

amending Class D airspace at Cabaniss Navy Outlying Field (NOLF), Corpus Christi, TX.

**DATES:** *Effective date:* 0901 UTC August 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321-7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 2, 2011, the FAA published in the **Federal Register** a final rule amending Class D airspace at Cabaniss NOLF, Corpus Christi, TX (76 FR 31821, Docket No. FAA-2010-1171). Subsequent to publication, an error was discovered in the latitude coordinates listed in the regulatory text. This action corrects that error. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

*Correction to Final Rule*

Accordingly, pursuant to the authority delegated to me, the latitude coordinates listed in the regulatory text for the Class D airspace area at Cabaniss NOLF, Corpus Christi, TX, as published in the **Federal Register** June 2, 2010 (76 FR 31821), (FR Doc. 2011-13559), are corrected as follows:

**ASW TX D Corpus Christi, TX [Corrected]**

*Cabaniss NOLF, TX*

On page 31822, column 1, line 49 of the regulatory text, remove 'lat. 27°38'15" N.,' and insert 'lat. 27°38'16" N. '; and on line 50 remove 'lat. 27°41'30" N.,' and insert 'lat. 27°41'22" N.'

Issued in Fort Worth, Texas, on August 2, 2011.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011-20303 Filed 8-9-11; 8:45 am]

**BILLING CODE 4910-13-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 Chapter II**

[CPSC Docket No. CPSC-2011-0052]

**Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies To Assess Conformity With the Limits on Phthalates in Children's Toys and Child Care Articles**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of Requirements.

**SUMMARY:** The Consumer Product Safety Commission (CPSC, Commission, or we) 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 pursuant to the phthalates limits in section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA).

**DATES:** *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with phthalates limits when tested in accordance with CPSC-CH-C1001-09.3, *Standard Operating Procedure for Determination of Phthalates*, and GB/T 22048-2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic* are effective August 10, 2011.

Submit comment by September 9, 2011. Comments on this notice should be captioned "Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Phthalates in Children's Toys and Child Care Articles."

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2011-0052, 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 <http://www.regulations.gov>.

*Written Submissions:* Submit written submissions in the following ways:

*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 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

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

**FOR FURTHER INFORMATION CONTACT:** Carol Afflerbach, Compliance Officer, Office of Compliance and Field Investigations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail [cafflerbach@cpsc.gov](mailto:cafflerbach@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

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 publish a notice of requirements for accreditation of third party conformity assessment bodies (also known as "testing laboratories" or "laboratories") to assess children's products for conformity with "other children's product safety rules."<sup>1</sup> 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 the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after

<sup>1</sup> The Commission voted 5-0 to publish this notice of requirements, with amendments, in the **Federal Register**. Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore and Robert S. Adler filed a joint statement regarding the vote. Commissioners Nancy A. Nord and Anne M. Northup filed individual statements. The statements may be viewed at <http://www.cpsc.gov/pr/statements/html>.

the **Federal Register** publication date 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. 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 the applicable CPSC requirements (see, e.g., section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following test methods:

- CPSC-CH-C1001-09.3, *Standard Operating Procedure for Determination of Phthalates*, issued on April 1, 2010 (“CPSC Test Method”). This is the most recent version of the test method, and it can be downloaded from the CPSC Web site at <http://www.cpsc.gov/about/cpsia/CPSA-CH-C1001-09.3.pdf>; and/or
- GB/T 22048-2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*, issued on June 16, 2008 (“Chinese Test Method”).

The Commission is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the publication of this notice of requirements. The details regarding those limited circumstances can be found in part VI of this document below.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with “all other children’s product safety rules,” this notice of requirements is limited to test methods CPSC-CH-C1001-09.3, *Standard Operating Procedure for Determination of Phthalates*, and GB/T 22048-2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*. The CPSC acknowledges that the test methods for determining phthalates content are not, by themselves, rules that are codified in the Code of Federal Regulations. However, section 108(d) of the CPSIA considers the phthalates content limits to be “consumer product safety standards” under the Consumer Product Safety Act. Section 14(a)(3)(B)(vi) of the CPSA directs the Commission to publish

notices of requirements for the accreditation of third party conformity assessment bodies to assess conformity with “other children’s product safety rules,” and section 14(f)(1) of the CPSA defines a “children’s product safety rule,” in part, as “a consumer product safety rule under [the CPSA].” Section 3(a)(6) of the CPSA, in turn, defines a “consumer product safety rule” as “a consumer products safety standard described in section 7(a) [of the CPSA] \* \* \* or a rule under this Chapter declaring a consumer product a banned hazardous product.” Accordingly, because the phthalates content limits are “consumer product safety standards” under the CPSA, it follows that they are also “consumer product safety rules” under section 3(a)(6) of the CPSA and, in turn, “children’s product safety rules” under section 14(f)(1) of the CPSA. Thus, the phthalates content limits are “children’s product safety rules” for which a notice of requirements for accreditation of third party conformity assessment bodies must be published. In addition, because the test methods would be used to assess conformity with the phthalates limits, it is appropriate for the notice of requirements to apply to the CPSC Test Method and the Chinese Test Method.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned: “All Other Children’s Product Safety Rules,” but the body of the statutory requirement refers only to “other children’s product safety rules.” Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed to require a notice of requirements for “all” other children’s product safety rules, rather than a notice of requirements for “some” or “certain” children’s product safety rules. However, whether a particular rule represents a “children’s product safety rule” may be subject to interpretation. Commission staff is continuing to evaluate which rules, regulations, standards, or bans are “children’s product safety rules.” The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be “children’s product safety rules.”

This notice of requirements applies to all third party conformity assessment bodies, as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (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.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, “General Requirements for the Competence of Testing and Calibration Laboratories.” 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 any of the test methods identified earlier in this document for which the third party conformity assessment body seeks to be accredited.

(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>).

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at: <http://www.cpsc.gov/about/cpsia/labaccred.html>.

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 the phthalates limits of section 108 of the CPSIA. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588), revising the terms of the stay. One section of the December 28, 2009, notice addressed: “Consumer Products or Children’s Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice,” due to factors such as pending rulemaking proceedings affecting the product or the

absence of a notice of requirements. The phthalates content testing and certification requirements for children's toys and child care articles were included in that section of the December 28, 2009 notice. The absence of a notice of requirements prevented the lifting of the stay in the December 28, 2009 notice with regard to testing and certifications of children's toys and child care articles for phthalates content. On February 8, 2011, the Commission published a notice in the **Federal Register** (76 FR 6765), continuing the stay of enforcement for testing and certification of children's products for which a notice of requirements for accreditation of laboratories had not yet been published.

The phthalates content testing and certification requirements for children's toys and child care articles were mentioned specifically as an example of a provision for which the stay would continue, pending publication of the notice of requirements. Thus, publication of this notice of requirements would have had the effect of lifting the stay on testing and certification requirements for phthalates content in children's toys and child care articles; however, on July 27, 2011, the Commission voted to stay enforcement of the testing and certification requirements of section 14 of the CPSA with respect to toys and child care articles subject to the phthalates content limits until December 31, 2011.

Accordingly, the Commission will enforce third party testing and certification requirements for products subject to the phthalates content limits if such products are manufactured on or after January 1, 2012. (Under the CPSA, the term "manufacturer" includes anyone who manufactures or imports a product.)

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (see section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

## II. Testing & Certification to Phthalates Limits—Prior Guidance Remains in Effect

The Commission approved a "Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety Improvement Act" on August 7, 2009. On August 17, 2009, a Notice of Availability regarding the Statement of Policy was published in the **Federal Register** (74 FR 41400). The Statement of Policy can be viewed and downloaded from the CPSC Web site at:

<http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf>. In brief, we believe that only those plastic parts or other product parts which could conceivably contain phthalates ("plasticized component parts") should be tested for phthalates. We consider it to be unnecessary to test and certify materials that are known not to contain phthalates or to certify that phthalates are absent from materials that are known not to contain phthalates.<sup>2</sup> In addition, we believe that when testing covered products, the assessment of the concentration of phthalates is to be based on testing of the plasticized component parts, rather than testing of the entire product, to avoid dilution of the concentrations of phthalates that can occur when the entire product is considered. The Statement of Policy remains in effect until further notice (except that the CPSC Test Method referenced in the Statement of Policy, CPSC-CH-C1001-09.2, has been superseded by CPSC-CH-C1001-09.3 as outlined in part VI of this document below).

The Commission voted to publish a "Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108" on February 13, 2009. On February 23, 2009, the staff guidance was published in the **Federal Register** (74 FR 8058). This staff guidance can be viewed and downloaded from the CPSC Web site at: <http://www.cpsc.gov/businfo/frnotices/fr09/draftphthalatesguidance.pdf>. The Commission may choose to update this staff guidance or initiate a formal rulemaking concerning the topics addressed by the guidance after receipt of the Chronic Hazard Advisory Panel report required by section 108(b)(2)(C) of the CPSIA. Until such time, this staff guidance remains in effect (except that the CPSC Test Method referenced in the guidance, CPSC-CH-C1001-09.1, has been superseded by CPSC-CH-C1001-09.3 as outlined in part VI of this document below).

Answers to frequently asked questions that provide guidance concerning the requirements of section 108 of the CPSIA can be viewed on the CPSC Web site at: <http://www.cpsc.gov/about/cpsia/sect108.html#faqs>. The Commission intends for this guidance to be useful and therefore the materials on this Web page may be modified

<sup>2</sup> Untreated/unfinished wood, metal, natural fibers, natural latex and mineral products are not expected to inherently contain phthalates and need not be tested or certified provided that these materials have neither been treated or adulterated with the addition of materials that could result in the addition of phthalates into the product or material.

periodically in the future. In order to receive automatic notification of any such updates, interested parties may sign up for the CPSIA email subscription list at: <https://www.cpsc.gov/about/cpsia/cpsialist.aspx>. The Commission notes that the phthalate content limits in section 108 of the CPSIA are statutory requirements and we may always take action with regard to products defined in this section of the statute that exceed those limits.

## III. Responses to Comments Received on the CPSC Testing Method

The Commission requested comments regarding the Statement in the Notice of Availability published in the **Federal Register** (74 FR 41400). We received several comments on the CPSC Test Method. We describe and respond to the comments in this section of the document. To make it easier to identify the comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value, or importance, or the order in which it was received.

(*Comment 1*)—Some commenters questioned the necessity to run the test in triplicate. Other test multiples from two to five were suggested. Some commenters asked whether the sample to be tested always needed to be ground to a powder. A commenter asked about the proper cleaning protocol of the cryogenic mill.

(*Response 1*)—We have examined all suggestions and comments pertaining to the CPSC Test Method and have updated our test method to address these issues (CPSC-CH-C1001-09.3). We adjusted the method to allow the third party conformity assessment body to choose an appropriate quality assurance program; thus, the third party conformity assessment body will determine the number of replicates to be tested. The CPSC Test Method allows, but does not require, third party conformity assessment bodies to pulverize the sample. Cryogenic mill equipment should be cleaned as thoroughly as any other laboratory equipment that comes into contact with a sample.

(*Comment 2*)—One commenter suggested that the official Chinese test method, GB/T 22048-2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl*

*Chloride Plastic*, should be added to the lists of acceptable extraction and analysis methods. The commenter also suggested that each plasticized component part should be cut into pieces no larger than 2 mm prior to the extraction step.

(*Response 2*)—We have reviewed the test method GB/T 22048–2008 and determined that it is an acceptable test method for inclusion in this notice of requirements. With regard to the 2 mm maximum size of pieces, we agree with this comment and have incorporated the dimension into the current edition of the CPSC Test Method (CPSC–CH–C1001–09.3).

(*Comment 3*)—Another commenter suggested that the CPSC Test Method include a description of the limit of detection (LOD) and limit of quantitation (LOQ). The commenter added that, on the last page of CPSC–CH–C1001–09.2, there appears to be an error in the DEHP calculation. Under column C, measured DEHP concentration by GC–MSW is 200 µg/ml. In the final calculation column, 200 µg/ml is mistakenly cited as 20 µg/ml.

(*Response 3*)—Detection and quantitation limits have not been outlined specifically at this point. Third party conformity assessment bodies should follow their own internal quality assurance program. These limits may be introduced in the future, following further validation and round robin studies. The DEHP calculation included a typographical error that was corrected for the current edition of the test method (CPSC–CH–C1001–09.3).

(*Comment 4*)—One commenter stated that grinding the sample into a powder is time-consuming, adds additional expense to the testing methods, and could introduce the possibility of significant interlaboratory variability.

(*Response 4*)—Grinding the sample into a powder is no longer required in the CPSC Test Method; however, third party conformity assessment bodies may continue to do so, if they wish.

(*Comment 5*)—One commenter asked how the CPSC Test Method prevents interferences that can lead to a false positive for the phthalates of interest. The commenter also asked if the detection method could be revised.

(*Response 5*)—We have updated the CPSC Test Method (to CPSC–CH–C1001–09.3) to include a vigorous qualitative assessment by trained staff to avoid false positives. Such steps include: Retention time matching with known standards and full-scan mass spectrum analysis. We will continue to consider new methods that could simplify or improve the analysis.

(*Comment 6*)—One commenter pointed out typographical inconsistencies found within the text of the method. Additionally, the commenter asked: What is the minimum signal-to-noise ratio required, and what are the reproducibility and detection limits of the method?

(*Response 6*)—We have corrected the typographical errors that might have caused confusion. Signal-to-noise, detection limits, and reproducibility requirements have not been outlined specifically at this point. Third party conformity assessment bodies should follow their own internal quality assurance program. Testing requirements may be adjusted following further validation and round robin studies.

(*Comment 7*)—One commenter asked if the chromatography was optimized.

(*Response 7*)—The gas chromatography parameters outlined have been successful at providing adequate separation while minimizing sampling time. However, due to the nature of DINP and DIDP, they will not completely separate chromatographically. DINP and DIDP are actually a mixture of compounds; DINP and DIDP contain some of the same phthalate species, leading to an overlap. We recommend following the selection monitoring analysis scheme outlined in the CPSC Test Method to quantify these compounds for instances when they are both present.

(*Comment 8*)—One commenter suggested that we create a flexible correlative policy that permits use of several methods suitable for the routine identification and measurement of total phthalate concentration, such as ASTM D7083–04, the Canada Product Safety Bureau method, the European Toy Safety Directive method, and GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*.

(*Response 8*)—The current edition of the CPSC Test Method (CPSC–CH–C1001–09.3) allows alternative test methods. Additionally, any combination of the approved extraction and analysis methods listed may be used. We have included GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*, as an additional test method in this notice of requirements. We have not included ASTM D7083–04 as an alternative detection method due to the lack of selectivity from using a flame ionization detector; this method may lead to false positives. We will review other suggested methods and

may include them as alternatives in future revisions of the test method.

#### IV. 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 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 test method CPSC–CH–C1001–09.3, *Standard Operating Procedure for Determination of Phthalates*, and/or to the test method GB/T 22048–2008, *Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic*. 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 conformity assessment bodies are described in parts IV.B and IV.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing children's toys and child care articles for phthalates content to support certification by the manufacturer or private labeler of compliance with the test method(s) 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 IV.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 IV.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 in the same nation who have been accredited;
- 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 IV.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.

#### **V. How does a third party conformity assessment body 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/about/cpsia/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 third party conformity assessment body training document(s), if relevant.

CPSC staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are completed satisfactorily, 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 staff's review is complete, staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially 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 firewalled conformity assessment body

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.

Once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may begin testing children's products to support certification of compliance with the phthalates content limits for which it has been accredited.

#### **VI. Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing to CPSC-CH-C1001-09, Standard Operating Procedure for Determination of Phthalates, and/or GB/T 22048-2008, Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic, Prior to the Effective Date**

For certifications of children's toy or child care articles subject to the phthalates content limits in section 108 of the CPSIA, the Commission will allow certifications to be based on prior testing under certain conditions. Firms that elect to voluntarily have the phthalates content of children's toys and child care articles tested by a third party conformity assessment body, using either the CPSC Test Method or the Chinese Test Method, before January 1, 2012, will not need to have those products retested. The Commission's acceptance of certifications based on prior testing under certain conditions should prevent testing backlogs at accredited third party conformity assessment bodies, making it less likely that the Commission will have to postpone the effective date for certification.

The Commission will accept a certificate of compliance to the phthalates limits in section 108 of the CPSIA based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC-MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the

Commission has accredited by order at or before the time the product was tested, even if the order did not include the test methods specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;

- For tests conducted using the CPSC Test Method, the test was conducted on or after July 27, 2009. The Commission has chosen July 27, 2009, because it is the date the Commission posted a test method for testing component parts for phthalates on the Commission Web site: (<http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.2.pdf>). The test method was updated on April 1, 2010, to the current method (<http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.3.pdf>). The Commission will accept phthalates content certifications for products tested before January 1, 2012, if the product was tested using either CPSC-CH-C1001-09.2 or CPSC-CH-C1001-09.3. The Commission acknowledges that, on March 3, 2009, it released a test method that involved testing the entire product (<http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.1.pdf>) (“March 2009 test method”). The Commission will not accept phthalates content certifications for products tested using the March 2009 test method (CPSC-CH-C1001-09.1). The Commission considers testing the entire product to be less protective of children because mouthable component parts with high concentrations of phthalates in products with large quantities of nonplasticized parts would be able to pass the test because the total mass of the product would dilute the overall phthalate measure.

- For tests conducted using the Chinese Test Method, the test was conducted on or after June 18, 2008. The Commission has chosen June 18, 2008, because that is the date that the Chinese Test Method was issued.

- The third party conformity assessment body’s application for accreditation is accepted by CPSC by the mandatory effective date, as established by the Commission;

- The accreditation scope in the application for accreditation expressly includes one or both of the acceptable test methods identified earlier in part I of this document;

- The test results show compliance with the applicable current standards; and
- The third party conformity assessment body’s accreditation and inclusion of one or both of the test methods (identified earlier in part I of this document) in its scope remain in effect through the effective date for mandatory third party testing and manufacturer certification for the subject products’ respective standards.

Dated: July 29, 2011.

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. 2011-19678 Filed 8-9-11; 8:45 am]

**BILLING CODE 6355-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 35

**RIN 3038-AD21**

### Agricultural Swaps

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Dodd-Frank Act provides that swaps in an agricultural commodity (as defined by the Commission) are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to certain provisions of the Commodity Exchange Act (“CEA” or “Act”). On February 3, 2011, the Commission requested comment on a set of proposed rules that would, among other things, implement regulations whereby swaps in agricultural commodities may transact subject to the same rules as all other swaps. The proposed rules for swaps in an agricultural commodity would repeal and replace the Commission’s current regulations concerning the exemption of swap agreements. After reviewing the comments submitted in response to the proposed rules, the Commission has determined to issue these final rules for swaps in an agricultural commodity in the form as originally proposed. The February 3, 2011, proposed rules also included provisions that would substantially amend the Commission’s regulations regarding commodity option

transactions. However, in this final rule the Commission is only issuing the rules for swaps in an agricultural commodity. The proposed rules for commodity option transactions will be addressed at a later date.

**DATES:** *Effective Date*—December 31, 2011.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

### I. Introduction

#### A. Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>1</sup> Title VII of the Dodd-Frank Act<sup>2</sup> amended the CEA<sup>3</sup> to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission’s oversight.

#### B. Proposed Agricultural Swaps Rules

Section 723(c)(3) of the Dodd-Frank Act provides that swaps in an agricultural commodity (as defined by the Commission)<sup>4</sup> are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to CEA section 4(c).

<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

<sup>2</sup> Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

<sup>3</sup> 7 U.S.C. 1 *et seq.*

<sup>4</sup> As discussed below, in accordance with the mandate of the Dodd-Frank Act, the Commission recently promulgated a final rule defining the term “agricultural commodity.” See 76 FR 41048, July 13, 2011.