

## PART 41—SECURITY FUTURES PRODUCTS—Continued

[OMB Collection #3038-0059]

	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Subtotal Reporting Requirements .....	87	.....	2,679.90	.....	1,384.08
Recordkeeping:					
41.41(a)(2) Handling of customer accounts .....	60	1	60	4	240
Subtotal Recordkeeping Requirements .....	60	1	60	4	240
Total Reporting and Recordkeeping .....	147	.....	2,739.90	0.592	1,624.08

[FR Doc. 2010-29232 Filed 11-18-10; 8:45 am]

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**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meetings****AGENCY HOLDING THE MEETINGS:**

Commodity Futures Trading Commission.

The following notice of scheduled meetings is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, 5 U.S.C. 552b.

**TIMES AND DATES:** The Commission has scheduled three meetings for the following dates:

December 1 from 9:30 a.m. to 5:30 p.m.

December 9 from 9:30 a.m. to 5:30 p.m.

December 16 from 9:30 a.m. to 5:30 p.m.

**PLACE:** Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission has scheduled these meetings to consider the issuance of various proposed rules. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission's Web site at <http://www.cftc.gov> at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

**ADDITIONAL INFORMATION:** Meeting Cancellation.

The Commission has canceled the meeting scheduled for November 30, 2010.

**CONTACT PERSON FOR MORE INFORMATION:**

David A. Stawick, Secretary of the Commission, 202-418-5071.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010-29357 Filed 11-17-10; 4:15 pm]

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**CONSUMER PRODUCT SAFETY COMMISSION****Third Party Testing for Certain Children's Products; Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14: Requirements for Accreditation of Third Party Conformity Assessment Bodies**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of Requirements.

**SUMMARY:** The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing of children's sleepwear pursuant to 16 CFR parts 1615 and 1616, the CPSC regulations under the Flammable Fabrics Act (FFA) relating to the flammability of children's sleepwear. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the CPSA, 15 U.S.C. 2063(a)(3)(B)(vi).

**DATES:** *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR parts 1615 and 1616 are effective upon publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Patricia K. Adair, Director, Division of Combustion and Fire Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone 301-504-7536; e-mail [padair@cpsc.gov](mailto:padair@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction****A. Statutory Authority**

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, directs the CPSC to establish and publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including an importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the establishment and **Federal Register** publication of a notice of the requirements for accreditation tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. The Commission may extend the 90-day period by not more than 60 days if the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule. Any requests for an extension should contain detailed facts showing why an extension is necessary.

Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.*,

section 14(h) of the CPSA, added by section 102(b) of the CPSIA).

Section 14(a)(3)(G) of the CPSA, 15 U.S.C. 2063(a)(3)(G), exempts notices of requirements from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. Therefore, the Commission finds good cause that notice and public procedure thereon are unnecessary.

#### B. The Children's Sleepwear Standards

The Standards applicable to children's sleepwear (the "Standards") are 16 CFR part 1615, *Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF3-71)*, and 16 CFR part 1616, *Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF5-74)*. The Standards were issued in the early 1970s to reduce the unreasonable risk of burn injuries and deaths from fires associated with children's sleepwear. Most burn incidents involving children's sleepwear do not occur while children are sleeping; rather, the incidents occur while the children are awake, unsupervised, and wearing the sleepwear. The primary hazard is ignition of sleepwear by contact with hot surfaces and/or small open-flame ignition sources, such as stove elements, matches, and lighters. The Standards require that children's sleepwear, and fabric intended for such sleepwear, stop burning when the flame source is removed.

The original children's sleepwear Standard for sizes 0 through 6X was revised in 1972, to include a statistical sampling plan for fabrics and garments. The sampling plan was devised to give assurance to manufacturers that sleepwear garments reaching the marketplace meet the flammability test, and that children wearing the sleepwear garments receive increased protection. The sampling plan also was intended to provide a framework for premarket testing, and thus, greatly assist in detecting noncomplying fabrics and garments before they are placed on the market. When the Standard for sizes 7 through 14 was issued in 1975, it incorporated the same sampling plan as the one in the Standard for sizes 0 through 6X.

The Standards require testing of the fabric to be used in children's sleepwear, of preproduction prototypes of the garment style or type which includes testing of the seams and the trim attached to the fabric, and of the seams of finished garments, by having fabric, seams, and trim exposed to a flame source under controlled conditions, as discussed below. To meet the criteria in § 1615.3(b) and

§ 1616.3(b), three samples of five specimens each are tested, and the average char length of the sample must not exceed 17.8 centimeters (cm) (7.0 inches (in)) and no individual specimen may have a char length of 25.4 cm (10.0 in).

In 1996, the Commission published amendments to the Standards that except products of wearing apparel from the definition of children's sleepwear for the purpose of testing to the flammability requirements if they are:

- (1) Infant garments as defined in § 1615.1(c) or;
- (2) Tight-fitting as defined in § 1615.1(o) and § 1616.2(m), provided the garment is labeled with its size and provided with a specified warning statement on a hangtag attached to the garment and on a label on any package in which the garment is sold.

All wearing apparel excepted pursuant to § 1615.1(c), § 1615.1(o) or § 1616.2(m) must otherwise comply with all the applicable requirements of the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611).

Children's sleepwear garments subject to the Standards must follow specific sampling plans and be tested for flammability performance at several stages of production. The Standards have performance requirements for fabric, prototypes (seams and trims), and garment production units. There are recordkeeping requirements at each stage of testing. The following summarizes the three stages of testing:

- (1) Fabric testing. Fabrics that are promoted for use in children's sleepwear are tested in the finished state (either original state or after one laundering) and must meet the requirements after 50 launderings (wash and dry) in either the fabric or finished garment state. Testing is of a Fabric Production Unit (FPU), which is a continuous length of fabric up to 5,000 linear yards, or 10,000 linear yards for reduced sampling, which has a specified identity that remains unchanged throughout the unit, except for color or print pattern, as specified in the Standards. Samples are taken from the beginning and end of the FPU.

- (2) Prototype testing. Once a garment design is proposed, the seams and trims are tested to assure that satisfactory garment specifications have been chosen prior to production. All seam types and all seams over 10 inches are tested. Trims are tested in the orientation they will be used in the final garment; however, neckline, shoulder, and sleeve trim are only tested in the

vertical configuration (the most severe scenario).

- (3) Production testing. Garment Production Unit (GPU) testing is carried out to assess the flammability of the garment as produced. The longest seam type is tested at this stage. Tests are conducted on each GPU, and each GPU is either accepted or rejected. The maximum number of garments in a GPU is 500 dozen (6,000 garments).

#### C. This Notice of Requirements

This notice provides the criteria and process for the Commission's acceptance of accreditation of third party conformity assessment bodies for testing pursuant to 16 CFR part 1615, *Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF3-71)*, and 16 CFR part 1616, *Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF5-74)*. Section 3(a)(2) of the CPSA defines a "children's product" as "a consumer product designed or intended primarily for children 12 years of age and younger." The sizes of sleepwear covered by the cited regulations are primarily intended for children age 12 years and younger; these sizes of sleepwear are therefore "children's products" as that term is defined in the CPSA.

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA that desire to test children's sleepwear to the requirements of 16 CFR parts 1615 and/or 1616, where the test results will be used as the basis for a certification that the sleepwear complies with those requirements. Such third party conformity assessment bodies can be grouped into three general categories: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

This notice of requirements is effective on November 19, 2010. Further, the publication of this notice of requirements lifts the Commission's previous stay of enforcement with

regard to testing and certifications related to 16 CFR parts 1615 and 1616. Therefore, each manufacturer of children's sleepwear subject to these regulations that is manufactured after February 17, 2011 must have samples of any such product, or samples that are identical in all material respects to such product, tested by a third party conformity assessment body accredited to do so and, based on such testing, issue a certificate that the sleepwear complies with the applicable Standard, before the sleepwear is imported for consumption or warehousing or distributed in commerce. (Under section 3(a)(11) of the CPSA, the term "manufacturer" includes anyone who manufactures or imports a product.) The Commission also is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the third party conformity assessment body is accepted as accredited by the CPSC. The details regarding those limited circumstances are in part IV of this document below.

As noted above, these Standards require testing at three stages in the process of developing and producing the sleepwear (fabric, prototype seams and trim, and production seams). The tests at each of these stages are designed to detect risks that can be reflected in the production garments. In addition, the results of the tests cannot have meaning unless the sampling criteria in the Standards are followed. Therefore, in order for third party testing to serve as the basis for the required certificate that the garment complies with the applicable Standard, it is necessary for the tests by a third party conformity assessment body whose accreditation has been accepted by the Commission be performed as specified in the Standards, that is, tests at the three stages specified in the Standards according to the sampling criteria in the Standards. Of course, responsible parties must, in addition, comply with all recordkeeping requirements of the Standards. We do note, however, that 16 CFR 1615.35(b)(1) and 1616.35(c)(1) allow a firm to use another testing regime if the firm has proof that the other test is at least as stringent as the Standards.

In addition, the Commission will not require third party testing to demonstrate that a product meets the exception for "tight-fitting garments" as defined by §§ 1615.1(c) and 1616.2(m), as these garments are not subject to the Standards. However, all fabrics intended for sleepwear meeting the tight-fitting exception from 16 CFR parts 1615 and 1616 must meet the flammability requirements of 16 CFR

part 1610, *Standard for the Flammability of Clothing Textiles*, and 16 CFR part 1611, *Standard for the Flammability of Vinyl Plastic Film*. The Commission also will not require that the presence of the required labels and hangtags for tight-fitting garments be subject to third party testing. This is consistent with the exemption from testing accorded to labeling requirements under the Federal Hazardous Substances Act (see NEWS from CPSC, December 18, 2009 (Release No. 10-083)).

#### *D. Lifting the Stay of Enforcement of Section 14(a) of the CPSA as to Children's Sleepwear*

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396). The stay applied to testing and certification of various products, including children's sleepwear. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. The December 28, 2009 notice did not lift the stay with regard to testing and certification of children's sleepwear because no notice of requirements had been published applicable to the Standards for these products. Since this notice provides such a notice of requirements, it has the effect of lifting the stay with regard to 16 CFR parts 1615 and 1616.

## **II. Accreditation Requirements**

### *A. Baseline Third Party Conformity Assessment Body Accreditation Requirements*

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods in the regulations identified earlier in part I of this document, it must be accredited by an ILAC-MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC-MRA signatory accrediting bodies is available on the Internet at <http://ilac.org/membersbycategory.html>. The accreditation must be to ISO Standard ISO/IEC 17025:2005, *General Requirements for the Competence of Testing and Calibration Laboratories*, and the scope of the accreditation must expressly include testing to the regulations in 16 CFR parts 1615 and/or 1616. (A description of the history and content of the ILAC-MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff

briefing memorandum, "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR part 1501 (Small Parts Regulations)," dated November 2008, and available on the CPSC's Web site at <http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf>. A true copy, in English, of the accreditation and scope documents demonstrating compliance with the requirements of this notice must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of the third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support the manufacturer's certification that the product complies with the regulations identified earlier in part I of this document.

### *B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies*

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of 10 percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must

formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body. The Commission's order must also find that accrediting the firewalled conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent conformity assessment body.

### C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

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

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

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

### III. How Does a Third Party Conformity Assessment Body Apply for Acceptance of Its Accreditation?

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

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

Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may begin testing of children's

products to support certification of compliance with the regulations for which it has been accredited.

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

The Commission will accept a certificate of compliance with 16 CFR part 1615 and/or 16 CFR part 1616 based on testing performed by an accredited third party conformity assessment body (including a government-owned or government-controlled conformity assessment body, or a firewalled conformity assessment body) prior to the Commission's acceptance of its accreditation if all the following conditions are met:

- When the product was tested, the testing was done by a third party conformity assessment body that at that time was ISO/IEC 17025 accredited by an ILAC-MRA signatory and the scope of the accreditation included the regulations specified in this notice. For firewalled conformity assessment bodies, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body unless the firewalled conformity assessment body was accredited by order as a firewalled conformity assessment body before the product was tested, even though the order will not have included the test methods in the regulations specified in this notice.
- The third party conformity assessment body's application for testing using the test methods in the regulations identified in this notice is accepted by the CPSC on or before January 18, 2011.
- The product was tested on or after November 19, 2009, with respect to the regulations identified in this notice.
- The test results show compliance with the applicable current standards and/or regulations.
- The third party conformity assessment body's accreditation remains in effect from the date of testing through the effective date for mandatory third party testing and manufacturer certification for conformity with 16 CFR parts 1615 and/or 1616.

Dated: November 15, 2010.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

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