

# THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT: WHAT YOU NEED TO KNOW

IAAPA PRESENTATION

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# Consumer Product Safety Improvement Act of 2008 (CPSIA)

## Session Outline

- Background
- Key Provisions of the CPSIA
- How the CPSIA affects your business
- Recent Activity

# Overview of Presentation

- The Consumer Product Safety Improvement Act (CPSIA) was signed by President Bush on August 14, 2008. The legislation reformed the laws and regulations of the CPSC governing ALL consumer products in the U.S.
- What follows is an overview of the key provisions in the Act, and the recent regulations and statements by the Commission (CPSC) regarding the Act, and the controversy between the federal and state governments.

# CPSIA

- Congressional response to last summer's product recalls.
- Changes will result in:
  - More recalls
  - More non-compliance with legal requirements
  - Greater fines and penalties
  - Increased product liability litigation
- Implementation has been a **MESS**:
  - Too aggressive implementation dates
  - Overly broad application
  - Inconsistent staff clarifications

# What Didn't Change?

- Didn't alter the **General Reporting Requirements** which require manufacturers, importers, distributors and retailers to report to CPSC any defect that could cause a **substantial product hazard** and any product that violates a **Consumer Product Safety Standard**.

# Changes that Impact Children's Product Industries

- Lead ban
- Phthalate ban
- Third party testing
- Product registration cards
- Tracking labels
- Internet and printed advertisements
- ASTM F963-07 and other voluntary standards become mandatory

# Changes that Impact ALL Consumer Product Industries

- Substantially increased civil penalties
- Public database of incidents
- Stop sale authority
- State Attorney General actions
- Conformity certifications

# Important Definitions

- **Children's Product** Consumer product designed or intended for children 12 years of age or younger
- **Children's Toy** Consumer product designed or intended for children 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 or younger
- **Consumer Product** Any article, produced or distributed for sale to consumer for use in or around a residence, school, or recreation area.
- **Inaccessible** Component not physically exposed due to a sealed covering or casing, shall remain inaccessible from normal use or abuse

# Banned Substances


- Lead (Section 101)
- Phthalates (Section 108)

# Section 101

## Children's Products Containing Lead; Lead Paint Rule

# Children's Products Containing Lead

Banned After Enactment Date	Total Lead Above
February 10, 2009	600 ppm
August 13, 2009	300 ppm
August, 2011	≤ 100 ppm*



- New requirement for lead in all children's products
- Progressively more stringent limits over 3 years
- Lead in Paint – 16 CFR 1303 reduced from 600 ppm to 90 ppm effective August 13, 2009.

*\*100 ppm or the lowest technologically feasible below 300 ppm*

# Section 101 is Retroactive!

- On September 12, 2008 an Advisory Opinion, from CPSC General Counsel Cheryl Falvey to Acting Chairman Nancy Nord, held that products above the legal limit in Section 101 cannot be sold from inventory or from store shelves as of February 10, 2009.
  - This is the Commission's interpretation of the CPSIA and Congressional intent.
  - Bottom line: Make sure your products that are in inventory or in stores meet the legal limits by February 10, 2009.

# Section 108

## Prohibition on Sale of Certain Products Containing Specified Phthalates

# What are Phthalates

- Used as plasticizers to soften plastics
- In cosmetics, added to provide flexibility, an oily “moisturizing” film



# Concerns Associated with Phthalates

- Concerns about the potential to disrupt the endocrine system due to hormonal activity
- In animal studies there is evidence of:
  - Adverse birth outcomes
  - Impact on reproductive system, particularly in males

# Prohibition on Certain Phthalates

<u>Phthalates</u>	Scope	Requirements	Effective Date after enactment
DEHP, DBP or BBP	In toys (up to 12) or child care items	≤0.1%	180 days
DINP, DIDP or DNOP	Toy and child care articles that can be placed in a mouth	≤0.1%	180 days

- New Federal requirement for toys and childcare items
- Interim ban on DINP, DIDP, DnOP for 1 year pending toxicology advisory panel report and until a final rule is promulgated by the CPSC

# The Phthalate Controversy

- If your product is a “toy” or “child care article” and contains a banned phthalate, it must be removed from inventory, cannot be exported, and must be removed from store shelves no later than 1/1/09 in California only.
- CPSC advisory opinion states that Phthalate Section 108 is not retroactive. Therefore, Phthalate Section 108 shall be applicable only to “toys” and “child care articles” manufactured after 2/10/09 in states other than California.
- Note: All products sold in California that contain listed phthalates must have a prominent warning under Proposition 65.

# CPSIA vs. California AB1108

- Different definition of “toy” and “child care articles”
  - CPSIA: For children 12 years and under
  - AB1108: For children 3 and under
- Different Effective date:
  - CPSIA: 2/10/09
  - AB1108: 1/1/09
- Different Retroactive Applicability:
  - CPSIA: Applies to “toys” and “child care articles” **manufactured** after 2/10/09
  - AB1108: Applies to “toys” and “child care articles” **sold** after 1/1/09

# Section 102

## Mandatory Third Party Testing For Certain Children's Products

# What Is It?

- A **self-certification** as required by 14(a)(1) of the CPSA
  - Requires a reasonable testing program
  - or
  - In some cases a mandatory 3<sup>rd</sup> party test report
- You are vouching that your products comply with applicable standards

# Certification of Consumer Products

## WHAT

- **All products subject to CPSA bans as well as standards, or to any “similar rule, ban, standard or regulation under any other act enforced by the Commission.”**
  - Consumer Product Safety Act (CPSA)
  - Federal Hazardous Substance Act (FHSA)
  - Flammable Fabrics Act (FFA)
  - Poison Prevention Packaging Act (PPPA)
  - Refrigerator Safety Act (RSA)

Effective 90 days after enactment  
(November 12, 2008)

# Certification of Consumer Products


## WHEN

Rule (Effective Date)	Publication of TP Accreditation Procedure	Mandatory TP Testing
Lead Paint: 16 CFR 1303	September 2008	December 2008
Cribs and Pacifiers: 16 CFR 1508/9, 11	October 2008	January 2009
Small Parts	November 2008	February 2009
Metal Jewelry	December 2008	March 2009
Baby bouncers, Walkers and Jumpers	March 2009	June 2009
Lead Content in Children's Products at 300 PPM	May 2009	August 2009
All other children's product	June 2009	September 2009

- 90 Day window for accreditation of third party lab
- CPSC defined accreditation process  
(CPSIA Sec. 102)

# Certification of Consumer Products

Example: Remote Controlled Rubber Ducky

General Conformity Certificate		Third Party Certification
November 12, 2008	<p><b><u>Currently Applicable:</u></b></p> <ul style="list-style-type: none"><li>16CFR 1303, Lead-in Paint</li><li>16CFR 1501, Small Parts</li><li>16CFR 1510, Rattles</li><li>16 CFR 1500, 48 &amp; 49, Sharp points or edges</li></ul>	<p><i>December 22, 2008</i></p> <p><i>April 4, 2009</i></p> <p><i>October 2, 2009</i></p>
February 10, 2009	<p><b><u>Future:</u></b></p> <ul style="list-style-type: none"><li>Lead Content</li><li>ASTM F963</li><li>Phthalates</li></ul>	<p><i>August 29, 2009</i></p>

# Certification of Consumer Products

## WHO

- The importer for product being “imported for consumption or warehousing” or “distributed in commerce”
- The Manufacturer is responsible for COC’s on domestic product
- The importer can certify based on tests conducted by the foreign manufacturer,
  - A copy of the test records is in English and kept in the US
  - The importer is a resident of the US or has a resident agent
  - Test records to be maintained for a period of three years from the date of certification
  - For children’s products certification is based on Third Party lab testing

# Content of Certification

- Certification Content
  - In English language
  - Listing of each applicable regulation, standard, ban, etc.
  - Identification and contact information of manufacturer or private labeler and third party lab
  - Date and place of manufacturing and testing
  - Product ID information
  - Contact information for person maintaining
  
- Certificate must “accompany” each product or shipment of products covered by the same certificate
  - Certificate furnished down the supply chain “no requirement to provide to ultimate consumer”
  - Must be furnished upon request to the CPSC
  - Can be in electronic format
  - Shipment may be “refused admission” if not accompanied by a certificate or if accompanied by a false certificate

# CERTIFICATE OF CONFORMITY

PRODUCT DESCRIPTION (one certificate per product):

ITEM / STYLE / UPC NUMBER:

BASED UPON A TEST OR UPON A REASONABLE TEST PROGRAM, THIS PRODUCT COMPLIES WITH ALL RULES, BANS, STANDARDS, OR REGULATIONS APPLICABLE TO THE PRODUCT UNDER THE CPSIA OR ANY OTHER ACT ENFORCEABLE BY THE CPSC INCLUDING (List all rules, bans, standards and applicable to the product):

CERTIFICATE DATE:

CERTIFIED BY:

MANUFACTURER NAME:

ADDRESS:

CITY:

STATE / PROVINCE:

POSTAL CODE:

COUNTRY:

IMPORTER NAME:

ADDRESS:

CITY:

STATE / PROVINCE:

POSTAL CODE:

COUNTRY:

DATE OF MANUFACTURE:

PLACE OF MANUFACTURE (Name, City, Province):

TEST DATE:

THIRD PARTY TEST LABORATORY:

ADDRESS:

CITY, STATE / PROVINCE

COUNTRY

DISNEY PRR NUMBER

RECORDS STORED BY:

NAME:

ADDRESS:

CITY, STATE ZIP:

PHONE NUMBER:

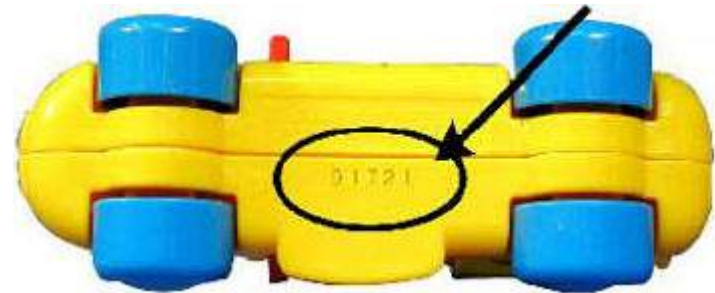
# Section 103

## Tracking Labels for Children Products

# Tracking Labels for Children's Products

- Establish traceability in the event of recalls
- Permanent marking on product and packaging, legible and indelible
  - Manufacturer or private labeler name
  - Location of production
  - Date of production
  - Other information (batch, run numbers, sources)

Effective 1 year after enactment  
(August 14, 2009)



# Section 104

## Standards and Consumer Registration of Durable Nursery Products

# New Requirements for Durable Infant or Toddler Products

- CPSC to promulgate mandatory safety standards for durable infant or toddler products (0-5 yrs old) including cribs, toddler beds, high-chairs, bath seats, etc.
- Must permanently place the manufacturer name and contact information, model name and number, and date of manufacture on each product
- Product registration by providing consumer with postage-paid consumer registration form for each product
- Must maintain record of the registered consumers
- Applies to infant products provided to hotel guests.

Effective less than 1 year after  
Enactment (August 14, 2009)

# Section 105

## Labeling Requirements for Advertising Toys and Games

# Labeling Requirement for Advertising Toys & Games

- **Cautionary labeling** requirement for Internet, Catalogue, and other advertising
- Any required cautionary statement under FHSA must be present
- Internet advertisements must be compliant by December 12, 2008
- Catalog and printed advertisements must be compliant by February 10, 2009, regardless of date or printing



(CPSIA Sec. 105)

# Section 106

## Mandatory Toy Safety Standards

# Changes that Impact Children's Product Industries

- Voluntary standards become mandatory:
  - Toys:
    - ASTM F963-07 Toy Standard becomes mandatory.
  - Juvenile Products:
    - CPSC must issue standards for cribs, toddler beds, high-chairs, booster seats, bath seats, gates, play yards, stationary activity centers, strollers, walkers, infant carriers, swings, bassinets, cradles that are at least as stringent as ASTM and other voluntary standards

# Enforcement and Penalties

# The Cost of Noncompliance

- Fines increased from \$8,000 to \$100,000 **per violation**
- Each unit of a product may be a **separate** violation
- Maximum fines increased from \$1.85 to \$15 million
- Amount of fine may consider:
  - The nature of defect, circumstances, extent and gravity of the violation
  - Impact of penalty on small businesses
  - “Other factors as appropriate . . .”
- Don't forget the costs of a recall on top of this

# Prison for Noncompliance

- Up to 5 years in prison for “willful” violations after company receives notice of noncompliance
- Officers and directors may be imprisoned even if they had no personal knowledge of the notice of noncompliance

# Recalls Under the Act

- The Act enhances the CPSC's authority to issue product recalls and to enforce such recalls.
  - The Commission has the power to order manufacturers, distributors, and retailers to cease distributing a product it believes violates a product safety rule.
  - The Commission has the power to notify all participants in the supply chain to cease its distribution
- The Act also allows the CPSC to promulgate new requirements for recall notices
- CPSC is required to develop guidelines for class of information to be included in recalls

# The State AGs Power

- The Act provides that state attorneys general may bring civil actions against companies for violations (Section 218)
  - May be brought in any Federal district court where the manufacturer transacts business on behalf of state's residents
  - The State must notify CPSC 30 days before filing suit
  - Action may not be brought where there is a pending civil or criminal action filed by the United States
  - Broad and largely unchecked powers

# Preparing for the Unknown and the Unknowable

- Regularly review the CPSIA alerts available at the webpage CPSC has set up dealing with new developments.  
<http://www.cpsc.gov/ABOUT/Cpsia/cpsia.html>
- Attend the CPSC's monthly public and web based conferences which offer guidance and explain new developments.
- Sign up for CPSC email and web feed which exclusively deal with CPSIA issues.
- Consider presenting comments, questions and concerns through CPSC's email system individually and through trade organizations that share similar concerns.
- Be aware of the CPSC's own deadlines for issuance of rules, and the CPSC's deadlines for the submission of comments and information.