

Therefore, we have preliminarily determined that critical circumstances do not exist for imports of FSVs for the PRC-wide entity.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from DunAn and Sanhua upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.⁵⁶ This practice is described in *Policy Bulletin 05.1*.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter/Producer Combination	Percent Margin
Exporter: Zhejiang Sanhua Co., Ltd. Producer: Zhejiang Sanhua Co., Ltd.	15.41
Exporter: Zhejiang DunAn Hetian Metal Co., Ltd. Producer: Zhejiang DunAn Hetian Metal Co., Ltd.	26.72
PRC-Wide Entity*	55.62

* The PRC-wide entity includes Tianda.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the exporter/producer combinations listed in the chart above, the following cash deposit requirements will be effective upon publication of the

preliminary determination for all shipments of merchandise under consideration entered or withdrawn from warehouse, for consumption on or after publication date: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the PRC-wide rate; (3) for all non-PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of FSVs, or sales (or the likelihood of sales) for importation of FSVs within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. See 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments

raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.⁵⁷ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, at a time and location to be determined. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 15, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E8-25178 Filed 10-21-08; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XI77

Marine Mammal Protection Act; Final Conservation Plan for the Cook Inlet Beluga Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; response to comments.

SUMMARY: NMFS announces the availability of the final conservation plan for the Cook Inlet Beluga Whale pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA). NMFS incorporated into this document new information on Cook Inlet beluga whales and comments received on the draft conservation plan released for public review and comment on March 16, 2005.

⁵⁶ See *Initiation Notice*, 73 FR at 20255.

⁵⁷ See 19 CFR 351.310(c).

ADDRESSES: The conservation plan is available on the Internet at the following address: <http://www.alaskafisheries.noaa.gov/protectedresources/whales/beluga/management.htm>. Copies of the conservation plan may be reviewed and/or copied at NMFS, Protected Resources Division, 222 W. 7th Ave., Room 517, Anchorage, AK 99513; or at NMFS, Alaska Regional Office, Protected Resources Division, 709 W. 9th St., Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Mandy Migura, NOAA/NMFS, Alaska Region, Anchorage Field Office, (907) 271-5006, or Kaja Brix, NOAA/NMFS, Alaska Region, (907) 586-7235.

SUPPLEMENTARY INFORMATION:

Background

The MMPA requires NMFS to prepare a conservation plan to promote the conservation and recovery of any species or stock designated as depleted. The Cook Inlet beluga whale stock declined by nearly 50 percent from 1994 to 1998. In response to this significant decline, NMFS designated the Cook Inlet beluga as depleted under the MMPA on May 31, 2000 (64 FR 34580). A draft conservation plan was released for public review and comment on March 16, 2005 (70 FR 12853). This conservation plan incorporates new information on Cook Inlet beluga whales as well as information and suggestions received from the public, State, Federal and municipal agencies, Alaska Natives, industry and environmental groups. The goal of this conservation plan is to restore the Cook Inlet beluga whale population to its optimum sustainable population (OSP). The conservation strategy NMFS developed to attain this goal has four components: (1) improve our understanding of the biology of Cook Inlet beluga whales and the factors limiting the population's growth; (2) stop direct losses to the population; (3) protect valuable habitat; and (4) evaluate the effectiveness of these strategies and the success of the conservation actions in restoring the Cook Inlet beluga whale population. The Plan will be reviewed and updated every five years. The goal of the Plan will be met when the depleted designation for Cook Inlet beluga whales can be removed.

Comments and Responses

NMFS received 115 letters of comment on the draft conservation plan for the Cook Inlet beluga whale. Substantive comments of a similar nature are consolidated, grouped by subject and responded to below.

NMFS received suggestions regarding editorial and format changes to the draft conservation plan. Generally, these suggestions regarding editorial and format changes were accepted, and the plan has been modified accordingly. Substantive comments are summarized and addressed in this notice.

Comment 1: More than one hundred commenters advocated habitat protection. Comments varied with some recommending development prohibition in Type 1 habitat, prevention of oil and gas activities in Type 1 and 2 habitats, providing for discrete protected areas, and broadening Type 1 and 2 habitat areas. One commenter said NMFS failed to recommend measures that adequately protect these key beluga feeding and breeding areas. Comments also expressed concern about specific development projects such as Knik Arm Bridge, Coastal Trail, Port of Anchorage expansion, Campbell Creek, and coastal development. Many commenters urged additional habitat research.

Response: NMFS believes habitat protection to be one of the principal actions needed to recover this population to its OSP. The conservation plan outlines what we believe to be appropriate conservation actions associated with varying habitat types as determined by specific habitat characteristics and frequency and timing of use by Cook Inlet beluga whales.

Beluga habitat use was ascertained by examining long-term data derived from intensive annual aerial surveys conducted from 1993–2007, monthly surveys from June 2001 to June 2002, aerial surveys in August 2006 and August 2007, traditional knowledge gathered through interviews with Cook Inlet beluga hunters, habitat modeling, Cook Inlet aerial surveys conducted by other government agencies (Alaska Department of Fish and Game and Minerals Management Service), satellite tracking of 14 beluga whales, stranding data, archeological studies, opportunistic reports, and other scientific study reports.

The final conservation plan has reexamined and updated habitat information and valuable habitat types. Additional information was incorporated into the definitions of habitat types I, II and III from NMFS analyses and from surveys conducted for the Knik Arm Bridge and Toll Authority and the Port of Anchorage. Important habitat has been identified and will be reassessed periodically when new data are gathered, the population recovers, or as habitat changes over time. Habitat classifications and corresponding

management goals will be reassessed as this conservation plan is periodically updated.

Response to proposed habitat alterations will vary according to the sensitivity of the habitat.

Comment 2: NMFS should prioritize actions, and fully fund and identify funding sources for the research plan set forth in the draft conservation plan. Two commenters requested that NMFS ask Congress for \$20M per year during the next five years to manage and research the Cook Inlet beluga whale stock. Four commenters recommended that a “team” of experts convene a workshop to review the priorities and funding needs for Cook Inlet beluga recovery.

Response: Priorities for research and management projects were updated in the final conservation plan. Costs for various activities have been estimated, but identifying funding sources is outside the scope of this document. Current NMFS funding supports annual abundance surveys and co-management activities. The conservation plan takes a comprehensive look at identifying funding needs and will be used (adaptively) to set regional management and research priorities.

Comment 3: The draft conservation plan failed to address non-hunting impacts on belugas and their important habitats, including pollution, noise, oil and gas development, aviation impacts, sewage, military activities, coastal development, and food supplies, among other things.

Response: Subsistence hunting was a major contributing factor in the Cook Inlet beluga decline during the 1990s. The long-term harvest regulatory process will be finalized in 2008. NMFS agrees that research and management should address non-hunting impacts and expanded these aspects in the conservation plan. The threats discussion has been updated in the final conservation plan to address the concerns from these commenters.

Comment 4: More detail is needed on the overview of Cook Inlet beluga whales.

Response: NMFS has updated and expanded the background information on Cook Inlet beluga whales. NMFS will continue to use and gather the best available information on Cook Inlet belugas and provide that information to the public through updates to the conservation plan.

Comment 5: Discrete action thresholds need to be provided which describe specific management steps should the beluga population continue to decline.

Response: NMFS has revised the Conservation Action section of the conservation plan to include more specific actions necessary for the conservation and management of the Cook Inlet beluga whales.

Comment 6: More outreach and development of a broader stakeholder group is necessary.

Response: NMFS conducted significant outreach to the public and interested groups when the draft conservation plan was published (e.g., notice in the **Federal Register**, public meetings, mailings, press release, NMFS website). The comment period for the draft conservation plan was extended 30 additional days to enable all interested parties to formulate their comments. Consequently, NMFS' address list for interested parties on Cook Inlet beluga whales has been expanded. Specific outreach on stranding response was conducted in local area communities to improve the capacity for stranding. *Response:* Homer in 2003, Anchorage in 2006 and 2007, and Seward in 2008.

Comment 7: Some commenters opposed NMFS' restrictions in Cook Inlet on coastal development, oil and gas, National pollutant discharge elimination system (NPDES) permits, vessel traffic, etc. unless objective scientific research supports the conclusion that restrictions would aid in Cook Inlet beluga whale recovery. Some commenters said the draft conservation plan was inaccurate if it implied development had significantly impacted the beluga population or their recovery. Commenters supported additional research for Cook Inlet belugas and their habitat.

Response: NMFS agrees that more research should be done for the Cook Inlet belugas. The habitat research and monitoring sections have been expanded in the final conservation plan. Although the Cook Inlet beluga population decline in the 1990s was attributed primarily to Native subsistence harvests, since 1999 the harvest has been severely restricted (only five belugas taken from 1999–2008) and the population has not increased as expected. It is probable that other factors are keeping the beluga population from recovering, and it is prudent to protect their habitat. Important habitat has been characterized in this conservation plan and will be reassessed periodically when new data are available, the population recovers, or as habitat changes over time. With so few belugas remaining (estimated abundance of 375 belugas in 2008), failure to protect important habitats could rapidly reduce

the Cook Inlet beluga population to a level where recovery is impossible.

The conservation plan develops a strategy based on what is known about these whales and what can be done to understand them better, prevent further declines, and aid the stock to recover its population to the OSP. NMFS pursued a scientifically-based conservation plan, while using a precautionary approach to management. We believe this plan is (1) appropriate given our current knowledge of Cook Inlet belugas and their low population abundance, (2) comprehensive in nature by combining management and applied research for many different issues, and (3) adaptive through subsequent revisions and updates. The conservation plan has used the best available scientific, commercial, and traditional ecological knowledge available at this time.

Comment 8: Commenters expressed concern about pollutants from sewage, industry, aircraft, storm drains, Eagle River Flats, and ballast water. Stronger environmental standards and monitoring were recommended.

Response: The final conservation plan included additional pollution information when available. Information was added on Anchorage wastewater treatment, Anchorage stormwater, Stevens International Airport deicing, ballast water discharges, and military testing at Eagle River Flats. Contaminant analysis has been done on Cook Inlet belugas since 1992 and results are presented in the conservation plan. Contaminant analysis will continue to be a priority and funded when possible. NPDES permits for outfalls and oil and gas development will be reviewed and appropriate mitigation will be recommended.

Comment 9: The final conservation plan should address acoustic impacts as related to geophysical operations in Cook Inlet. Some commenters noted that mitigation measures have been implemented during seismic surveys to eliminate noise impacts to beluga whales. Other commenters advocated additional acoustic restrictions on geophysical operations in Cook Inlet not be included, while yet other commenters advocated additional noise restrictions and another recommended additional acoustic studies before restrictive actions are instituted.

Response: NMFS recognizes the cooperation and effort of industry to eliminate and reduce impacts to the marine environment. NMFS agrees that additional acoustic studies and monitoring should occur and will continue to gather acoustic information and update protocols to protect beluga whales. Recommendations for noise

regulation and acoustic studies have been improved in the final conservation plan.

Comment 10: Some commenters supported a status review under the ESA.

Response: Even though a status review under the ESA occurs independently from a conservation plan under the MMPA, NMFS agreed with commenters that a second status review was necessary for Cook Inlet belugas. The purpose of a status review is to assemble the best scientific or commercial data available, in this case on Cook Inlet beluga whales, within its known historic range. Since publication of the draft conservation plan in 2005, NMFS released a status review for the Cook Inlet beluga whales in November 2006, followed by an update in April 2008. NMFS considered the information presented in, and conclusions drawn from the status reviews for the conservation plan.

Comment 11: NMFS needs to update the historic Cook Inlet beluga abundance and carrying capacity.

Response: The conservation plan used the best available scientific data, both for Cook Inlet beluga whale population status and carrying capacity determinations. Cook Inlet beluga whale data collected before 1990 have been reviewed and included where appropriate in the conservation plan. NMFS has also included traditional ecological knowledge on the population where appropriate.

Historic abundance of Cook Inlet beluga whales was estimated from an Alaska Department of Fish and Game survey conducted in 1979. The 1979 beluga count was the most comprehensive survey for Cook Inlet belugas prior to 1993, and by using a conversion factor for missed belugas, it provides the best scientific method and available data for a historical abundance estimate. Given that the true number of whales Cook Inlet could support is unknown, NMFS is using this historical abundance estimate as the carrying capacity. Edits were incorporated into the conservation plan to better clarify the historical abundance estimate and carrying capacity. The beluga population trend analysis was updated with the most recent abundance surveys.

Comment 12: NMFS should establish guidelines that protect the whales from undue harassment from tour operators and jet skis.

Response: Harassment of marine mammals under the MMPA is currently considered as part of the definition of a "take." Takes are prohibited under the MMPA. NMFS will evaluate the need

for further guidelines as they might pertain to tour operators and jet ski operations that may cause takings of Cook Inlet beluga whales.

Comment 13: Some commenters supported tighter controls on oil and gas activity. Commenters urged NMFS to take a stronger approach to determine the effects of existing oil and gas activity.

Response: NMFS agrees that monitoring oil and gas activity in Cook Inlet should be comprehensive and effective. NMFS reviews all applicable Federal permits for oil and gas development and recommends appropriate mitigation measures and stipulations as necessary.

Comment 14: NMFS should invoke its statutory authority to implement various management tools to protect Cook Inlet beluga whales.

Response: Under various authorities, NMFS has implemented management measures to protect Cook Inlet beluga whales. Among the protection measures, NMFS enforces the MMPA marine mammal take moratorium. NMFS has issued regulatory provisions that prevent or restrict Native subsistence harvests. NMFS is listing the whale as an endangered species under the ESA. Also, with this conservation plan, NMFS is describing methods to stop direct population losses and restore the stock.

Comment 15: The marine mammal stranding plan and network should be expanded. Commenters indicated that more stranding data in Cook Inlet should be collected and analyzed.

Response: NMFS agrees. The conservation plan reflects NMFS' efforts to improve stranding response and agreements. Furthermore, stranding outreach workshops have been held (with USFWS) in Homer (2003), Anchorage (2006, 2007), and Seward (2008). NMFS plans to update the Cook Inlet stranding plan in 2008/2009.

Comment 16: Four commenters indicated that the draft conservation plan used flawed methodology, flawed population estimates, and unrealistic recovery rates.

Response: The final conservation plan was updated with the most recent abundance surveys and trend analysis. The annual abundance surveys on Cook Inlet beluga whales are a comprehensive and statistically validated assessment of the Cook Inlet beluga whale population. Aerial survey methodology has been consistent since 1994 and video analysis has been improved over the years as technology has advanced. For odontocetes, the typical average growth rate is 4 percent per year. The Cook Inlet beluga population has seen a 1.5 percent

annual decline since 1999 when the harvest was regulated. This declining trend since 1999 indicates that factors other than subsistence hunting may be preventing recovery. A detailed discussion on population abundance estimates and recovery rates is included in the conservation plan.

Comment 17: The draft conservation plan failed to adequately address beluga whale subsistence issues.

Response: The final conservation plan was edited to better clarify subsistence issues. NMFS recognizes the cultural and nutritional values of subsistence foods, including beluga whale, for Alaska Natives. Harvests from this stock have been severely restricted (0 to 2 whales annually) since 1999. Alaska Native subsistence harvests will continue at low levels when the five year population average is more than 350 Cook Inlet belugas. The conservation efforts on subsistence harvests are due to both the voluntary efforts by the Native hunters and conditions imposed by Federal law.

Since 2000, six annual co-management agreements have been signed between NMFS and Cook Inlet Marine Mammal Council in compliance with Public Laws 106-31 and 106-553. NMFS has worked extensively with experts, including Native hunters, to use the best available science and traditional knowledge in our management and conservation of Cook Inlet belugas. This includes workshops by NMFS, Cook Inlet Marine Mammal Council, and Alaska Beluga Whale Committee.

A technical working group was created by an administrative law judge to develop a Cook Inlet beluga harvest management plan for 2005 and subsequent years that would recover Cook Inlet belugas while allowing for traditional subsistence use. The long-term harvest regulations were finalized in 2008. It is probable that other factors, not subsistence harvest, keep the population from recovering. This is addressed in the final conservation plan.

Comment 18: NMFS should immediately enter into agreements with relevant Federal agencies to ensure enhanced protection measures are in place for Cook Inlet issues, concerns, and development projects that are outside NMFS direct jurisdiction.

Response: NMFS has good working relationships with other State and Federal agencies and does not believe additional agreements are necessary at this time. No changes were made to the conservation plan to develop agreements with other agencies.

Comment 19: While beluga tagging efforts provide invaluable information on beluga movements and behavior, the actual tagging process and subsequent tag conveyance by whales poses heightened risk (stress) to the tagged whales.

Response: Some research activities may have the potential to negatively affect the small population of Cook Inlet beluga whales. NMFS carefully evaluates all marine mammal research permit applications to ensure that the proposed research is not likely to have a long term direct or indirect impact on the stock.

Comment 20: A goal of the conservation plan should be to analyze Cook Inlet salmon and other prey availability more closely.

Response: NMFS agrees. The need for a forage fish analysis research project was included in the conservation plan.

Comment 21: Reorganize and clarify the conservation strategy and step-down outline. The step-down outline needs better organization and specificity.

Response: NMFS agrees. The entire conservation program, including the conservation strategy, has been reorganized for clarity and re-prioritized in the conservation plan.

Comment 22: Improve the enforcement plan by adding specific information on who will conduct air, boat, and vehicle patrols and when; and specifically how NMFS will interface with citizens and community groups to enhance enforcement oversight.

Response: The enforcement section was updated to include the 2008 NOAA Law Enforcement Plan for Cook Inlet belugas (see Appendix D); however, this plan does not describe specific enforcement methods and activities which may compromise the effectiveness of the enforcement plan.

Comment 23: Exploratory drilling should not be limited to November 1 through April 1 of each year. Due to winter ice conditions in Cook Inlet, this restriction will effectively eliminate all exploratory drilling in the inlet.

Response: This specific condition has been eliminated in the final conservation plan. However, NMFS will develop mitigation measures (including timing) tailored to drilling locations and beluga presence on a case by case basis as coordinated under the MMPA, ESA, Fish and Wildlife Coordination Act, and Magnuson-Stevens Act (as it pertains to Essential Fish Habitat).

Comment 24: One commenter encouraged NMFS to avoid recommending an outright prohibition on wastewater discharge permits for Type 1 habitat. Wastewater treatment needs can be tailored to meet even the

most stringent receiving water requirements identified in a permit.

Response: NMFS has reassessed its position in the conservation plan. NMFS acknowledges that a lack of sewage treatment in a growing urban area would have negative impacts. Further, NMFS acknowledges that wastewater treatment needs can be tailored to meet a permit's requirements; therefore, this prohibition was removed.

Comment 25: One commenter noted that Type I and II habitat management measures place severe restrictions on any work that would be associated with placing and maintaining undersea electrical cables. The commenter said it is not aware that previous cable circuit installation and subsequent operation have negative impacts on the beluga whale population.

Response: NMFS has no evidence that electrical cable operation or maintenance has had negative impacts on beluga whales. Any cable installation must go through the Corps of Engineers permitting process, as required by law. The goal of the conservation plan is not to restrict development or prohibit maintenance for undersea electrical cables, but rather to protect beluga habitat and allow the population to recover and expand to its historic range. Projects in Type I habitat area (which has been redefined in the conservation plan) should not adversely affect the beluga habitat.

Comment 26: One commenter says that NMFS must continue to study belugas to help future preservation and knowledge efforts, and must not delay actions ensuring the belugas' survival.

Response: With the continued annual decline at 1.5 percent since harvest was regulated in 1999, we agree that conservation actions need to occur immediately. The conservation plan develops a strategy based on: (1) improving our knowledge about the biology of these belugas and the factors that are limiting their population growth; (2) stopping direct losses to the population; (3) protecting valuable habitat; and (4) evaluating the effectiveness of these strategies and the success of the conservation actions in restoring the Cook Inlet stock to its OSP. NMFS pursued a scientifically-based conservation plan while using a precautionary approach to management. As monitoring and studies provide additional scientific information, management can be adjusted accordingly. This section was clarified in the final conservation plan.

Comment 27: One commenter is concerned that NMFS plans to re-assess this stock for possible listing under ESA, and asserts that it is inappropriate

for NMFS to abandon the current co-management agreement and conservation measures.

Response: Although NMFS is listing Cook Inlet beluga whales as an endangered species, NMFS will continue to co-manage Cook Inlet belugas with the Cook Inlet hunters and make use of conservation measures under the MMPA while a recovery plan under the ESA is being prepared.

Comment 28: NMFS should not manage or authorize fishing operations that are likely to have an impact on beluga whales. The commenter adds that the draft conservation plan is unclear as to NMFS' role in Federal and State fisheries.

Response: The conservation plan has been clarified to differentiate between managing Federal fisheries and providing input to State fisheries.

Dated: October 16, 2008.

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E8-25101 Filed 10-17-08; 11:15 am]

BILLING CODE 3510-22-S

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 1508, Part 1509, and/or Part 1511 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 1508, Part 1509, and/or Part 1511 of Title 16, Code of Federal Regulations.

Introduction: The Consumer Product Safety Act ("CPSA"), at section 14(a)(3)(B)(ii) as added by section 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 for full-size baby cribs at 16 CFR part 1508, for non-full-size baby cribs at 16 CFR part 1509, and/or for pacifiers at 16 CFR part

1511.^{1 2} Each manufacturer (including the importer) or private labeler of cribs and/or pacifiers 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.^{3 4}

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 December 26, 2008, may form the basis for the certificate of compliance with the crib and/or pacifier regulations 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 regulations for cribs and/or pacifiers (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 Administrative Procedure Act, 5 U.S.C. 553.⁵

¹ 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. Those requirements were published in the **Federal Register** on September 22, 2008. 73 FR 54564-6.

² Children's products are those designed or intended for use primarily by children 12 years old and younger.

³ 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.

⁴ Of course, irrespective of certification, the children's product in question must comply with applicable CPSC requirements. See, e.g., CPSA § 14(h) as added by CPSIA § 102(b).

⁵ CPSA section 14(a)(3)(G) as added by section 102(a)(2) of CPSIA exempts publication of this