

CHILDREN'S PRODUCTS THE IMPACT OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT (CPSIA)

The Consumer Product Safety Improvement Act (CPSIA) is a law that impacts Importers of products sold to or used by children. The Consumer Product Safety Commission has a web site devoted to the CPSIA
<http://www.cpsc.gov/about/cpsia/cpsia.html> and <http://www.cpsc.gov/ABOUT/Cpsia/cpsia.HTML#bytopic>

Defining Toys and Child Care Articles

Children's Toy: Is a product intended for a child **12 or younger** for use when playing.

Excludes: Bikes, Playground equipment, musical instruments, sporting goods (except for their toy counterparts).

Child Care Article: A product that a **child 3 and younger** would use for sleeping, feeding or teething.

Examples: Pacifier/teether, Sippy Cup, Bib, Crib Mattress, Children's sleepwear.

Identifying Children's Products

There are four factors in determining whether a product is designed or intended for use by children **12 years of age and younger**.

- 1) A statement by the manufacturer about the intended use of the product, including a label on the product stating the same.
- 2) If the product is represented in its packaging, display or promotion or advertising as appropriate for use by a specified age group.
- 3) If the product is commonly recognized by consumers as being intended for use by a child of the ages specified; and
- 4) The Age Determining Guidelines issued by the commission staff in Sept 2002.

More simply though a children's product is defined as a "consumer product designed or intended primarily for children **12 years of age and younger**."

Web site for definition can be located at: <http://www.cpsc.gov/about/cpsia/faq/children.html>

Children's products, which are most strongly affected, are not just products designed and intended specifically for children **12 years of age and younger**. Children's products can also be considered any products with packaging, promotions, or advertising that displays their product as appropriate for children **12 and younger**. This means that if a product designed for adults is being used by a child in an advertisement, it will then be regulated the same as a children's product.

Children's Metal Jewelry

Lead rules apply to all children's products, including Jewelry.

Third party testing required

Children's metal jewelry may or may not also be a "children's toy".

Labeling (Tracking Labels)

Manufacturers must affix a permanent label on their product so that the ultimate purchaser can ascertain when and where the product was manufactured and tested.

The law requires that markings with the specified information be permanent. Hangtags and adhesive labels are not permanent.

Tracking labels will be required for products if they are primarily intended for children **12 years of age or younger**. The label must be on the product (only once) and on the packaging.

Required information for labeling

- Manufacturer or private labeler
- location of the product
- date of production
- cohort information (if applicable)
(including the batch, run number, or other identifying characteristic)

Mandatory Testing

The legislation requires that every manufacturer of a product subject to a consumer product safety rule will provide a "General Conformity Certificate" to certify, based on unit testing or a reasonable testing program, that the product complies with all safety rules. This requirement was imposed on every product manufactured on or after 12 November 2008. The certificate must:

1. be in English
2. list the name, address, and phone number of the manufacturer, importer, and/or private labeler issuing the certificate and any third party testing facility
3. list the date and place of manufacture and date and place of testing
4. list the contact information of the records keeper
5. list each applicable rule, standard, and ban

These certificates must accompany the product through the distribution chain through the retailer. They must be available to the CPSC during any inspection (not an entry requirement but a copy should be in the import file).

Children's products are singled out for third party testing by this Act.

General Conformity Certificate

A general certification requirement is sometimes called a "supplier's declaration of conformity." These general conformity certifications do not need to be based on testing done by a third-party laboratory. Certification must be based on a test of the product or a "reasonable testing program." This new general certification requirement goes into effect on November 12, 2008.

- What must be covered by a certificate?

- Any consumer product imported or distributed in commerce if the product is subject to a consumer product safety rule under the CPSA/CPSIA or any similar rule, ban, standard, or regulation enforced by CPSC.

Third-Party Testing of Children's Products

The new legislation imposes an additional third-party testing requirement for all consumer products primarily intended for children **twelve years of age or younger**. Every manufacturer (including an importer) or private labeler of a children's product must have its product tested by an accredited independent testing lab and, based on the testing, must issue a certificate that the product meets all applicable CPSC requirements.

CPSC is given authority either to accredit laboratories ("third party conformity assessment bodies") for doing the required testing of children's products or to designate independent accrediting organizations to accredit the testing laboratories, with one exception. The Commission itself must accredit laboratories that are controlled by the manufacturer of the children's product in question. To assure their impartiality, government labs must also meet strict standards of independence. The CPSC must maintain an up-to-date list of accredited labs on its web site. CPSC has authority to suspend or terminate a laboratory's accreditation in appropriate circumstances.

The third-party testing and certification requirements for children's products are phased in on a rolling schedule. The statute requires the CPSC to issue laboratory accreditation regimes for different categories of children's products. Once the CPSC issues the laboratory accreditation requirement for that category of children's products, each children's product in that category that is manufactured more than ninety days after that date must be tested and certified to the applicable requirements. The schedule for CPSC to issue the laboratory accreditation requirements and the certification schedule is set forth on the timeline shown in the chart below.

Accredited 3rd party laboratories can be found at: <http://www.cpsc.gov/cgi-bin/labapplist.aspx>

Certificates

The required certificates, whether general conformity certificates or certificates for children's products based on third-party testing, must be in English and also may be in another language. They must include information on the identity of the manufacturer or private labeler of the product, the testing laboratory, and the date and place of manufacturing and testing the product.

Products without the required certificate cannot be imported or distributed in commerce in the United States. The certificate must accompany the product or product shipment and must be available to CPSC and Customs and Border Protection upon request. Failure to furnish the certificate or furnishing a false certificate can subject the manufacturer or private labeler to civil and criminal penalties.

CPSC LEAD TESTING EXEMPTIONS

The Consumer Product Safety Commission has voted to approve a list of products that are now exempt from lead testing for children's products under the Consumer Product Safety Improvement Act (CPSIA). CPSC commissioners agreed that the following items do not exceed the CPSIA lead limits and therefore are not subject to those limits or the related testing requirements.

Textiles (excluding after-treatment applications, e.g., screen prints, transfers, decals or other prints) consisting of natural fibers or manufactured fibers, whether dyed or undyed. For apparel items, this means that fabric and yarn will be exempt from lead testing but not metal or plastic findings, trimmings, fasteners, buttons, zippers, etc.

Other plant-derived and animal-derived materials; i.e., wood, natural fibers, coral, amber, feathers, fur, untreated leather, bone, sea shell, animal glue, bee's wax, seeds, nut shells, flowers and bone, provided these materials are not treated with any chemicals or surface coating.

Paper and similar materials made from wood or other cellulosic fiber, including paperboard, linerboard and medium, and coatings on such paper that become part of the substrate.

Printing inks using the modern CMYK printing process (excluding spot colors, other inks that are not used in CMYK process, inks that do not become part of the substrate, and inks used in after-treatment applications, including screen prints, transfers, decals or other prints) and the paper used in books. The CPSC also determined that adhesives and binding materials used in children's books will normally be inaccessible and therefore fall within the inaccessibility exception to the lead limits.

Precious gemstones, semiprecious gemstones and other minerals (excluding any mineral based on lead or lead compounds, including aragonite, bayldonite, boleite, cerussite, crocoite, galena, phosgenite, vanadinite and wulfenite).

Natural or cultured pearls.

Metals and alloys, including surgical steel and precious metals.

The CPSC stated that the determination that these products do not contain lead does not relieve the products from lead testing if the product or material is altered or modified so as to exceed the lead content limits.

Lead

The legislation reduces the limit of lead allowed in surface coatings or paint to 90 ppm (from the current limit of 600 ppm) effective on 14 August 2009.

The legislation reduces the amount of total lead content in children's products to

- 600 ppm by 10 February 2009
- 300 ppm by 14 August 2009
- 100 ppm by 14 August 2011

Phthalates

As of February 10, 2009, it shall be unlawful for any person to manufacture for sale, distribute in commerce, or import any children's toy or childcare article that contains the phthalates, DBP or BBP at levels higher than 0.1 percent.

The legislation bans from any children's toy that can be put in a child's mouth or childcare articles phthalates DINP, DIDP and DnOp at levels higher than 0.1%.

Frequently Asked Questions for third party testing (from CPSC web site).

General Certification of Conformity

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

The Commission has issued a rule specifically allowing use of an electronic certificate provided the Commission has reasonable access to it, it contains all of the information required by section 102 of the CPSIA, and it complies with the other requirements of the rule. The rule is available on the CPSC World Wide Web site at <http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf>

*Who must issue the certificate?

Under the Commission's rule at <http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf>, for products manufactured overseas, the certificate must be issued by the importer. For products produced outside the United States, the certificate must be issued by the U.S. manufacturer. Neither a foreign manufacturer nor a private labeler is required to issue a certificate. Neither need be identified on the certificate issued by the importer or domestic manufacturer.

*Must each shipment be "accompanied" by a certificate?

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 the rule issued by the Commission 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. Certificates can also be transmitted electronically to a broker with other customs entry documents before a shipment arrives so long as they are available to the Commission or Customs and Border Protection staff if the product or shipment is inspected.

*Is the importer or U.S. manufacturer required to supply the certificate to its distributors and retailers?

Yes. The importer or U.S. manufacturer is required to "furnish" the certificate to its distributors and retailers. The Commission's rule states that this requirement is satisfied if the importer or U.S. manufacturer provides its distributors and retailers a reasonable means to access the certificate.

*Must the certifier(s) sign the certificate?

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

*On what does my certification have to be based?

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

*Where must these certificates be filed?

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.

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

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 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.

