



Billing Code 6355-01

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2009-0092]

Submission for OMB Review; Comment Request -- Clothing Textiles, Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information from manufacturers and importers of clothing, textiles, and related materials intended for use in clothing under 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) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by **[insert date that is 30 days from publication of this notice in the Federal Register]**.

ADDRESSES: Submit comments about this request by email:

OIRA_submission@omb.eop.gov or fax: 202-395-6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at <http://www.regulations.gov>, under Docket No. CPSC-2009-0092.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301-504-7923 or by e-mail to rsquibb@cpsc.gov.

SUPPLEMENTARY INFORMATION:

In the *Federal Register* of June 14, 2013 (78 FR 35875), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the CPSC's intention to seek extension of approval of a collection of information from manufacturers and importers who furnish guaranties for products under 16 CFR parts 1610 and 1611.

A. Background

Clothing and fabrics intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610). Clothing made from vinyl plastic film and vinyl plastic film intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). The standards set forth in 16 CFR parts 1610 and 1611 prescribe a test to help ensure that articles of wearing apparel, and fabrics and film intended for use in wearing apparel, are not dangerously flammable because of rapid and intense burning. Children's sleepwear and fabrics and related materials intended for use in children's sleepwear in sizes 0 through 14 are subject to other, more stringent flammability standards codified at 16 CFR parts 1615 and 1616. Pursuant to the Flammable Fabrics Act of 1953 (FFA) (Pub. L. 83-88, 67 Stat. 111; June 30, 1953), the testing procedures in 16 CFR parts 1610 and 1611 are mandatory for those firms that issue guaranties.

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. For example, a distributor or importer may rely on a guaranty issued by another firm stating that the fabric or wearing apparel covered by the guaranty is compliant with 16 CFR parts 1610 and 1611. The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with clothing and fabrics and vinyl film intended for use in clothing. In addition, the information helps the Commission pursue corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public.

Firms are not required to issue guaranties for fabrics or wearing apparel that they manufacture or distribute. Only domestic firms, or foreign entities with a domestic presence, can issue a guaranty. For those firms that choose to issue guaranties, section 8 of the FFA requires that such guaranties must be based on “reasonable and representative tests.” However, testing is not required to support a guaranty when the guaranty is based on an exemption contained in 16 CFR § 1610.1(d). Continuing guaranties may be filed with the Commission. Any firm that issues a guaranty must keep records of the related tests. The testing and recordkeeping requirements for firms that issue guaranties are set forth under 16 CFR part 1610, subpart B, and 16 CFR part 1611, subpart B.

B. Comments

We received two comments, discussing four issues, in response to the June 14, 2013 notice.

Comment 1: One commenter stated that a study should be conducted to assess whether “anti-inflammatory chemicals” may increase the risk of cancer.

Response 1: This comment is outside the scope of the inquiry regarding paperwork burdens associated with issuing guaranties.

Comment 2: The American Apparel and Footwear Association (AAFA) asserts that under the FFA, continuing guaranties must be maintained for 3 years. However, AAFA notes that the proposed rulemaking for certificates of compliance under 16 CFR part 1110 would require certificates of compliance for non-children’s apparel and supporting test records to be maintained for 5 years, as opposed to 3 years. AAFA opposes the addition of 2 years of record keeping requirements for such certificates.

Response 2: This information collection is on guaranties issued pursuant to 16 CFR parts 1610 and 1611. Accordingly, recordkeeping requirements for certificates of compliance are outside the scope of this information collection.

Comment 3: The AAFA questioned the accuracy of the Commission’s estimate that 1,000 apparel manufacturers and importers issue guaranties. AAFA noted that in 2010, more than 7,000 U.S. companies were included in the general U.S. Census category of Apparel Manufacturing and about 6,000 in the category of Textile Mills. Additionally, the AAFA noted that in 2011, based on U.S. Customs and Border Protection estimates, there were about 68,000 apparel importers. Based on the figures provided in its comment, AAFA believes that the number of apparel and textile manufacturers that furnish guaranties is more than the Commission’s estimate of 1,000. AAFA requested that the Commission describe in detail how the Commission came to the estimate of 1,000 manufacturers and importers that issue guaranties.

Response 3: For the purposes of this response, we do not question the accuracy of the figures provided by AAFA. However, staff believes that the figures provided by AAFA do not provide an accurate basis to estimate the number of manufacturers and importers that issue guaranties. Manufacturers and importers are not required to issue guaranties, and only domestic firms, or firms with a domestic presence may issue guaranties. Thus, even though tens of thousands of companies may be manufacturing or importing fabric or wearing apparel, based on guaranties filed with the Commission, compliance experience with the industry, and previous discussions with AAFA members, staff does not believe that most of these firms are issuing guaranties.

AAFA has not provided information that would aid in revising the Commission's estimate of the number of firms that issue guaranties. The Commission's estimate of 1,000 firms that issue guaranties was based on the number of guaranties that have been filed with the Commission. The Commission's most recent updated records indicate that approximately 660 firms have active continuing guaranties. Because guaranties are not required to be filed with the Commission, CPSC staff rounded the number of firms that issue guaranties up to 1,000.

Comment 4: The AAFA also questioned the Commission's estimate that the regulations impose an average annual burden of about 101.6 hours on each firm that issues guaranties. AAFA noted that the apparel industry is dynamic, with rapidly changing styles and products. AAFA stated that in 2011, there were about 11 million separate entries of imported apparel. AAFA argued that if each entry required one hour of recordkeeping, the total burden could be 11 million hours, much more than the Commission's estimate of 101,600 burden hours. AAFA requested that the Commission describe in detail how the average annual burden of 101.6 hours per firm was derived.

Response 4: The number of apparel entries does not provide an accurate basis for determining the recordkeeping burden for firms that issue guaranties because: (a) importers are not required to issue or to file a guaranty with each import entry for fabric or wearing apparel; (b) imported fabric and apparel entries are not required to be accompanied by a guaranty; (c) even when fabric or apparel entries are covered by a guaranty, one guaranty can cover multiple products, fabrics, and entries; and (d) the number of apparel entries in a given year does not provide any information about what tests and records are required to be maintained which would inform an estimate of the recordkeeping burden. A direct relationship does not exist between the number of apparel entries in a given year and either the number of guaranties issued by firms or the burden hours associated with issuing a guaranty. Accordingly, the Commission has not relied upon the number of apparel entries to estimate the recordkeeping burden for guaranties.

The Commission's estimate of 101.6 average annual burden hours per firm for issuing guaranties is based on an estimate of the time for each firm that issues a guaranty to conduct the testing required by the regulations, to issue guaranties, and to establish and maintain associated records. In arriving at estimates of testing time, CPSC considered our own laboratory and Compliance experience and the experience of several AAFA- and ASTM-member manufacturers' and third party testing laboratories. The estimates used were purposely generous, and may overstate the actual time necessary to conduct testing. Additionally, the estimated testing time is an over-estimate because the testing time is applied to every firm per guaranty issued, even though many firms may issue guaranties based on an exemption from testing under 16 CFR § 1610.1(d), and may not actually conduct testing. The Commission's average annual burden hour estimate of 101.6 is explained in detail in section C below.

C. Burden Hours

The Commission's estimate of 1,000 firms that issue guaranties is based on the number of continuing guaranties that have been filed with the Commission. The Commission's last updated records indicate that approximately 660 firms have active continuing guaranties. Because continuing guaranties are not required to be filed with the Commission, CPSC staff rounded the number of firms up to 1,000.

The Commission estimates that the flammability standards for clothing textiles and vinyl plastic film and enforcement regulations impose an average annual burden of about 101.6 hours on each of those firms, based on an estimate of the time for each firm to conduct testing, issue guaranties, and to establish and maintain associated records. The average annual burden hour estimate of 101.6 is based on the following assumptions, which are based, among other things, on staff's experience with and expertise in testing requirements and procedures and staff's review of records relating to guaranties that have been filed with the Commission:

- Testing Time - 5 hours per test series, using either the test and conditioning procedures in the regulations or alternate methods that are now allowed under the 2007 amendments to the regulations (this was applied to all firms for each guaranty, even though many firms no longer test because the products are exempt by virtue of weight or fiber content under 16 CFR § 1610.1(d), or because the firms' experience indicates that the fabrics already comply);
- Guaranties Issued - *On average*, 20 new guaranties issued per firm per year for new fabrics or garments;
- Estimated Annual Testing Time Per Firm - 5 hours for testing x 20 guaranties issued = 100 hours per firm;

- Estimated Annual Recordkeeping Per Firm - 1 hour to create, record, and enter test data into a computerized dataset; 20 minutes (= 0.3 hours) for annual review / removal of records; 20 minutes (=0.3 hours) to respond to one CPSC records request per year; for a total of 1.6 recordkeeping hours per firm (1 hour + .3 hours + .3 hours = 1.6 hours per firm);
- Total Estimated Annual Burden Hours Per Firm - 100 hours Estimated Annual Testing Time Per Firm + 1.6 Estimated Annual Recordkeeping hours Per Firm = 101.6 hours per firm;
- Estimated Annual Industry Burden - 101.6 hours per firm x 1,000 firms issuing guaranties = 101,600 industry burden hours

The total annual industry burden imposed by the flammability standards for clothing textiles and vinyl plastic film and enforcement regulations on manufacturers and importers of garments, fabrics, and related materials is estimated to be about 101,600 hours (101.6 hours per firm x 1,000 firms).

The hourly wage for the testing and recordkeeping required by the standards is about \$61.06 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, December 2012), for an estimated annual cost to the industry of approximately \$6.2 million (101,600 x \$61.06 = \$6,203,696.00). The hourly wage was updated from the \$57.22 estimate used in the June 14, 2013 notice (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, June 2009).

The estimated annual cost of the information collection requirements to the federal government is approximately \$4,696, which is based on a total 80 staff hours to examine and evaluate the information as needed for Compliance activities (representing an estimate of the

actual time required to conduct such examination and evaluation in staff's experience).

Compliance staff typically reviews a subset of the guaranties filed and may inspect firms that issue guaranties. The estimated annual cost to the government is based on a GS-12 level salaried employee. The average hourly wage rate for a mid-level salaried GS-12 employee in the Washington, DC metropolitan area (effective as of January 2011) is \$40.80 (GS-12, step 5). This represents 69.5 percent of total compensation (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," December 2012, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees: <http://www.bls.gov/ncs/>). Adding an additional 30.5 percent for benefits brings average hourly compensation for a mid-level salaried GS-12 employee to \$58.70 (\$58.70 hourly compensation x 80 hours = \$4,696.00).

Dated: March 24, 2014.

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

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