



January 11-15, 2010

Professional Development January 11-12

Exhibits Open January 13-15

CPSIA Compliance: What You Need To Know

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MAS - 1.5 pts

Tuesday, January 12

8 - 9:30 am



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CPSIA Compliance: What You Need To Know

Presenters: Susan DeRagon, STR
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Counsel and Lead Washington Lobbyist
Date: January 12, 2010
Time: 8:00 – 9:30 AM





Consumer Product Safety Improvement Act of 2008



- Signed on August 14, 2008
- Since enactment, CPSC has held various public meetings and has issued numerous advisory opinions, test methods, guidance documents and Federal Register notices.



Title I Children's Product Safety

- **Section 101** – Children's Product Containing Lead; Lead Paint Rule
- **Section 102** – Mandatory Third Party Testing for Certain Children's Products; General Conformity Certificate
- **Section 103** – Tracking Labels for Children's Products
- **Section 105** – Labeling Requirements for Advertising Toys & Games
- **Section 106** – Mandatory Toy Safety Standards
- **Section 108** – Prohibition on Sale of Certain Products Containing Specified Phthalates

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CPSIA Definitions

- **Consumer Product** – Any article, produced or distributed (i) for sale to a consumer for use or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise
- **Children's Product** – Consumer product designed or intended primarily for children 12 years of age or younger
- **Children's Toy** – Consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays
- **Child Care Article** – Consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething




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CPSIA Factors for Children's Product

- A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
- The Age Determination Guidelines issued by the Commission staff (<http://www.cpsc.gov/BUSINFO/adg.pdf>)

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Other Factors to Consider

- Size and Shape
- Materials Used
- Number of Parts
- Motor Skills Required
- Classic Product
- Colors
- Cause & Effect
- Sensory Elements
- Level of Realism/Detail
- Licensing/Theme







Section 101 Children's Products Containing Lead; Lead Paint Rule



Lead Paint Rule



- Previous ban
 - 16 CFR 1303 in effect since 1978
 - Sets limit at **600 ppm**
 - Applies to children's products, furniture, paint
- New ban
 - 16 CFR 1303 was amended on August 14, 2009
 - Sets limit at **90 ppm**
 - Applies to children's products, furniture, paint



Lead Paint Rule - Update

- Requires 3rd party testing and certification as of 12/21/08
- CPSC does allow for composite testing
- XRF Study findings indicate not suitable for compliance testing



Component Testing – Lead in Paint

- For small painted areas, paint manufacturer testing is acceptable, provided it meets all CPSC requirements
- Spray sampling is allowed
- Multi-stamping is allowed
- Composite testing of multiple colors in small area is allowed



Children’s Products Containing Lead

- Lead Content in Substrate materials
 - Substrate is the material of which something is made, and to which surface coating may be applied
 - As of February 10, 2009 - 600 ppm limit
 - As of August 14, 2009 - 300 ppm limit
 - As of August 14, 2011 - 100 ppm limit possible

*Requires compliance but 3rd party testing and certification is under one year stay of enforcement.
Stay is expected to be lifted 2/10/10.*



Lead Content - Update

- Accessibility
- Electronics
- Exclusions
- Materials Whose Lead Content Is Consistently Below Prescribed Limits
- Product Classes Whose Lead Content Is Consistently Below Lead Limits
- CPSC does Not allow for composite testing
- XRF Study findings indicate suitability for compliance testing of plastic materials



Statement of Policy: Testing and Certification of Lead Content

- Reminder of exempted materials
 - Precious gemstones
 - Semi-precious gemstones and minerals
 - Natural or cultured pearls
 - Wood (any paint requires testing)
 - Paper and similar materials (paperboard) and coatings that soak into the paper and cannot be scraped off
 - CMYK process printing inks
 - Textiles, dyed or undyed, excluding after-treatment applications such as screen prints, transfers, decals
 - Plant-derived or animal-derived materials (beeswax, seeds, nutshells, bone, feathers, fur, etc.)
 - Surgical steel and other stainless steel
 - Precious metals (gold, sterling silver, etc.)



Statement of Policy: Testing and Certification of Lead Content

- CMYK Process Printing Inks exemption
 - 4 color process which can be identified via microscopic evaluation
 - Exempt from Lead Content, regardless of whether or not they are 'scrapable'
 - Not Exempt from ASTM F963 soluble heavy metals if they are 'scrapable'
 - Exemption does Not include:
 - Spot colors
 - Other inks not used in CMYK process
 - Inks that can be scraped off surface
 - Inks that are used in after-treatment applications such as screen prints, transfers, decals, or other prints



Statement of Policy: Testing and Certification of Lead Content

- Lead testing is not required on components or products that are made entirely of exempt materials
 - No testing is required to prove that an item is made of an exempted material (e.g. you don't have to test a cotton shirt to prove that it is cotton)
- For products containing components made of both exempted and non-exempted materials, only the non-exempted materials need to be tested, but the entire finished product must be certified for compliance



Statement of Policy: Testing and Certification of Lead Content

- Examples:
 - Book with cardboard cover glued to pages made of paper printed with CMYK inks
 - No testing and no certificate is required
 - Book with cardboard cover and pages made of paper printed with CMYK inks, with metal spiral binding
 - Metal spiral binding requires 3rd party testing and certificate for the book is required
 - Children's coat made of a variety of fabrics and a zipper
 - What is required??



Section 102 Mandatory Third Party Testing for Certain Children's Products

General Conformity Certification



General Conformity Certificate/ Certification of Compliance

- Applies to product manufactured on or after November 12, 2008
- Applies to consumer products covered by CPSC-enforced regulations
- Certificate is responsibility of Importer (if produced outside US) or Domestic Manufacturer (if produced within US)
- Mandatory Third Party Testing Required for Certain Children's Products

One year stay of enforcement extends the testing and certification date for certain categories.
Stay is expected to be lifted 2/10/10.



Mandatory Third Party Testing for Certain Children's Products

	CPSC Publishes Accreditation Procedures	Third Party Testing Required
Lead in Paint	9/2008	12/21/2008
Cribs and Pacifiers	10/2008	1/20/2009
Small parts	11/2008	2/15/2009
Metal Jewelry	12/2008	3/23/2009
Baby Bouncers, Walkers, and Jumpers	3/2009 ON HOLD	6/2009 ON HOLD
300 ppm Lead Content - Substrates	5/2009 ON HOLD	8/2009 ON HOLD
CPSC Children's Product Safety Rules	6/2009 ON HOLD	9/2009 ON HOLD



Mandatory Third Party Testing of Children's Products

- Currently Required
 - Lead in Paint
 - Cribs
 - Pacifiers
 - Small Parts
 - Lead in Children's Metal Jewelry



Mandatory Third Party Testing of Children's Products

- Required once Stay of Certification and Testing is lifted (expected to be 2/10/10)
 - Youth Bicycles
 - Youth Bicycle Helmets
 - Bunk Beds
 - Rattles
 - Dive Sticks
 - **Lead Content**



Mandatory Third Party Testing of Children's Products

- Required after Stay is lifted and 90 days after CPSC publishes laboratory accreditation requirements
 - Youth All Terrain Vehicles
 - Baby Walkers and Bouncers
 - Caps and Toy Guns
 - Youth Carpets and Rugs
 - Clacker Balls
 - Children's Sleepwear, and...



Mandatory Third Party Testing of Children's Products

- Durable Nursery Products
- Electrically Operated Toys
- Youth Mattresses
- **Phthalates**
- Small Balls and Marbles
- Youth Swimming Pool Slides
- **Toys (ASTM F963)**
- Flammability of Vinyl Plastic Film
- **Flammability of Youth Wearing Apparel**



Section 103 Tracking Labels for Children's Products



Tracking Labels for Children's Products

- Permanent, distinguishing marks on product (to the extent practicable) and packaging manufactured as of **August 14, 2009**
 - Manufacturer or private labeler name
 - Location of production
 - Date of production
 - Other information (batch, run number, sources)





Practicability of Tracking Labels

- CPSC has not specified type size, location or format of tracking label
- Determining if it is practicable to include the tracking label on product is a challenge in itself, and factors such as size of the product, material, and manufacturing techniques must be considered.



Single items where it is **practicable** to use a permanent tracking label



Permanent tracking label can be placed on each cup. Tracking label should be non-ink and should not be leachable.



Surface area of sun glasses allows room for permanent tracking label without marring aesthetics of the item.




Permanent tracking label can be attached to stuffed toy.




Large enough to accommodate a permanent tracking label.

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Supply Chain Risk Management

Single items where it is **not practicable** to use a permanent tracking label



The size and surface area of these earrings are too small to accommodate a country of origin label or a permanent tracking label. Tracking label should appear on the packaging.



It is not practicable to use a permanent tracking label on socks because socks are unable to be marked directly with a country of origin label.

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Supply Chain Risk Management

Tracking Label Requirement

- The overall purpose is to enhance recall effectiveness
 - Keep this purpose in mind when considering what information to include on a tracking label
- Tracking labels will provide information to help a manufacturer target the problem and initiate an effective corrective action program, and allows recalled product to be identified and pulled from the marketplace

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Supply Chain Risk Management

Tracking Label Applicability for Promotional Products

- Supplier should include tracking label information.
- Depending on changes made to the supplier's product, distributor may need to include additional tracking label markings



Tracking Label Enforcement

- The CPSC does not intend to penalize manufacturers for inadvertent violations of the state when they have made a good faith effort in attempting to comply.
- A company that misrepresents the scope of the products affected by a recall should be subject to a penalty.
- The manufacturer/importer/distributor should be responsible to make sure the products are marked so products can be readily distinguished by everyone (including the consumer who has the product in the home).




PPAI Tracking Label System

- PPAI has developed an electronic system for maintaining the tracking label information with a URL code on the product and packaging itself.
- Additional details on this system are available through PPAI.




Section 105 Labeling Requirements for Advertising Toys and Games



Labeling Requirement for Advertising Toys & Games

- Applicable to both Internet and Catalogue sales where there is direct means for consumer purchase
- Any required cautionary statement under FHSA must be present (16 CFR 1500.19):
 - Small Parts
 - Small Balls
 - Marbles
 - Balloons



WARNING:
 CHOKING HAZARD--Toy contains a small ball.
 Not for children under 3 yrs.



Section 106 Mandatory Toy Safety Standards



Mandatory Toy Safety Standards

- ASTM F963-07 became mandatory as of February 2009
- ASTM F963-08 became mandatory in August of 2009
 - with the exception of Toy Chests and Flammability
 - F963-08 includes additional requirements for magnets, impaction hazards, and jaw entrapment

*Requires compliance but 3rd party testing and certification is under one year stay of enforcement.
Stay is expected to be lifted 2/10/10.*



Section 108 Prohibition on Sale of Certain Products Containing Specified Phthalates



Prohibition on Sale of Certain Products Containing Specified Phthalates

- Applies only to **Children's Toys** and **Child Care Articles**
- For any children's toy or child care article:
 - DEHP, DBP, BBP not allowed in concentrations exceeding 0.1%
- For any children's toy, or any part of the toy, that can be placed in a child's mouth or child care article:
 - DINP, DIDP, DnOP not allowed in concentrations exceeding 0.1% (**interim prohibition**)

*Requires compliance but 3rd party testing and certification is under one year stay of enforcement.
Stay is expected to be lifted 2/10/10.*



Phthalate Updates

- CPSC issued New test method
 - Requires component testing rather than entire toy
 - Materials that are not plasticized do not require testing
 - Harmonization to Europe and California phthalate regulations



Phthalates

- Phthalates may be found in following materials
 - Soft or flexible plastics, except polyolefins
 - Soft or flexible rubber, except silicone rubber and natural latex
 - Foam rubber or foam plastic such as PU foam
 - Surface coatings, non-slip coatings, finishes, decals, printed designs
 - Elastic materials on apparel, such as sleepwear
 - Adhesives and sealants
- Phthalates would not likely be found in the following materials
 - Unfinished metal
 - Natural wood, except coatings and adhesives added to wood
 - Textiles, except printed decorations, waterproof coatings, elastic
 - Mineral products such as sand, glass, crystal



DRAFT Guidance Document: Testing and Certification Requirements

- Reasonable test program
- Testing frequency
- Sample size considerations
- Component testing
- Two types of certification of compliance
- Appendices which outline the product safety rules
- Timeline for required third-party testing of children's products
- Real-life Q&A's concerning testing and certification requirements



Reasonable Test Program

- Five Essential Elements
 - Product specification including applicable safety rules, standards, etc.
 - Certification tests that demonstrate compliance with the applicable safety rules, standards, etc.
 - Production testing plan
 - Remedial action plan (CAPA)
 - Documentation of your reasonable test program and how it is implemented



Testing Frequency

- Minimum annual testing is “strongly encouraged”
- Should be performed by CPSC-recognized lab
- More frequent testing is “encouraged” when non-compliance presents a substantial product hazard
- Changes in production may also necessitate either more frequent testing, or completely new certification tests
- Test samples should be randomly selected



Testing Frequency

- For small volume production
 - Test every 10,000 pieces produced
 - Changes in production may still necessitate either more frequent testing, or completely new certification tests



Sample Size

- CPSC “cannot prescribe any specific sample size”
- Factors to consider in determining testing sample size include:
 - Whether testing is destructive
 - Testing costs
 - Specific aspects of the product (substantial product hazard if testing failure)
 - Similarities to other (tested) product
 - Production quantity
 - Likelihood of non-compliance
 - Customer complaints or product returns related to compliance



Sample Size

- Factors likely to increase frequency of testing, testing sample size, or both include:
 - Non-compliance may result in serious injury or death
 - Number of products produced annually is very large
 - Product has considerable test variability in tests related to applicable product safety rules
 - Product tests close to specified safety limits
 - Testing is non-destructive or inexpensive
 - Products are dissimilar to other tested products
 - Non-compliance cannot be determined easily, such as by visual inspection
 - Customer complaints, product returns related to compliance



Component Testing

- Manufacturer can rely on third party test data from component manufacturer or supplier, provided:
 - The testing meets all CPSC requirements
 - That there has been no material change in the component since testing was performed
 - That nothing in the manufacturing process would have affected test results of the component
 - That traceability is evident



Component Testing

- If Manufacturer is relying on third party test data from component manufacturer or supplier, they should:
 - Keep detailed records of purchases and lot and batch records
 - Perform some production testing
- Manufacturer is ultimately responsible for product compliance



Component Testing – Other Tests

- Finished components not yet assembled to finished product may be tested separately for certain tests
 - Lead content
 - Phthalates
 - Lead in paint
- Mechanical or Flammability in most cases will require finished product to test



Resources

- PPAI: www.ppai.org
- Product Safety powered by PPAI: <http://www.ppai.org/Member/productsafety.aspx>
- Consumer Product Safety Commission: www.cpsc.gov ; www.recalls.gov
- American National Standards Institute www.ansi.org or www.astm.org
- Specialized Technology Resources: www.STRQuality.com





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Q & A Session

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