



US CONSUMER PRODUCT SAFETY COMMISSION

CONSUMER PRODUCT SAFETY IMPROVEMENT ACT (CPSIA) FREQUENTLY ASKED QUESTIONS

Definition of Children's Product

Q: What is the definition of a children's product and how will the age cutoffs be determined?

A: A "children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors will be considered:

- A statement by the manufacturer about the intended use of the product, including a label on the 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 in September 2002, and any successor to such guidelines.

Preemption

Q: Do the new standards in the CPSIA, such as the new limits on lead-containing paint and lead content, phthalates and the like, preempt state laws that address the same risk of injury?

A. The new lead limits for lead paint and lead content preempt state law as do the new provisions on phthalates and ATVs. The provision mandating the voluntary toy safety standard ASTM F963-07 as a mandatory consumer product safety standard is also preemptive although there Congress has provided a mechanism to grandfather in certain existing state laws on toy safety. We will be addressing which of those state laws that are designed to deal with the same risk of injury as the ASTM F963-07 toy safety standard will remain in effect. However, in order to qualify for an exemption from preemption from a toy safety standard under ASTM F963-07, the state toy safety laws must have been in effect on August 13, 2008 and states must submit them to us at <http://www.cpsc.gov/about/cpsia/section106.html> by November 12, 2008.

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Section 101

Children's Products Containing Lead

Q: Will the CPSC consider exclusions for categories of products or materials based on age or other factors?

A: Some children's products may be exempted or excluded from the new lead limits particularly if the only parts containing lead are inaccessible. A component part is not accessible if the component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. The CPSIA directs the Commission to provide guidance by rule within one year on what component parts are considered inaccessible. The Commission will also be evaluating whether certain electronic devices, including devices that contain batteries, must comply with the lead limit. CPSC will host a public meeting on November 6, 2008 that will provide an opportunity for participants to share their views with Commission staff regarding what product components, or classes of components, should be considered inaccessible to a child through ordinary use and abuse and on whether it will be technologically feasible for certain electronic devices to meet the new lead limits.

Q: Please clarify section 101(f)(3) regarding lead paint testing and whether small areas are exempt from testing.

A. The new law does not exempt small painted areas from the applicable lead limits. It does allow the Commission to rely on x-ray fluorescence technology (XRF) or other alternative means to screen for products bearing lead paint where the total weight of such paint or surface coating is no greater than 10 milligrams or where the surface area of such paint or surface coating covers no more than 1 square centimeter of the surface area of such products. This alternative method for measurement may not allow more than 2 micrograms of lead in a total weight of 10 milligrams of paint or other surface coating or in a surface area of 1 square centimeter or less.

Q: Once the ASTM F963-07 Toy Standard becomes mandatory, will toys need to be tested for lead and other heavy metals in paint according to F963-07 or according to 16 CFR § 1303.1 or both?

A: The answer to this question will change over the course of the next year. Until February 10, 2009, toys must meet CPSC's lead paint rule at 16 C.F.R. § 1303.1. For paint and similar surface coatings, and certain consumer products, 16 CFR § 1303.1 specifies that the maximum allowable *total* lead content is 0.06% based on the total weight of the non-volatile portion of the paint (which is equivalent to 600 ppm). As of August 14, 2009, the maximum allowable total lead content of such items will fall to 0.009% (which is equivalent to 90 ppm). The test method

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for compliance with 16 CFR § 1303.1 used by the CPSC staff is available on the CPSC website at: <http://www.cpsc.gov/businfo/leadsop.pdf>.

The Standard Consumer Safety Specification for Toy Safety, ASTM F963-07 becomes a mandatory consumer product safety standard on February 10, 2009. This standard *additionally* places limits on the amount of lead (and other heavy metals, namely antimony, arsenic, barium, cadmium, chromium, mercury and selenium) based on the *soluble* portion of that material using a specified extraction methodology given in the standard. Toys manufactured after February 10, 2009 will have to meet these requirements.

Beginning on August 14, 2009, however, the *soluble* limit testing for lead paint under ASTM F963-07 will not be necessary because the maximum total lead content in paint will be reduced to 90 ppm in 16 CFR § 1303.1, which would be a more stringent requirement in all cases. It will remain necessary to conduct ASTM F963-07 solubility testing for antimony, arsenic, barium, cadmium, chromium, mercury, and selenium, as those are not covered by 16 CFR § 1303.1.

Q: Is compositing allowed for testing for lead in the surface paint/coating or in the substrates (that is the underlying materials that are painted or coated)?

A: The term “compositing” could refer to more than one type of combination. One type of compositing that labs have used is to combine like paint from several like parts or products to obtain a sufficient sample size for analysis where there is not sufficient quantity of paint on one item to perform the testing. This is appropriate in this circumstance and may even be necessary to obtain valid analytical results.

Another type of compositing is to combine *different* paints or substrates from one or more samples to reduce the number of tests run. This type of composite testing may fail to detect excessive levels of lead in one individual paint or substrate because they have been diluted. This approach is therefore not acceptable.

Q: Under 16 CFR § 1303.2, electroplating is exempt from the ban on lead containing paint and similar surface coating materials, is this the same under the new statute? Would electroplating a substrate allow the substrate to be considered "inaccessible"?

A: For lead containing children’s products, CPSIA specifically provides that paint, coatings, or electroplating may *not* be considered a barrier that would render lead in the substrate inaccessible to a child. Accordingly, electroplating a substrate will not provide a basis for exempting a children’s product from having to meet the lead content limits specified in CPSIA. For items covered by 16 CFR part 1303, including paint, and certain painted items, the definition of paint and other similar surface coatings remains the same and still does not include electroplating.

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Q: Does the new requirement for total lead on children's products apply to children's books, cassettes and CD's, printed game boards, posters and other printed goods used for children's education?

A: In general, yes. CPSIA defines children's products as those products intended primarily for use by children 12 and under. Accordingly, these products would be subject to the lead limit for paint and surface coatings at 16 CFR part 1303 (and the 90 ppm lead paint limit effective August 14, 2009) as well as the new lead limits for children's products containing lead (600 ppm lead limit effective February 10, 2009, and 300 ppm lead limit effective August 14, 2009). If the children's products use printing inks or materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing, they would be excluded from the lead paint limit. However, these products are still considered to be lead containing products irrespective of whether such products are excluded from the lead paint limit and are subject to the lead limits for children's products containing lead. For lead containing children's products, CPSIA specifically provides that paint, coatings, or electroplating may *not* be considered a barrier that would render lead in the substrate inaccessible to a child.

Q: Is compositing of plastics and other materials allowed in regards to lead testing in substrates?

A: No. Compositing to combine *different* substrates from one or more samples may fail to detect excessive levels in one part merely because they are diluted. Accordingly, compositing of plastics or other materials to test for lead in substrates is not appropriate.

Q: How will the new legislation affect previously issued CPSC guidelines on lead and are there any developments on the CPSC rulemaking activities on lead in children's jewelry?

A: The existing lead guidelines will be superseded to the extent they conflict with the statutory requirements of CPSIA. In addition, the rulemaking commenced by the Commission on children's metal jewelry is also superseded by the statutory requirements of CPSIA.

Q: Does packaging have to comply with the lead requirements? Does it matter if the packaging is intended to be reused (e.g., heavy gauge reusable bag with zipper closure to store a set of blocks)?

CPSIA defines children's products as those products intended primarily for use by children 12 and under. Packaging is generally not intended *for use* by children, given that most packaging is discarded and is not used or played with as a children's product. However, if the packaging is intended to be reused, or used in conjunction with the children's product, such as a heavy gauge reusable bag used to hold blocks, it becomes a component or part of the product, and would be

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subject to the lead requirements of CPSIA. It should also be noted that many individual states have adopted packaging laws which address toxics in packaging or packaging components and which have *not* been preempted by Commission action.

Section 102 C Mandatory Third Party Testing for Certain Children's Products General Certification of Conformity

Q. Can electronic certificates be used to meet the requirements of Section 102 rather than paper?

A. The CPSC staff's opinion is that so long as the Commission has reasonable access to the certificate electronically and it contains all of the information required by section 102 of the CPSIA, electronic certificates can be used to satisfy the CPSIA.

Q. Must each shipment be "accompanied" by a certificate?

A. 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. CPSC staff believes that 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.

Q. Must I supply the certificate to my distributors and retailers?

A. You are required to "furnish" the certificate to your distributors and retailers. CPSC staff believes that this requirement is satisfied if you provide your distributors and retailers a reasonable means to access the certificate.

Q. Must the certifier(s) sign the certificate?

A. No. Issuing the certificate satisfies the new law. It does not have to be signed by the issuer(s).

Q. On what does my certification have to be based?

A. The general conformity certification must be based on a test of each product or a reasonable testing program.

Q. Where must these certificates be filed?

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A. 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 be furnished to CPSC upon request.

Section 103

Tracking Labels for Children's Products

Q: Are tracking labels required on domestically made products or are they only required for imported products?

A: Tracking labels are required for all children's products manufactured one year after enactment of the CPSIA (August 14, 2009) regardless of whether they are domestic or imported products.

Q: Will the tracking label requirement be met if premiums are labeled with a date of distribution, a production date and trademark information?

A: Section 103 of the CPSIA requires that the tracking label provide, "to the extent practicable," marks that will enable the ultimate purchaser to ascertain the manufacturer or private labeler, the location and date of production of the product and cohort information. A label stating only the date of distribution, a production date and trademark information would not satisfy the requirements of section 103. Such a label would lack information identifying the manufacturer or private labeler, the place of production and cohort information.

Q: Could hangtags and adhesive labels be used as tracking labels for textile-type items?

A: No. The law requires that markings with the specified information be permanent. Hangtags and adhesive labels are not permanent.

Q: The law requires manufacturers to start labeling product and packaging one year after enactment. Does that mean it would affect products manufactured for the 2010 retail season or that items in retail stores would already have to have tracking labels as of August 2009?

A: The law requires that one year after enactment, or August 14, 2009, manufacturers of children's products must place **permanent** marks on their product providing the information specified. Thus, the Commission staff believes that the tracking label requirement applies to children's products manufactured on or after August 14, 2009.

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Q: Will the Commission be providing specifications or guidelines as to size, location and format of the tracking information required by section 103? Or as to the meaning of “to the extent practicable”?

A: The Commission may issue implementing guidance on these issues. It should be noted, however, that the requirement to provide tracking information is mandatory regardless of whether the Commission provides such guidance.

Q: What information needs to be provided on the product to meet the tracking label requirements of section 103? Does section 103 of the CPSIA require that a manufacturer’s name be present on a tracking label?

A: Section 103 of the CPSIA provides that the tracking label must contain information that will enable the manufacturer to ascertain the location and date of production of the product and cohort information (including the batch, run number, or other identifying characteristic) and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks.

Section 103 of the CPSIA further provides that the tracking label must contain information that will enable the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including the batch, run number, or other identifying characteristic.) Thus, section 103 of the CPSIA does require that the tracking label contain information sufficient for the purchaser to ascertain the manufacturer of the product.

Watch the Commission's website for postings regarding further guidance on this issue. The Commission will seek comments from the public during this process.

Section 104

Standards and Consumer Registration of Durable Nursery Products

Q: Will infants’ crib bedding, blankets, bath textiles, and apparel fall under the heading of “durable product”?

A: No. Congress did not define the term “durable,” but it is commonly understood to mean able to exist for a long time without significant deterioration. Cloth/textile items are generally not considered to be durable goods. None of the items Congress specified in section 104 as examples of durable products are items made entirely of cloth, rather they are primarily made from rigid materials (e.g., cribs, toddler beds, high chairs, strollers, bath seats).

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Q: Are baby slings covered by section 104?

A: No. Although Congress specified that infant carriers are covered as durable children's products under section 104, the staff believes that baby slings are not covered but are non-durable cloth products. (Also see the above answer.)

Section 105 Advertising Requirements

Q: Will there be a petition process to extend the grace period for catalogues and other printed materials to comply with the requirements of section 105 of the CPSIA?

A: No. Section 105 of the CPSIA provides that the Commission may provide a grace period of *no more than* 180 days, or until August 9, 2009, for catalogues and other printed material printed prior to February 10, 2009, during which time distribution of such catalogues and other printed materials will not be a violation of the standard.

A proposed rule on the section 105 advertising requirements was published in the Federal Register on October 6. The Federal Register notice states that the Commission preliminarily finds that a grace period of 180 days is warranted. Please note that this is a proposed rule. The requirements of the final rule may differ from those of the proposal. **Comments on the proposed rule are due to the Commission by October 20, 2008.**

Q: What warnings are required to be posted on a company Internet website, and for which toys?

A: Section 24(a) of the Federal Hazardous Substances Act (FHSA) prescribes cautionary labeling requirements on the packaging of toys or games intended for use by children from 3 to 6 years old containing small parts. Section 24(b) of the FHSA prescribes cautionary labeling requirements on the packaging for balloons, small balls, and marbles intended for children 3 years and older, or the packaging of any toy or game which contains such a balloon, small ball, or marble (See sections 24(a) and (b) of the FHSA and 16 CFR 1500.19 for the precise labeling requirements).

The CPSIA amends section 24 of the FHSA to require that advertising of products whose packaging requires a cautionary statement must bear the same cautionary statement, if that advertising provides a direct means for purchase or order of the product. Thus, if a cautionary statement is required on a product's packaging under section 24(a) or (b) of the FHSA, a cautionary statement is required in advertising (such as internet advertising) for that product that provides a direct means for purchase or order of the product.

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The Commission has issued a proposed rule which gives more details on the size and placement of the cautionary statements in advertising. Please note that this proposed rule is subject to change before it becomes final. **Comments on the proposed rule are due to the Commission by October 20, 2008.**

Q: Do the advertising requirements of section 105 of the CPSIA apply to toys manufactured for children under three years old, in which there are no choking hazards?

A: No. The advertising requirements apply to the same products whose packaging requires cautionary statements under sections 24(a) and (b) of the Federal Hazardous Substances Act (FHSA). Section 24(a) applies to toys or games that are intended for use by children from 3 to 6 years old and contain small parts. The cautionary statement warns potential purchasers that these products are not for children under 3 years old due to choking hazards. Section 24(b) of the FHSA prescribes similar requirements for balloons, small balls, and marbles intended for children 3 years and older, or any toy or game which contains such a balloon, small ball, or marble. (Please see sections 24(a) and (b) of the FHSA and 16 CFR 1500.19 for the precise labeling requirements).

Q: How do we comply with the advertising warning requirements in catalogues and other printed materials? Will abbreviated warnings be permissible?

A: A proposed rule on the CPSIA section 105 advertising requirements has been issued by the Commission. It is likely that abbreviated warnings will be permissible. Please note that this is a proposed rule. The requirements of the final rule may differ from that of the proposed. **Comments on the proposed rule are due to the Commission by October 20, 2008.**

Section 108 Products Containing Certain Phthalates

Q: What kind of products does the phthalates prohibition apply to?

A: Three phthalates, DEHP, DBP, and BBP, have been permanently prohibited by Congress in concentration of more than 0.1% in "children's toys" or "child care articles." A "children's toy" means a product intended for a child 12 years of age or younger for use when playing, and a "child care article" means a product that a child 3 and younger would use for sleeping, feeding, sucking or teething.

Three additional phthalates, DINP, DIDP, and DnOP, have been prohibited pending further study and review by a group of outside experts and the Commission. This interim prohibition applies to child care articles or toys that can be placed in a child's mouth or brought to the mouth and kept in the mouth so that it can be sucked or chewed that contains a concentration of more than 0.1% of the above phthalates.

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Q: Does the phthalate prohibition apply to inaccessible parts?

A: The prohibition on phthalates applies to all parts of a children’s toy or child care article as defined in section 108 of the CPSIA. Section 108 does not make an exception or exemption for accessibility for phthalates as is the case for lead in children’s products under section 101.

Q: Does the prohibition on phthalates apply to jewelry?

A: It depends. If such jewelry is intended for use as a toy for a child 12 years of age or younger, the phthalates prohibition would apply.

Q: Does the prohibition on phthalates apply to sporting goods?

A: The category of products known as “sporting goods” can include toys but not all sporting goods are toys. Indeed, the ASTM F963 toy safety standard, which becomes a mandatory consumer product safety standard on February 10, 2009, does not define sporting goods equipment to be a toy unless the product is a toy version of sporting goods equipment. However, “children’s toy” in section 108 of the CPSIA is defined broadly as a “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.” Therefore, any determination as to whether a particular sporting goods product would be a toy as defined under section 108, and therefore, subject to the ban on phthalates, would be made on a case by case basis after consideration of the following factors:

- A statement by the manufacturer about the intended use of the product, including a label on the product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by of the ages specified.
- Whether the product is commonly recognized by consumers as being intended for use by a child of the ages specified.
- The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

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Q: Will there be further guidance regarding the scope of the phthalates prohibitions and their application to individual products?

A: The CPSC will host a public meeting on December 4, 2008 on the issue of phthalates that will provide an opportunity for the public to share their views with Commission staff regarding these issues. Prior to the meeting the Commission staff will ask the public to comment on specific issues that the staff is interested in exploring. Watch the CPSC website for further updates regarding the public meeting.

Section 232 All-Terrain Vehicle Standard

Q: When does the mandatory standard go into effect?

A: The current voluntary standard will become mandatory 150 days after it is published as a consumer product safety standard in the Federal Register. The Commission must publish ANSI/SVIA-1-2007 as a consumer product safety standard within 90 days of enactment of the CPSIA (by November 12, 2008). The law states that “after the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle” unless it complies with the ATV standard and is subject to, and complies with, an action plan filed with the Commission.

Q: Are ATVs subject to the requirements for general conformity certification under section 102(a)(1)?

A: Yes. Section 102(a)(1) requires every manufacturer of a product that is subject to a consumer product safety standard to issue a certificate certifying that the product meets that standard (as well as others that are applicable). The CPSIA directs the Commission to publish the ANSI/SVIA-2007 standard for four wheel ATVs as a consumer product safety standard. Thus, once the standard takes effect (150 days after publication in the Federal Register) the products that are subject to the ATV standard must also be certified to it (and any other standards applicable to those products).

Q: Are youth ATVs subject to the third party testing requirements of section 102(a)(2)? And if so, when?

A: Section 102(a)(2) requires third party testing for children’s products that are subject to a children’s product safety rule. A children’s product is a consumer product designed or intended primarily for a child 12 years of age or younger (see section 232(a)). Thus, youth ATVs intended primarily for children 12 years of age or younger will need to comply with the third party testing requirements of section 102(a)(2). This will require third party testing for

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compliance to the new ATV standard. A manufacturer's certification based on that testing requirement will be required 90 days after the Commission publishes accreditation requirements for testing laboratories that will test conformity to the ATV standard.

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