as the binding material. Patching compounds are used to cover, seal or mask cracks, joints, holes and similar openings in the trim, walls, ceiling, etc. of building interiors. They are applied in a wet form and after drying are sanded to a smooth finish. They are commonly referred to as “spackling,” “joint compounds,” and “mud.” The rule bans any patching compounds to which asbestos has been added deliberately as an ingredient or contained in the final product as the result of knowingly using a raw material containing asbestos.

All manufacturers of patching compounds intended for consumer use will have to certify that they did not deliberately or knowingly add asbestos to the product. There is no test of the product required by the rule. The only requirement is that the manufacturer must attest that they did not intentionally add respirable free-form asbestos to the product. We estimate that the recordkeeping burden to create and maintain the GCCs will be at least 15 minutes per product annually.

A total of 148 patching compounds by about 35 different manufacturers were found during an internet search on February 21, 2013. Because there are probably patching compounds available that were not found, this would be a low estimate of the total number of patching compounds available. Assuming that the time required to prepare the required certificates for each product averaged 15 minutes per year, the total recordkeeping burden would be about 37 hours.

Firms	Total Models	Hours/Model	Total Hours
35	148	0.25	37

### **Third Party Reporting Burden**

Section 14 of the Consumer Product Safety Act, as amended by the CPSIA requires that each GCC accompany the applicable product or shipment and a copy of the certificate be furnished to each distributor or retailer of the product. It also requires the manufacturer or private labeler issuing the certificate to furnish a copy of the certificate to the Commission upon request. There is some flexibility provided to manufacturers and private labelers as to how the GCCs may be provided to the retailers and distributors. For example, the GCCs may be provided in the form of a paper certificate that physically accompanies each shipment or the GCCs could be accessible

through the internet and each retailer or distributor is provided with information as to how to access the GCCs, such as the URL, a lot number, and date and place of manufacture.

We do not have a strong basis for estimating the average third party reporting burden per product. This is because these requirements apply to very diverse products and manufacturers and we have not developed the information necessary to estimate the public disclosure burden for different categories of products. Moreover, the reporting burden is most likely related to the number of shipments of the product from the manufacturers, importers, or private labelers to the distributors or retailers, which is information that is not available. Therefore, for purposes of preparing these initial estimates of the third party reporting burden, we are estimating that the burden is 15 minutes per product per year. For some products or manufacturers this might be an overestimate and for others, an underestimate. CPSC requests comment on the burden associated with the disclosure of the GCCs or CPCs to distributors or retailers.

Previously, we provided estimates of the recordkeeping burden associated with testing children's products and creating and maintaining records of CPCs. We do not believe that the third party reporting burden was reported in those estimates. We estimated that there were a total of 1.6 million children's products for which CPCs would be required. These estimates included 1.3 million apparel and footwear products and 0.3 million nonapparel products. If burden of providing the CPC to each retailer and distributors and, if requested, to the CPSC is about 15 minutes per product per year, then the total burden would be about 400,000 hours. Based on the estimates for each of the products or rules above, we estimate that there are approximately 6 million<sup>13</sup> non-children's products for which GCCs are required.<sup>14</sup> If the third party reporting burden averages about 15 minutes per product a year, then the third party reporting burden would be about 1,500,000 hours.

As noted, the third party reporting burden estimated above applies only to the requirements that the certificates accompany the products and be provided to the retailers and distributors of the products. The draft proposed part 1110 rule also requires that importers provide the certificates for each shipment to Customs and Border Protection (CBP). This estimate has been provided to you in another memorandum and is not included in the estimates above.

## **Cost per Hour**

We are estimating that the cost per hour of recordkeeping and reporting burden is \$37.34 an hour, which represents a mixture of professional and administrative staff labor.

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<sup>13</sup> This estimate is rounded.

<sup>14</sup> In the case fireworks devices, we estimated that there were about 115,000 lots certified annually. Some devices might have been produced in more than one lot.

### Summary of PRA Burden Estimates by Rule

Product	Firms	Models	Hours per Model	Total Burden Hours
Architectural Glazing Materials	400	2,400	1.5	3,600
Matchbooks	4	12	1.5	18
Bicycle Helmets	30	165	0.5	83
CB Band Base Station Antennas	5	15	0.5	8
Walk Behind Power Mowers	20	--	130*	2,600
Swimming Pool Slides	--	120	1.5	180
Cellulose Insulation	44	--	60*	2,640
Cigarette and Multipurpose Lighters	145	6,667	0.25	1,667
Garage Door Openers	21	84	0.5	42
Furniture (paint)	--	125,000	0.5	62,500
Furniture (bunk beds)	--	600	1.5	900
Paints and Coatings	501	41,082	0.5	20,541
ATVs	32	132	1.5	198
Pools and Spas (VGB Act)	12	136	1.5	204
Fireworks Devices	44	115,000**	1.0	115,000
Bicycles	150	1,900	1.5	2,850
Clothing and Apparel	1,000s	5,500,000	0.25	1,375,000
Carpets and Rugs	240	24,000	1.5	36,000
Mattresses	671	13,420	0.25	3,355
PPPA	1,000	150,000	0.12	17,500
Refrigerators	19	2,800	1.5	3,420
Candles w/Metal Core Wicks	400	60,000	40*	16,000
Refuse Bins	19	358	0.50	179
Lawn Darts	6	6	1.5	9
Artificial Emberizing Materials	14	56	1.5	84
Patching Compounds	35	148	0.25	37
Total Recordkeeping Burden Hours				1,664,615
Third Party Reporting of CPCs		1,600,000	0.25	400,000
Third Party Reporting of GCCs		6,000,000	0.25	1,500,000
Total Recordkeeping/Reporting Burden				3,564,615
Cost per hour				\$37.34
Total Cost				\$133,102,724

\* Estimated burden hours per manufacturer, not model.

\*\* Estimated lots that are certified.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
BETHESDA, MD 20814

This document has been electronically  
approved and signed.

MEMORANDUM

**Date: March 7, 2013**

TO : The Commission

THROUGH: Todd A. Stevenson, Secretary  
Stephanie Tsacoumis, General Counsel  
Kenneth R. Hinson, Executive Director  
Gregory R. Rodgers, Ph.D., Associate Executive Director, EC  
Deborah V. Aiken, Ph.D., Senior Staff Coordinator, EC

FROM : Charles L. Smith, Economist, EC

SUBJECT: Paperwork Burden Associated with Proposed Amendments to 16 CFR Part  
1110: Additional Burden for Importers to File Certificates with the United  
States Customs and Border Protection

## **Background**

CPSC staff is recommending that the Commission propose to amend provisions of *16 CFR Part 1110: Certificates of Compliance*. The amendment would, among other things, require the importer of products manufactured outside the United States to file an electronic certificate with the United States Customs and Border Protection (CBP) at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. This memorandum presents estimates of the additional burden created for importers by the required electronic filing of certificates with CBP.

## **Hourly Compensation Rate**

The hourly compensation rate used is based on the hourly compensation rate used for estimating the recordkeeping burden of 16 CFR parts 1107 and 1109, which relate to the testing and certification of children's products and component part testing. In the notice of proposed rulemaking (NPR) for parts 1107 and 1109 we used the total hourly compensation for private sector workers in management, professional, and related occupations, which at the time was \$48.91 per hour. This was based on the expectation that much of the recordkeeping involving the testing and certification of products would be done by people in professions such as chemists, engineers, and quality control management. Most of the commenters on the NPR for parts 1107 and 1109 did not mention the occupational mix of the workers that would be involved the recordkeeping. However, one commenter stated that the rule would require an increase in both his clerical and management staff. Therefore, in order to recognize that both clerical and professional staff could be involved in the recordkeeping, we assumed that personnel in "management, professional, and related occupations" would be responsible for half of the activities involving the recordkeeping and that personnel in "office and administrative support"

occupations would be responsible for the other half. We assume that the same occupational mix of employees will also be involved in performing the tasks necessary to file certificates electronically with CBP (as required by the proposed amendments to 16 CFR part 1110). As of June 2012 total compensation (*i.e.* wages and benefits) for these occupational categories averaged \$37.34 per hour.

## **Estimates for Children's Products that Require Children's Product Certificates**

The required electronic filing of certificates of conformance for children's products with the CBP would increase the recordkeeping burden hours and costs associated with the Testing and Certification Rule. Since part 1107 already required importers to prepare Children's Product Certificates, the increased time required to file certificates electronically with CBP would be attributable to associating the proper certificates to individual shipments for import, converting certificates to an electronic format, and transmitting the certificates to CBP (or to a Customs broker, if the importer does not self-file).

The draft initial regulatory flexibility analysis for the proposed amendments to 16 CFR part 1110 cited research of CBP data by CPSC staff which found that during 2009 there were 231,094 distinct importers of products categorized in import codes likely to include products under CPSC's jurisdiction (although not necessarily products that require certificates).<sup>1</sup> Data on the number of importers of children's versus non-children's products is not publicly available. However, based on inspection of product trade codes, we know that the number of children's products requiring certificates of conformance is substantially lower than the number of non-children's products requiring general certificates of conformance. Thus, there might be on the order of 100,000 importers of children's products and 150,000 importers of non-children's products.

CBP estimated that "in 2005 more than 70 to 85 percent of all importers imported fewer than 12 shipments."<sup>2</sup> Based on this information, if 100,000 firms import children's products annually that are subject to electronic filing of certificates, and these firms average 10 shipments a year, the annual number of electronic filings of Children's Product Certificates with CBP could total 1 million. According to a customs broker contacted by the Directorate for Economic Analysis, all importers might average about three product lines per Customs entry. If electronic notification requires an average of 30 minutes per shipment, total incremental costs of recordkeeping for the Testing Rule would be about \$18.7 million (1 million electronic filings x .5 hours per filing x \$37.34 per hour).<sup>3</sup>

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<sup>1</sup> Blachere, John, International Trade Specialist, Office of Import Surveillance, CPSC. December 8, 2010, e-mail to Charles Smith, Directorate for Economic Analysis, CPSC.

<sup>2</sup> Department of Homeland Security, Bureau of Customs and Border Protection, Importer Security Filing and Additional Carrier Requirements, Interim final rule. Federal Register, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>3</sup> In the paperwork burden analysis for 16 CFR Part 1110, third party disclosure was estimated to require about 15 minutes per product. In this case, it is reasonable for this estimate to reflect efficiency in filing multiple electronic certificates simultaneously and with other paperwork required for entry. For this reason, we use an estimate of 10 minutes per product rather than 15 minutes per product. See Robert Franklin, Directorate for Economic Analysis, CPSC. Recordkeeping Burden Associated with Direct Final Rule for 16 CFR Part 1110 Issued in November 2008 (March 14, 2013).

## Estimates for Non-Children's Products that Require General Conformity Certificates

As noted above, the number of distinct products or models requiring General Conformity Certificates exceeds the number of models requiring Children's Product Certificates.<sup>4</sup> Therefore, if 150,000 firms import products subject to electronic filing of General Conformity Certificates, and that these firms average 20 shipments with products requiring certificates, the annual number of electronic filings of General Conformity Certificates with CBP could total 3 million.<sup>5</sup> If these activities require 30 minutes per filing as in the case of CPCs, the estimated annual incremental burden would be about \$56 million, using an estimated average employee compensation cost of \$37.34 per hour (3 million electronic filings x .5 hours per filing x \$37.34 per hour).

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<sup>4</sup> A large percentage of these firms (such as importers of adult clothing) also would be included in the estimate of importers of products requiring CPCs.

<sup>5</sup>In the paperwork burden analysis for 16 CFR Part 1110, we found that there are about 3.75 products requiring GCCs for every product requiring a CPC. The estimate of 20 shipments per importer was used to roughly maintain this relationship between GCCs and CPCs. *See* Robert Franklin, Directorate for Economic Analysis, CPSC. Recordkeeping Burden Associated with Direct Final Rule for 16 CFR Part 1110 Issued in November 2008 (March 14, 2013).