CPSC Compliance Guide Webinar: March 25, 2010



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Which Requirements Apply?

- Do you make a "children's product" ?
 What CPSC mandatory standards apply?
 Is your product subject to any voluntary standards?
- Does the product design incorporate the latest information on safety?

What Is a "Children's Product"?

Congress defined the term "children's product" as a *consumer product* that is designed or intended *primarily* for children *12 years* of age and younger

Interpreting "Children's Product"

Factors CPSC *must* consider:

(1) A statement or marking by the *manufacturer*, but only *if reasonable*

(2) whether the product is represented as appropriate for children under 13 in its *packaging, advertising*, etc.
(3) whether the product is "*commonly recognized*" as intended for children under 13

(4) CPSC's Age Determination Guidelines

Staff Guidance

- The CPSC staff has developed guidance to help identify "children's products"
- The staff briefed the Commission on the proposed guidance yesterday (March 24). You can watch the presentation on our web site.
- The Commission may issue the proposal for comment as soon as next week.

What Requirements Apply to Children's Products?

For children's products, there are three CPSC requirements that *generally* apply:
 CPSIA section 101 *lead content* limits
 CPSIA section 102 *certification* must be based on testing by recognized *third party test labs* CPSIA section 103 *tracking label* requirements apply to product and packaging

Lead Content Limits CPSIA section 101

- 300 parts per million (ppm) limit applies to all accessible components of children's products, effective 8/14/2009
- CPSC issued guidance on determining whether a part is accessible in August 2009
- The Commission has approved higher limits for certain electronic parts
- To date, the Commission has not granted any other exclusions from the lead limits

Lead "Determinations"

- The determinations identify materials whose lead content will not exceed 100 ppm
- Apply primarily to *natural* materials, such as dyed and undyed textiles (cotton, wool), wood (and paper), precious and semiprecious stones
- Do not include metal or plastic fasteners such as buttons, screws, grommets or zippers used in apparel or elsewhere
- Final rule issued August 2009 [link]; explanatory Statement of Policy issued October 2009 [link]

Certification CPSIA section 102

- Most consumer products that are subject to mandatory standards or bans must be *certified* as in compliance with each applicable requirement
 - Products made in the USA: *manufacturer* must certify
 - Products made elsewhere: *importer* must certify

Children's products must be certified based on testing by a *recognized third-party* test lab
 This requirement is being phased in (more later)

Certification to Lead Limits

Most children's products do not have to be certified to the lead content limits yet; they will have to be certified if they are *manufactured after 2/10/2011*

EXCEPTION: items of *children's metal jewelry* must be certified to the 300 ppm lead content limit if they are manufactured after 8/14/2009

Finding a "Recognized" Lab

- To issue a valid certificate, you must be sure that testing is performed by a *recognized* third party test lab; not all accredited labs are recognized
- All recognized labs are *listed on CPSC's website* with their *approved scope*; a lab may be approved by CPSC for one standard but not another
- You can also search for recognized labs nearest your location

Tracking Labels CPSIA section 103

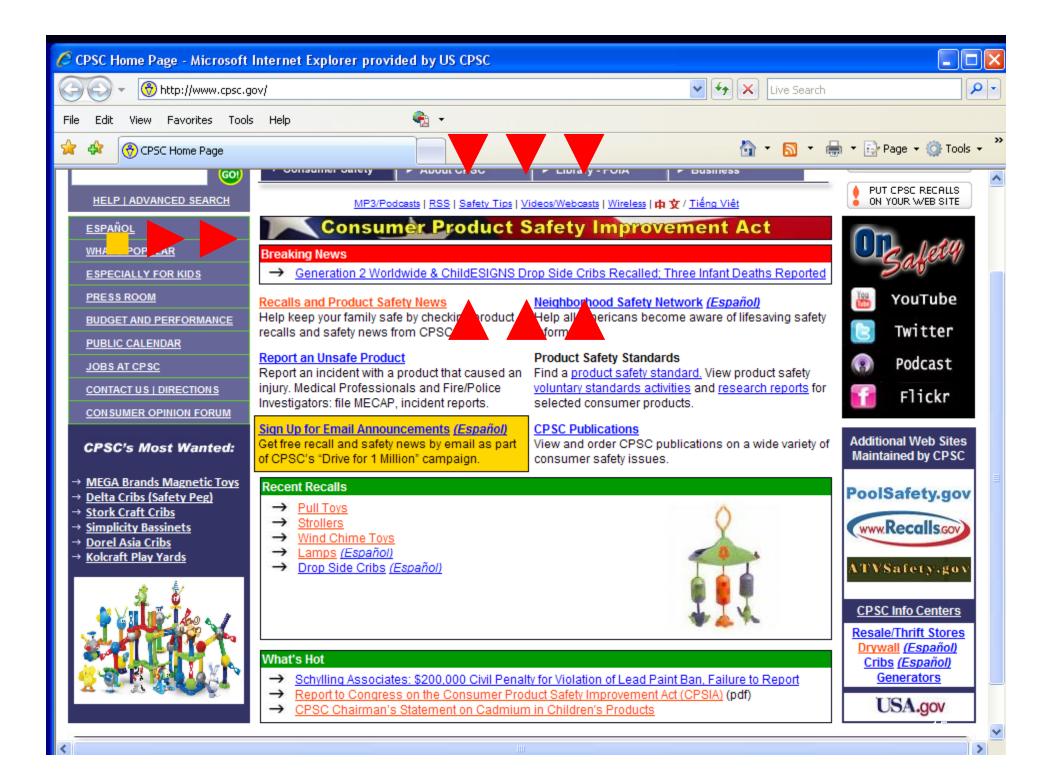
- Children's products manufactured on or after 8/14/2009 must have permanent distinguishing marks on the *product and packaging* "to the extent practicable"
- Manufacturers and importers are responsible
- Marks must allow consumers to *ascertain*:
 - The manufacturer or private labeler
 - The date and place of production
 - Cohort information

Tracking Label Guidance

- Statement of Policy issued July 2009 [link]
- Interprets basic requirements such as when product or packaging should be marked, how permanent marks should be, how specific dates and places of manufacture should be
- Does not require all information on one label
- No size or font requirements
- Does not require creation of batch or lot system, but you need some method of tracking parts

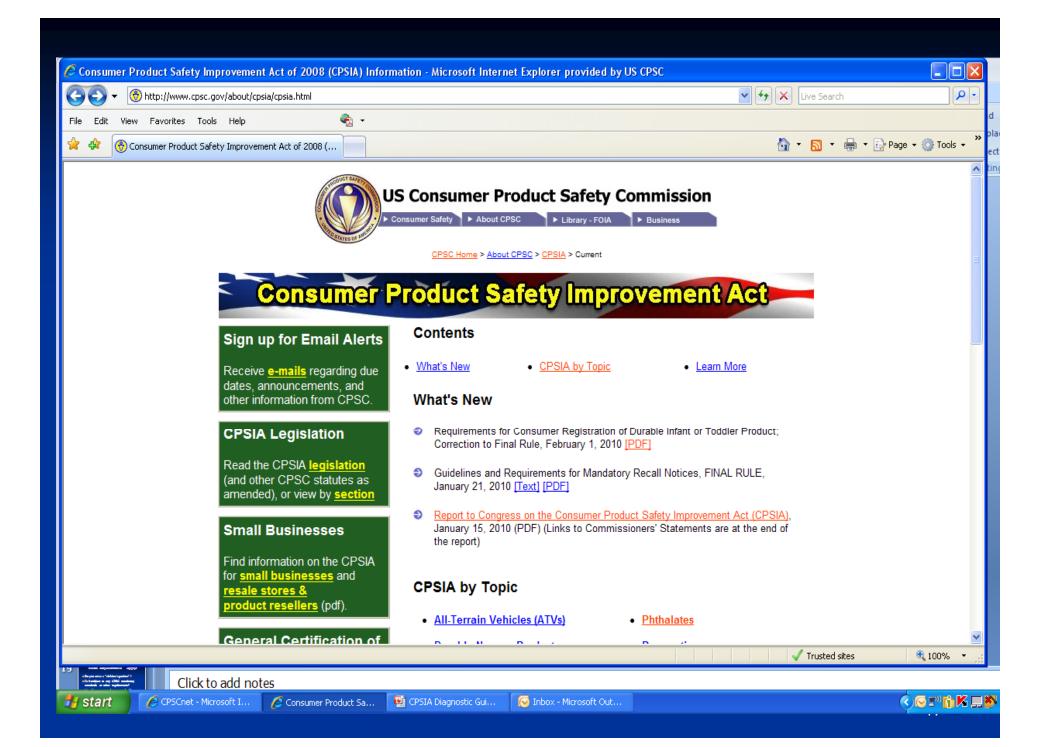
How to Find CPSIA Information

- Step 1: get to CPSC's home page: <u>www.CPSC.gov</u>
- Step 2: find the "CPSIA flag banner"—look for "Consumer Product Safety Improvement Act" with a star and USA flag background in the upper middle of the home page (marked with red arrows on the next slide but the arrows do not appear on the actual web site)



The "about CPSIA" page

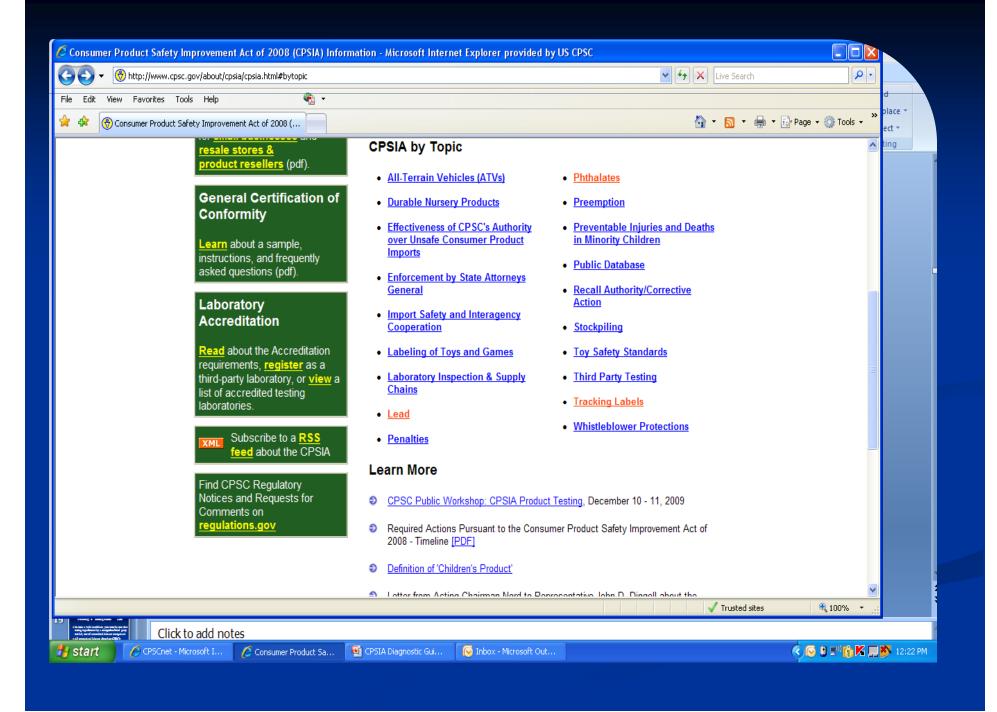
Step 3: click on the CPSIA Banner—it will open up a new page "about CPSIA" (see next slide)



Finding CPSIA Information

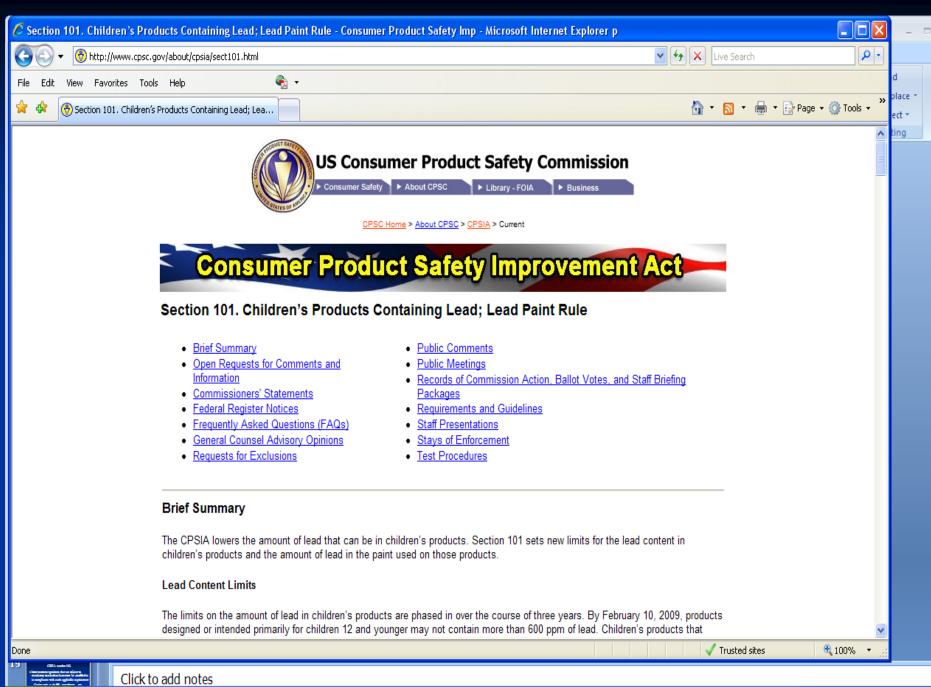
 Step 4: on the new page, locate the CPSIA Banner and right below it, find
 <u>CPSIA by Topic</u>

Step 5: click on "CPSIA by Topic": this will bring you to an alphabetical list of topics (see next slide)



Finding CPSIA Information

Step 6: click on "Lead" – this will open a new page with all of the available information on CPSIA lead content and lead paint limits (see next slide)



Checking CPSC Website for Labs

- From the home page, click on the CPSC banner to get to the "about CPSIA" page (slide 16 here)
- Notice the seven green boxes along the left side of the page
- Find the fifth green box from the top, which says "Laboratory Accreditation"
- Click on the yellow word "view"—this will open a new page (see next slide)

List of Accredited Testing Laboratories - Microsoft Internet Explorer provided by US CPSC						
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List of Accredited Testing Laboratories						
Section 14(a)(3)(E) of the Consumer Product Safety Act, as amended, requires the Commission to "maintain on its Internet website an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules." Third party testing is required to support a certification of compliance to the rules shown below for children's products that are manufactured after the effective dates listed with each rule. The laboratories in this list have been accepted as accredited to test products to one or more of these children's product safety rules, as identified in the accreditation scope for each						
laboratories.						
Bicycle Helmets, 16 CFR Part 1203 (effective date 02/10/2010)						
Lead Paint, 16 CFR Part 1303 (effective date 12/21/2008)						
 Dive Sticks and Other Similar Articles, 16 CFR Part 	500.86(a)(7) and (8) (effective date 02/10/2010)					
 Full-Size Cribs, 16 CFR Part 1508 (effective date 01/2 	20/2009)					
Non Full-Size Cribs, 16 CFR Part 1509 (effective date 01/20/2009)						
Rattles, 16 CFR Part 1510 (effective date 02/10/2010)						
Pacifiers, 16 CFR Part 1511 (effective date 01/20/2009)						
Bicycles, 16 CFR Part 1512 (effective date 05/17/2010)						
Bunk Beds , 16 CFR Part 1513 (effective date 02/10/2010)						
Small Parts Rule, 16 CFR Part 1501 (effective date 02/15/2009)						
Lead Content in Children's Metal Jewelry, Test Method CPSC-CH-E1001-08 or 2005 CPSC Laboratory SOP (effective date 03/23/2009)						
Lead Content in Children's Metal Products, Test Method CPSC-CH-E1001-08 (effective date 02/10/2011)						
Lead Content in Children's Non-Metal Products, Test Method CPSC-CH-E1002-08 (effective date 02/10/2011)						
Accreditation requirements and effective dates for third party testing for additional children's product safety rules will be added in the future. The list of laboratories below will be updated on a regular basis.						
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Finding Recognized Test Labs

- By scrolling through the list, you can find all the labs that have been recognized for various types of tests.
- Click on a lab name and you can learn more details about its location, contact info and what tests it is recognized to do ["its *scope*"]
- On the lower half of the page, you can also search for recognized labs that are nearest you

Which Requirements Apply?

Do you make a "children's product" ?
 What CPSC mandatory standards apply to your product?

- Is your product subject to any voluntary standards?
- Does the product design incorporate the latest information on safety?

What Mandatory Standards Apply?

- Is your product a children's article or furniture bearing *paint or similar surface coating*?
- Is it intended for babies or children under 36 months of age?
- Is it a "*child care article*' for children under 4?
- Is it a *durable nursery product* for children under 5?
- Is your product a toy?
- Is it clothing or children's sleepwear?

Limit for Lead in Paint CPSIA section 101(f)

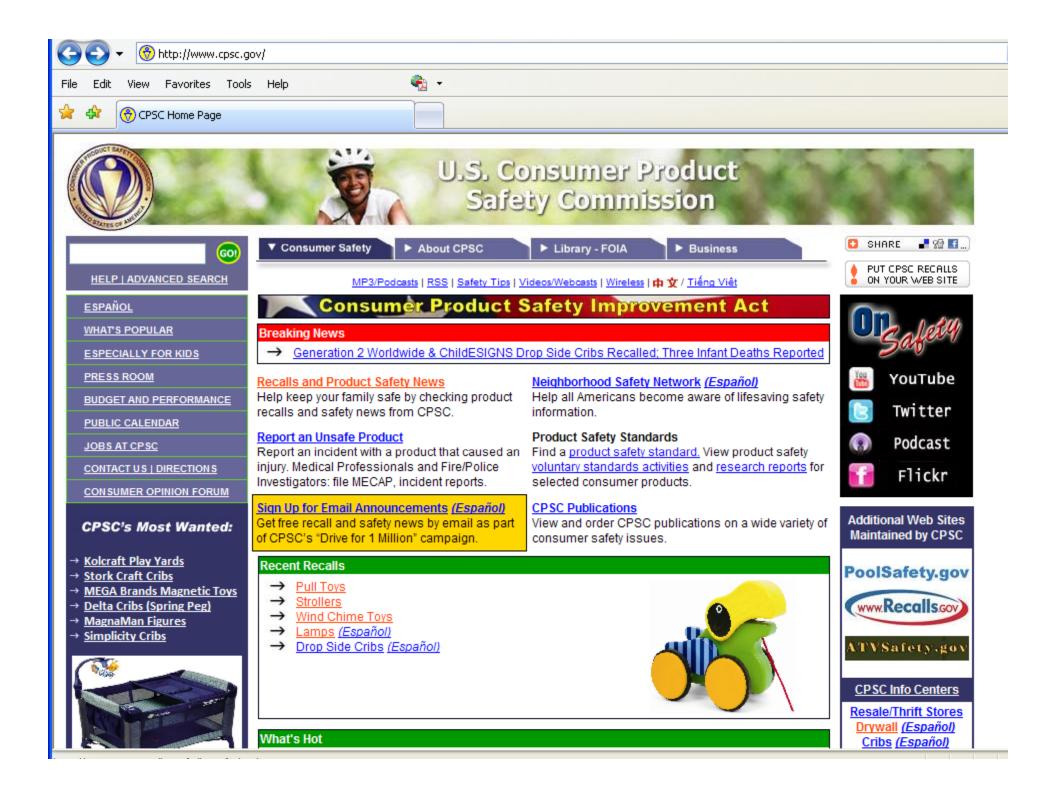
- 90 ppm limit took effect on 8/14/09
- Applies to the same items as previously under 16 C.F.R. part 1303, namely (1) paint sold to consumers as such; and (2) toys, other *articles intended for children* bearing paint or other surface coating; and (3) *household furniture* bearing paint or other surface coating
- Children's products *manufactured after* 8/14/09 must be *certified* to the 90 ppm limit if they bear paint or a similar surface coating

The "Small Parts" Ban

- Items for children under 36 months of age are banned if they have small parts "as received" or after "use and abuse" testing
 - Small parts are those fitting in the small part cylinder
 - The regulations list many items for children under 36 months that are covered by the ban
 - Exceptions include balloons, books, clay, crayons, children's clothing and accessories
- Certification is required for covered products if they are manufactured after 2/15/2009

Learning more about the "small parts" ban

- Check out CPSC's *Regulatory Summary* for small parts. Here's how
- I. Open CPSC's home page: <u>www.CPSC.gov</u>
- 2. Click on the "Business" tab at the top right of the website, between the picture banner at the top and the CPSIA flag banner
- On the business page, under Regulations, Law and Information, find "Industry Guidance"
- 4. Scroll down to "Regulatory Summaries"



C Product Recall and Corrective Action Prog	grams - Microsoft Internet Explorer	provided by US CPSC
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		US Consumer Product Safety Consumer Safety About CPSC Library - FOIA
		<u>CPSC Home</u> > <u>Business</u> > Current
		Industry Guidance
 Handbooks <u>Recall Handbook</u> A Guide for Manufacturers, Importers, D (Revised May 1999) <u>Regulated Products Handbook</u> (pdf) A guide for manufacturers, importers, displayed by the second se	Distributors and Retailers on Reporting	Regulated Products and Recalls, Regulatory Summaries in Plain Language, Confe g Under Sections 15 and 37 of the Consumer Product Safety Act and Section 102 es relating to the enforcement of standards and regulations issued under Acts adm
Recall Information		
	d pursuant to Section 15(b) of the Cons	nsumer Product Safety Act for firms that initiate acceptable corrective action within
 <u>CPSC Fast Track Product Recall Progr</u> An alternative procedure for reports filed 		nsumer Product Safety Act for firms that initiate acceptable corrective action within
Innovations in American Government Av	ward: Fast-Track Recall Program	

The CPSC Fast-Track Consumer Product Recall Program was named a 1998 winner of the prestigious Innovations in American Government award.

Cribs, Pacifiers and Rattles

Some products for infants have their own mandatory standards with extra requirements
These products must be *certified* as follows:
Cribs manufactured after 1/20/2009
Pacifiers manufactured after 1/20/2009
Rattles manufactured after 2/10/2010

Child Care Articles

- Term includes items designed or intended for children age 3 and younger to facilitate sleep or feeding or to help such children with sucking or teething
- Staff is preparing guidance for interpreting the term "child care article"
- Child care articles are subject to limits on *six different phthalates*
- Certification not yet required; will be required for products manufactured more than 90 days after publication of the rules for recognizing labs for phthalate testing

Phthalates CPSIA section 108

- Revised test method focuses on concentration in each *plasticized component* rather than the entire product
- Limit is 1000 parts per million (ppm) for six specific phthalates
- Unlike the lead provision, phthalate section lacks an exception for inaccessible components
- Commission enforcement focus remains on items of greatest risk: squeezable bath toys

Durable Nursery Products

- Twelve classes identified by statute and six more recently identified by staff; others likely
- CPSC must promulgate mandatory standards for all of these (two every six months)
 - First two will be promulgated soon: baby walkers and bath seats
 - Two more will be proposed shortly: toddler beds and bassinets
 - Revised crib standard will also be issued this year

Product Registration Cards CPSIA section 104(d)

Final rule published December 29, 2009 is effective June 28, 2010 for the twelve categories of durable nursery products named in CPSIA, December 29, 2010 for the six additional categories of products staff recently identified For products made in the USA: the *manufacturer* is responsible for compliance • For products made elsewhere: the *importer* is responsible for compliance

Mandatory Toy Standards CPSIA section 106

- Most provisions of ASTM F-963-07 became mandatory for toys made after February 10, 2009
- Most provisions of ASTM F-963-08 became mandatory for toys *manufactured after* 8/17/09 (except deletion of the toy box provision)
- CPSC consulting on upgrade of six specific provisions; deadline for upgrade is August 2010
- Certification is not required yet; it will be required for toys manufactured more than 90 days after lab recognition requirements are published

Toys and Phthalates

- Children's toys are also subject to a 1000 ppm limit on three banned phthalates
- Staff is preparing guidance on interpreting the term "children's toy"
- Toys that can be mouthed are subject to 1000 ppm limit on three additional phthalates on an interim basis
- Certification is not yet required—will depend on lab recognition rules

Labeling for Toys and Games

- Toys and games that are intended for children ages three to six must have a choking hazard warning on their packaging if they contain small parts
- Similar cautionary labeling is required for balloons, small balls and marbles, as well as toys that contain these, if they are intended for children ages 3 to 8

Internet and Catalog Advertising

- After December 2008 an internet advertisement for toys and games that require cautionary labeling, if it provides a *direct means of purchase*, must contain a "choking hazard" warning
- Catalogs displaying these products must also have warnings if printed after February 2009 or if distributed after August 2009 (regardless of printing date)

Apparel

- Most wearing apparel for children and adults is subject to CPSC flammability standards
- Class 3 textiles, which exhibit rapid and intense burning, cannot be used in clothing
- Certification is not yet required—it is stayed for both children's apparel and adult apparel

Fabrics Exempt from Testing

- Years of flammability testing has shown that some fabrics consistently pass as Class 1 textiles:
 - (1) plain surface fabrics, regardless of fiber content, weighing 2.6 ounces per square yard or more; and
 - (2) all fabrics (both plain surface and raised-fiber surface) regardless of weight, made entirely from any of the following fibers or entirely from a combination of these fibers: acrylic, modacrylic, nylon, olefin, polyester, and wool.

Children's Sleepwear

Children's sleepwear is subject to *stricter* flammability requirements than other wearing apparel unless the sleepwear is *tight fitting*Certification is not yet required; it will be required for products manufactured more than 90 days after the lab recognition rules are published

Which Requirements Apply?

Do you make a "children's product" ?
What CPSC mandatory standards apply?
Is your product subject to any voluntary standards?

Does the product design incorporate the latest information on safety?

Voluntary Standards

- Voluntary standards exist for many different products
- Meeting voluntary standards can help keep you out of trouble; not meeting voluntary standards can subject you to liability for personal injuries
- Failure to meet voluntary standards can be evidence of a defect that would give rise to a CPSC request for recall

Finding Voluntary Standards

1. Open CPSC's home page: <u>www.CPSC.gov</u>
2. Below the CPSIA flag banner, find the topic "Product Safety Standards"

3. Click on the link for "product safety standards"

Which Requirements Apply?

Do you make a "children's product"?
What CPSC mandatory standards apply?
Is it subject to any voluntary standards?
Does the product's design incorporate the latest information on safety?

Questions?

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Certification: Component Testing

- In December 2009, Commission issued Interim Enforcement Policy allowing two types of component testing
- Type 1: get each component tested yourself by a recognized third party test lab
- Type 2: get certificates for each component based on testing by a recognized third party lab

Example: Testing of Components





Content of Certificates

All certificates of conformity must:

- identify the manufacturer or importer issuing the certificate and any third party on whose testing the certificate depends, by name, address and phone number
 - Note: *not* required to name a foreign manufacturer
- specify each applicable standard, ban, etc.
- spell out the date and place where the product was manufactured and date and place of testing
- show contact information for person maintaining test records

Availability of Certificates

- Certificates must "*accompany*" each product or shipment of products covered by the same certificate
- A copy of the certificate must be "*furnished* to each distributor or retailer of the product" (no requirement to provide to ultimate consumer)
- A copy of the certificate must be made available to the Commission and Customs *upon request*

Electronic Certificates

The Commission by rule has confirmed that certificates in electronic form are acceptable

Key requirements:

- Certificate must be created no later than the time of shipment to US or first distribution within US
- The certificate must be *reasonably accessible* from information on the product or accompanying the shipment; can be transmitted with Customs docs

Certification vs. Compliance

- Certification *never exempts* any product from the requirement to comply with an applicable rule, standard, ban or regulation.
- Manufacturers (including importers), distributors and retailers must report to the CPSC immediately if they learn that one of their products fails to comply with an applicable rule
 A person holding a certificate of compliance may have a defense in a non-compliance case

Watch for More Certification Guidance

- More lab accreditation rules
- Component testing rule
- Program for voluntary certification marks on consumer products
- Testing Rule
 - Reasonable testing program
 - Periodic testing requirements
 - Random testing requirements
 - Verification of compliance
 - Safeguards against undue influence over labs

January 2010 Report to Congress

- Commission reached consensus on several issues:
 - Need for more flexibility in deciding when exemptions from lead limits are appropriate
 - Desirable to make future reductions in lead limits prospective, not retroactive
 - Need for greater flexibility on books
 - Need for flexibility on certification requirements for low volume manufacturers