



## HOW DOES THIS AFFECT MY SMALL BUSINESS?

No. 02/11

### **TOPIC:** EXTENSION OF THE STAY OF ENFORCEMENT OF TESTING AND CERTIFICATION REQUIREMENTS FOR TOTAL LEAD CONTENT IN CHILDREN'S PRODUCTS UNTIL DECEMBER 31, 2011

*PREPARED BY THE CPSC SMALL BUSINESS OMBUDSMAN,  
MARCH 15, 2011*

#### **The Basics:**

The U.S. Consumer Product Safety Commission (CPSC or Commission) [voted](#) recently to approve extending the stay of enforcement of testing and certification requirements pertaining to total lead content in all children's products. The testing and certification requirements can be found in section 14 of the Consumer Product Safety Act, 15 U.S.C. § 2063 ([CPSA](#)).

#### **What does this mean?**

##### *Compliance with Total Lead Content Requirements:*

If you are a manufacturer, importer, or private labeler of children's products, you must continue to comply with the total lead content limit of 300 parts per million (ppm) in accessible component parts of children's products.

(As of August 14, 2011, all children's products will need to be in compliance with the new total lead content limit of 100 ppm, as explained further below.)

##### *Third Party Testing and Certification:*

The stay of enforcement means that the CPSC will not enforce the requirements (1) to test your children's products for its total lead content by a third party accredited laboratory, recognized by the CPSC to test for total lead content in children's products, and (2) to issue a children's product certificate of conformity<sup>1</sup> regarding the compliance of your children's product with the total lead content limit in children's products.

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<sup>1</sup> The second half of this summary contains a detailed explanation of a children's product certificate of conformity (referred to as a "children's product certificate"). To be clear, the requirements for issuing a children's product certificate are different than the requirements for issuing a general certificate of conformity (GCC) for non-children's, or general use, products.

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## **What are the limits on total lead content in children's products, and where can I find the law?**

Children's products that are designed or intended primarily for use by children 12 years of age or younger cannot contain greater than 300 ppm (0.03 percent) of total lead content in any accessible part.

The Consumer Product Safety Improvement Act of 2008 ([CPSIA](#)) (Public Law 110-314) lowers the amount of total lead content permissible in children's products from 300 ppm to 100 ppm, effective August 14, 2011, unless the CPSC determines that such a limit is not technologically feasible<sup>2</sup> for certain products or product categories.<sup>3</sup> The new limit will apply regardless of when a children's product was manufactured.

You can find the law in section 101 of the [CPSIA](#) and section 2(q)(1) of the Federal Hazardous Substances Act, 15 U.S.C. § 1261(q)(1) ([FHSA](#)).

## **When will the stay of enforcement of third party testing and certification requirements for total lead content in all children's products be lifted?**

The Commission's extension of the stay of enforcement of the requirement to third party test and issue a certificate for total lead content in children's products will expire on December 31, 2011. In other words, on that date, you are required to issue a children's product certificate, based upon third party testing from a CPSC recognized laboratory, to retailers and distributors, and, upon request, to the CPSC for children's products imported or distributed in commerce on or after that date.

Furthermore, you should remember that on August 14, 2011, the total lead content limits for children's products will be lowered from 300 ppm to 100 ppm, as discussed above.

The Commission's recent action in extending the stay of enforcement for testing and certification may save you the cost of testing your products twice (to each lead level separately) because the Commission will make its determination on the technological feasibility of the 100 ppm question before the December 31, 2011, lifting of the stay for total lead content testing and certification requirements.

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<sup>2</sup> The rulemaking comment period on the technological feasibility of 100 ppm has closed, and the Commission held a public hearing on February 16, 2011. The written hearing record is currently [open](#) for supplemental written submissions until March 24, 2011.

<sup>3</sup> The Commission has not yet determined which, if any, products or product categories may be excluded from the lower lead requirements of 100 ppm. Absent a specific determination by the Commission, your product will have to comply with the new limits on August 14, 2011 and you should begin planning accordingly now.

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During this time period, we encourage you to prepare for the eventual lifting of this stay of enforcement and for the further lowering of the total lead limit to 100 ppm on August 14, 2011. For example, you might want to:

- examine and question those in your supply chain to ensure that they are providing materials and components that do not exceed the total lead limits of 300 ppm (and 100 ppm);
- educate your suppliers to make sure they understand and adhere to your specifications;
- find third party laboratories recognized by the CPSC for total lead content testing; and/or
- enter into testing agreements with those laboratories.

Remember that when this stay of enforcement lifts on December 31, 2011, you will be required to third party test and issue a children's product certificate to the *100 ppm limit* for total lead content, unless the Commission exempts your product or product category.

**Will this stay of enforcement of testing and certification requirements for total lead content in all children's products be lifted automatically on December 31, 2011?**

Yes.

**What are my current responsibilities?**

If you are a manufacturer, importer, or private labeler of children's products, I want to underscore that all of your children's products currently MUST comply with the 300 ppm limit on total lead content. (On August 14, 2011, your children's products will be required to comply with the new 100 ppm limit on total lead content.)

The Commission's action only delays the Commission's enforcement of the requirement to have your children's product tested by a CPSC recognized third party laboratory and to issue a certificate of conformity regarding your children's product's compliance with the limits on total lead content.

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## **Are there other testing and certification requirements for children's products currently in effect?**

Yes, all manufacturers, importers, or private labelers of children's products (including children's jewelry) must currently third party test <sup>4</sup> and certify that their products are in compliance with the requirements currently in place for the following:

16 C.F.R. Part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint for Toys and Other Articles Intended for Children in Excess of 0.009% (90 ppm.)

16 C.F.R. Part 1501, Ban on Small Parts for Toys and Other Articles Intended for Children under 3 Years of Age which Present Choking, Aspiration, or Ingestion Hazards.

Sec. 101 of the Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 (August 14, 2008) (CPSIA), Ban on Total Lead Content in Children's Jewelry in Excess of 300 ppm in Children's Products.

In addition, there are many additional mandatory children's product safety rules and regulations in effect for particular products and you must check to see whether those product safety rules currently require third party testing and certification. See the answer immediately below to determine whether your children's product is subject to additional requirements and whether third party testing and certification is currently required.

If the CPSC's Office of Compliance determines that your company: (1) is not in compliance with the total lead limits or (2) is not in compliance or failed to test and certify to the lead in paint ban, the small parts ban, or any other mandatory children's product safety rule in effect for your particular children's product, then your company may face serious civil penalties, asset forfeiture, or even criminal penalties.

## **How can I determine if my product is subject to a mandatory regulation, rule, ban, or standard?**

Click [here](#) to view the list of requirements for which third party testing and certification is required. Note the effective date for third party testing and certification next to each requirement.

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<sup>4</sup> The second half of this FAQ contains a detailed explanation of the exact requirements for third party testing and how to locate a third party laboratory recognized by the CPSC.

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Again, I want to emphasize that even if third party testing and certification is not yet required for the regulation associated with your children's product, compliance with the underlying requirement itself is always required.

**I manufacture, import, or private label toys. Are these all of my regulatory requirements?**

No. If you make toys, you are also subject to additional requirements that are beyond the scope of this summary.

**How does this stay affect third party testing and certification for total lead content for children's jewelry?**

Manufacturers, importers, or private labelers of children's jewelry currently must third party test and provide children's product certificates for the underlying total lead content (300 ppm) and the lead in paint (90 ppm) requirements for children's products. This stay has no effect on those requirements.

**Are there exemptions and exceptions to the third party testing and certification requirements of the total lead content ban?**

Yes. Those determinations, exemptions, and exceptions to the total lead content ban are beyond the scope of this summary. However, the Commission will not be enforcing third party testing and certification for total lead content until December 31, 2011.

**What is third party testing?**

Third party testing means testing performed by a third party, accredited laboratory that the CPSC has recognized to perform the specific tests for each children's product safety rule. (In this case, the children's product safety rule is the limit on total lead content in children's products.) All children's products are required to undergo third party testing.

A single children's product may be required to undergo multiple third party tests to ensure compliance with many different regulatory requirements. Accordingly, to save costs, you should choose your laboratory carefully and you may want to identify a single laboratory that the CPSC has recognized as qualified in all of the tests that you will need to certify that your children's product is compliant. Otherwise, you may need to use more than one laboratory to run all the tests required for your children's product.

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## Where can I find accredited labs that are recognized by the CPSC?

The list of accredited labs recognized by the CPSC can be found [here](#).

The easiest way to use this page is to scroll to the very bottom, choose your region by highlighting your geographic area, choose your scope by highlighting the requirement (above) for which you need to third party test and certify, and click the “Narrow List” button. You also may search by keyword.

The page will reload and all the CPSC-recognized labs in your designated geographic area will appear in the middle box. You will need to scroll down again to view the updated list of CPSC-recognized labs.

Remember that you may also be required to test and certify to other requirements (see above). Therefore, you will need to run the laboratory search multiple times until you have located a recognized laboratory that can complete all of your testing for you.

Although the stay of enforcement extends the date by which you must third party test and certify, you certainly *may* do so now, and the CPSC has recognized many labs to test to these methods. One reason you may want to test now is for your own assurances that your children’s product is in compliance.

The applicable test methods for the ban on total lead content are:<sup>5</sup>

- Lead Content in Children's Metal Jewelry, Standard Operating Procedure for Determining Total Lead (Pb) in Metal Children’s Products (including Children’s Metal Jewelry), Revision June 21, 2010, [Test Method CPSC-CH-E1001-08.1](#) (effective date when third party testing is required: 03/23/2009);
- Lead Content in Children's Metal Products, Standard Operating Procedure for Determining Total Lead (Pb) in Metal Children’s Products, Revision June 21, 2010, [Test Method CPSC-CH-E1001-08.1](#) (effective date when third party testing is required:12/31/2011); and
- Lead Content in Children's Non-Metal Products, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children’s Products, Revision June 21, 2010, [Test Method CPSC-CH-E1002-08.1](#), (effective date when third party testing is required:12/31/2011).

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<sup>5</sup> The CPSC also continues to recognize third party laboratories that are approved to use the prior versions of these test methods.

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**I recognize that the Commission will not be enforcing the requirement to third party test and certify for total lead content until December 31, 2011, but I still do not understand third party testing and certification in general. What is a children's product certificate?**

A children's product certificate is a document which, based upon the results of third party testing from an accredited laboratory recognized by the CPSC, certifies that the children's product complies with all applicable children's product safety rules enforced by the Commission. The document must specifically list each of the applicable children's product safety rules to which your company is certifying the children's product. For children's products, you are always required to issue a children's product certificate.<sup>6</sup>

In addition, the children's product certificate must include the manufacturer's, importer's, or private labeler's name, mailing address, telephone number, contact information, the date and time of manufacture, and the date(s) and place(s) where the product was tested by an accredited third party lab recognized by the CPSC to perform the specific test. The complete requirements can be found in section 14(g) of the [CPSA](#) at 15 U.S.C. §2063(g).

**Does the CPSC have a sample children's product certificate?**

Yes. There is a model of how to draft a certificate at: <http://www.cpsc.gov/about/cpsia/faq/elecfaq.pdf>. (The model is actually for a general certificate of conformity (GCC) that is used for nonchildren's, or general use, products. However, the same principles apply and the model includes a location to list the third party testing laboratory.)

You are not required to, but you may copy the layout and title the document: "Children's Product Certificate of Conformity" and include the details pertinent to your product; or, if you prefer, you may create your own form, as long as it captures all of the requirements of section 14(g) of the Consumer Product Safety Act.

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<sup>6</sup> The only exception is the situation where your product is wholly comprised of component parts that satisfy the Commission's determinations on lead content in [16 C.F.R. §1500.91](#).

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## **Can one children's product certificate certify that the product complies with multiple children's product safety rules?**

Yes. For example, if you are certifying that your product is in compliance with the bans on lead in paint, small parts, and other applicable regulations, then Part 2 of your certificate would read as follows:

16 C.F.R. Part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint for Toys and Other Articles Intended for Children.

16 CFR Part 1501, Small Parts Ban for Toys and Other Articles Intended for Children under 3 Years of Age which Present Choking, Aspiration, or Ingestion Hazards.

If your product is subject to an additional mandatory regulation, rule, ban, or standard for which third party testing and certification currently is required, then you would include the citation to that regulation, rule, ban, or standard as well.

*Note: Effective 12/31/11, you will also be required to third party test and certify for the total lead content of the children's product:*

Sec. 101 of the Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 (August 14, 2008) (CPSIA), Ban on Total Lead Content in Children's Products in Excess of 300 ppm in Children's Products.

## **Who must issue the certificate?**

Under the Commission's [rule](#) on certificates of conformity, the certificate must be issued by the importer for products manufactured overseas. The certificate must be issued by the U.S. manufacturer for products manufactured domestically.

## **To whom must I provide my children's product certificate?**

If you are an importer or U.S. manufacturer, you must "furnish" the children's product certificate to your distributors and retailers. The Commission's rule states that the requirement to "furnish" the certificate is satisfied if the importer or U.S. manufacturer provides its distributors and retailers a reasonable means to access the certificate. You can provide the actual hard copy of the certificate to your distributors and retailers, or you could provide a dedicated website with that specific certificate on your invoice. (See the answer addressing electronic certificates below.)

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Additionally, federal law requires you to provide a copy of the certificate to the CPSC and to the Commissioner of Customs upon request.

### **Where must I file these certificates?**

A certificate does not have to be filed with the government. As noted above, the certificate must “accompany” the product shipment, and be “furnished” to distributors and retailers, and, upon request, to the CPSC and to the Commissioner of Customs.

### **On what does my certification have to be based?**

The certificate must be based on tests of samples of each product conducted by an accredited, third party laboratory that the CPSC has recognized to perform each specific test method.

### **Once I have tested and certified that my children’s products are in compliance with the applicable requirements, how often must I retest and certify my product?**

At present, the Commission has not issued a final rule on testing and certification to answer this question, although the Commission expects to do so this calendar year. Currently, if a children’s product is subject to a children’s product safety rule, then it is subject to the third party testing requirement to show that the children’s product complies with the children’s product safety rule(s). The manufacturer, importer, or private labeler of the children’s product must then issue a children’s product certificate based on the testing.

Until the Commission issues a final rule on testing and certification, you are not required to retest children’s products after the children’s products have been third party tested and certified as compliant. However, you must still ensure that your children’s product complies with the mandatory regulatory requirements at all times. Any material changes, such as changing the paint used on a children’s toy or changing the product’s design or manufacturing process, for example, could result in the children’s product becoming noncompliant. Although this stay of enforcement means that you need not have your children’s product third party tested and certified to the total lead content limits until December 31, 2011, you must continue to third party test and certify to the other requirements described in this document.

### **Do I have to sign the certificate?**

No. You do not have to sign the certificate. The act of issuing the certificate satisfies the new law.

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### **Are small businesses exempt?**

No. The law does not provide exemptions or exceptions based on the size of the business.

### **What if I sell directly to consumers and do not use retailers or distributors?**

The law requires that manufacturers, importers, or private labelers issue children's product certificates, that the certificates accompany each product or shipment of products, and that certificates be furnished to retailers and distributors, and, upon request, to the CPSC. Accordingly, you do not have to provide certificates to consumers in direct-to-consumer sales.

### **Is a children's product certificate required for each shipment of my product?**

Yes. The law requires that each import (and domestic manufacturer) shipment be "accompanied" by the required certificate. The requirement applies to imports and products manufactured domestically. Under CPSC regulations, an electronic certificate is "accompanying" a shipment if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and available with the shipment.

### **Can electronic certificates rather than paper be used to meet the requirements of section 102 of the CPSIA?**

The Commission has issued a [rule](#) specifically allowing use of an electronic certificate, provided that the Commission has reasonable access to it; it contains all of the information required by section 14 of the CPSA; and it complies with the other requirements of the rule.

### **Are there penalties for noncompliance?**

Yes. It is a violation of the CPSA to fail to furnish a children's product certificate, to issue a false certificate of conformity under certain conditions, and to otherwise fail to comply with section 14 of the CPSA. Penalties for noncompliance include the imposition of civil penalties of up to \$100,000 per violation, limited to a maximum of \$15 million for any related series of violations, in addition to possible criminal penalties and asset forfeiture.

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