

**EFFECTIVE DATE: November 17, 2008.**

**FOR FURTHER INFORMATION CONTACT:** Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 3103 of the Trade Act of 2002, Pub. L. No. 107-210; Title VII of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub. L. No. 109-432; H.R. 1830 110th Cong. (2007); Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283, November 5, 2002).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components, subject to quantitative limitation. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

The TRHCA of 2006 extended the expiration of the ATPA to June 30, 2007. See Section 7002(a) of the TRHCA 2006. H.R. 1830 further extended the expiration of the ATPA to February 29, 2008. H.R. 5264 further extended the expiration of the ATPA to December 31, 2008. **See Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric** (73 FR 55502, September 25, 2008).

H.R. 7222, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2009. See Pub. L. No. 110-436. The purpose of this notice is to extend the period of the quantitative limitation for preferential tariff treatment under the regional fabric provision for imports of qualifying

apparel articles for a full 12-month period, through September 30, 2009.

For the period beginning on October 1, 2008 and extending through September 30, 2009, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,222,785,719 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Janet E. Heinzen,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

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**BILLING CODE 3510-DS**

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## CONSUMER PRODUCT SAFETY COMMISSION

### Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1501 of Title 16, Code of Federal Regulations

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with part 1501 of Title 16, Code of Federal Regulations.

*Introduction:* The Consumer Product Safety Act ("CPSA"), at § 14(a)(3)(B)(iii) as added by § 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110-314, directs the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") to publish this notice of requirements for accreditation of third party conformity assessment bodies ("third party laboratories") to test children's products for conformity with the Commission's regulations at 16 CFR part 1501 for identifying toys and other articles intended for use by children under three years of age which present choking, aspiration, or ingestion hazards because of small parts (the "small parts

rule")<sup>1</sup> Each manufacturer (including the importer) or private labeler of products subject to those regulations must have products manufactured more than 90 days after the **Federal Register** publication date of this notice tested by a laboratory accredited to do so and must issue a certificate of compliance with the applicable regulations based on that testing.<sup>2, 3</sup>

The Commission is also recognizing limited circumstances in which testing performed by a laboratory on or after May 16, 2008, 90 days prior to the date of enactment of CPSIA (August 14, 2008), but prior to Commission acceptance of the laboratory's preexisting accreditation, provided that accreditation is accepted not later than January 20, 2009, may form the basis for the certificate of compliance with the small parts regulation required of the manufacturer or private labeler.

This notice provides the criteria and process for Commission acceptance of accreditation of "third party" laboratories for testing to the small parts regulations (laboratories that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory for certification purposes), "firewalled" laboratories (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" laboratories), and laboratories owned or controlled in whole or in part by a government.

The requirements of this notice are effective upon its publication in the **Federal Register** and are exempted by CPSIA from the notice and comment rulemaking requirements of the

<sup>1</sup> Section 102 of CPSIA also required the Commission to publish requirements for accreditation of laboratories for testing to the lead paint ban at 16 CFR part 1303 and for testing to the Commission's regulations for full-size baby cribs at 16 CFR part 1508, for non-full-size baby cribs at 16 CFR part 1509, and for pacifiers at 16 CFR part 1511. The requirements for accreditation for testing to the lead paint ban were published in the **Federal Register** on September 22, 2008. 73 FR 54,564-6. The requirements for accreditation for testing to the crib and pacifier regulations were published in the **Federal Register** on October 22, 2008. 73 FR 62,965-7.

<sup>2</sup> Section 14(a)(2) of the CPSA as added by § 102(a)(2) of 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.

<sup>3</sup> Of course, irrespective of certification, the product in question must comply with applicable CPSC requirements. See, e.g., CPSA § 14(h) as added by CPSIA § 102(b).

Administrative Procedure Act, 5 U.S.C. 553.<sup>4</sup>

Baseline accreditation of each category of laboratory to the International Organization for Standardization (“ISO”) Standard ISO/IEC 17025:2005—General Requirements for the Competence of Testing and Calibration Laboratories—is required. The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (“ILAC–MRA”) and the scope of the accreditation must include testing for compliance with the small parts regulation at 16 CFR part 1501.<sup>5</sup> A laboratory owned or controlled by a manufacturer or private labeler of products to be tested by the laboratory is subject to additional requirements intended to assure that the Commission is immediately and confidentially notified of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over the laboratory’s test results. A governmental laboratory may be accredited subject to additional requirements concerning independence of its relationship with the host government and freedom of manufacturers in the host country to elect to use accredited non-government laboratories for certification testing without suffering disadvantage.

The Commission has established an electronic accreditation registration and listing system that can be accessed via its web site.

Although the accreditation requirements in this notice for testing to the small parts regulations are effective upon their publication in the **Federal Register**, the Commission solicits comments on the accreditation procedures as they apply to that testing and on the accreditation approach in general, since the Commission must publish additional testing laboratory accreditation procedures over the coming months.

**DATES:** *Effective Date:* The requirements for accreditation of laboratories for

testing to the small parts regulations are effective upon publication of this notice in the **Federal Register**, that is November 17, 2008.

*Request for Comments:* Please provide comments in response to this notice by December 17, 2008. Comments on this notice should be captioned “Laboratory Accreditation Process for Small Parts Testing.” Comments should be submitted to the Office of the Secretary by e-mail at [smallpartsreqts@cpsc.gov](mailto:smallpartsreqts@cpsc.gov), or mailed or delivered, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127.

**FOR FURTHER INFORMATION CONTACT:** Robert “Jay” Howell, Acting Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail [rhowell@cpsc.gov](mailto:rhowell@cpsc.gov).

## I. Accreditation Requirements

### A. Baseline Third Party Laboratory Accreditation Requirements

For a third party laboratory to be accredited to test children’s products for conformity with the Commission’s small parts regulations, 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 of 16 CFR part 1501. A true copy in English of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental laboratories are described below in sections I.B and I.C.

The Commission will maintain on its web site an up-to-date listing of laboratories whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of “retrospective” testing performed by other than firewalled laboratories noted in section III below, once the Commission adds a laboratory to that list, the laboratory may commence

testing of children’s products to support certification by the manufacturer or private labeler of compliance with the small parts regulations.

### B. Additional Accreditation Requirements for Firewalled Laboratories

In addition to the baseline accreditation requirements in section I.A, firewalled laboratories seeking accredited status must submit to the Commission for review 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 laboratory’s test results. This additional requirement applies to any laboratory in which a manufacturer or private labeler of a children’s product to be tested by the laboratory owns a ten percent or more interest. While the Commission is not addressing common parentage of a lab and a children’s product manufacturer at this time, it will be vigilant to see if this issue needs to be dealt with in the future.

The Commission must formally accept, by order, the accreditation application of a laboratory before the laboratory can become an accredited firewalled laboratory.

### C. Additional Accreditation Requirements for Governmental Laboratories

In addition to the baseline accreditation requirements of section I.A, CPSIA permits accreditation of a laboratory 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 laboratories that are not owned or controlled by the government of that nation;
- The laboratory’s testing results are not subject to undue influence by any other person, including another governmental entity;
- The laboratory is not accorded more favorable treatment than other laboratories in the same nation who have been accredited;
- The laboratory’s testing results are accorded no greater weight by other governmental authorities than those of other accredited laboratories; and
- The laboratory 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

<sup>4</sup> CPSA § 14(a)(3)(G) as added by § 102(a)(2) of CPSIA exempts publication of this notice from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and from the Regulatory Flexibility Act, 5 U.S.C. 601–612.

<sup>5</sup> A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO 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 Regulation)*, November 2008, available on the CPSC Web site at <http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf>.

based on outcomes of the laboratory's conformity assessments.

The Commission will accept the accreditation of a governmental laboratory if it meets the baseline accreditation requirements of section I.A and meets the conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

## II. How Does a Laboratory Apply for Acceptance of Its Accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at <http://www.cpsc.gov/businfo/labaccred.html>. The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC-MRA accreditation certificate and scope statement and firewalled laboratory training document(s), if relevant. Commission staff reviews that submission for accuracy and completeness. In the case of baseline third party laboratory accreditation and accreditation of governmental laboratories, when that review and any necessary discussions with the applicant are satisfactorily completed, the laboratory in question is added to the CPSC listing of accredited laboratories at <http://www.cpsc.gov/businfo/labaccred.html>. In the case of a firewalled laboratory seeking accredited status, when the review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration.<sup>6</sup> If the Commission accepts a staff recommendation to accredit a firewalled laboratory, that laboratory will then be added to the CPSC list of accredited laboratories. In each case, the Commission will electronically notify the laboratory 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 performed by other than accredited firewalled laboratories noted in section III. below, once the Commission adds a laboratory to the list, the laboratory may then commence testing of children's products to support certification of compliance with the small parts

regulations by the manufacturer or private labeler.

## III. Limited Acceptance of Children's Product Certifications Based on Third Party Laboratory Testing Prior to Commission Acceptance of Accreditation

The Commission will accept a certificate of compliance with the small parts requirements based on testing performed by an accredited third party or governmental laboratory on or after May 16, 2008 (90 days prior to August 14, 2008, the date on which CPSIA was enacted) and thus prior to the Commission's acceptance of the laboratory's accreditation if:

- The laboratory was ISO/IEC 17025 accredited by an C-MRA member at the time of the test;
- The accreditation scope in effect for the laboratory at that time expressly included testing to 16 CFR part 1501;
- The laboratory's accreditation application is accepted by the Commission under the procedures of this notice not later than January 20, 2009; and
- The laboratory's accreditation and inclusion of the small parts requirements in its scope remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for small parts.

Testing performed by a firewalled laboratory prior to Commission acceptance of its accreditation cannot be used as the basis for certification by a manufacturer or private labeler with a 10 percent or greater ownership interest in the laboratory pursuant to CPSA § 14(a)(3)(B)(ii) of compliance with the small parts regulations.

Dated: November 12, 2008.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

#### Establishment of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Notice; Establishment of Federal Advisory Committee.

**SUMMARY:** Under the provisions of section 1082 of Public Law 110-181, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of

1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.65, the Department of Defense gives notice that it is establishing the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents (hereafter referred to as the Panel).

The Panel is a non-discretionary federal advisory committee established under the authority of section 1082 of Public Law 110-181 and 41 CFR 102-3.50(a) to carry out an assessment of the capabilities of the Department of Defense to provide support to U.S. civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive incident.

The Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents is required by statute to submit a report within 12 months of its findings and recommendations. The report will be submitted to the Secretary of Defense and the Committees on Armed Services on the Senate and the House of Representatives.

The Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents shall be composed of a chairperson and no more than nineteen additional members who have expertise in the legal, operational, and organizational aspects of the management of the consequences of a chemical, biological, radiological, nuclear, or high-yield explosive incident.

Panel members appointed by the Secretary of Defense, who are not full-time or permanent part-time employees of the federal government, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and, with the exception of travel and per diem for official travel, they shall serve without compensation. These experts and consultants shall serve as special government employees.

The Department of Defense intends to authorize the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents to establish and use subcommittees, and the Panel, to include any subcommittees, will operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR, Parts 102-3 through 102-3.185.

Such subcommittees or workgroups shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make

<sup>6</sup> A laboratory that may ultimately seek acceptance as a firewalled laboratory could initially request acceptance as a third party laboratory accredited for testing of children's products other than those of its owners.