

## Children's Products and the Consumer Product Safety Improvement Act — Toy Safety

Insight | A Synopsis of the Rules and Regulations Governing Toy Safety

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Children's products, including toys, are regulated by the Consumer Product Safety Commission (CPSC) through the Consumer Product Safety Improvement Act of 2008 (CPSIA). Under CPSIA, children's toys are those products intended for use by children up to twelve (12) years of age. When determining if a product is intended for this age group, the following factors are considered:

1. A statement by the manufacturer about the intended use of the product, including a label on the product, if such statement is reasonable;
2. Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by children 12 years of age or younger;
3. Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger
4. The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines. <sup>1</sup>

### CPSIA Regulations of Toys:

Certain sections of CPSIA focus on children's toys, namely **Sections 101, 102, 103, 105, 106, and 108**. Each section informs manufacturers, distributors and importers of toys of their specific duties under CPSIA, and discusses the regulations and testing requirements applicable to children's toys. Failure to follow these rules may result in large fines and penalties, up to \$100,000 for a single violation and up to \$15 million for a related series of violations. The following is a brief discussion of each of the CPSIA sections applicable to children's toys:

**A. Section 101 (15 U.S.C.A. §1278a)** addresses the lead paint rule for children's products, which limits the amount of lead each product may contain to 100 parts per million (ppm). This

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rule applies only to products manufactured after August 14, 2011. Products that have been manufactured before this date may contain lead up to 300 ppm. A manufacturer or importer of children's products may petition for an exception of this rule if: a) it is not technologically feasible to reduce the lead content in the product to the required limit; b) the product is not likely to be ingested; and c) an exception will have no measurable effect on public health.

Off road vehicles, such as all-terrain vehicles and snowmobiles, need not comply with the lead paint rule. Used children's products are also exempt from the lead paint rule, except for metal jewelry. However, if the seller of the used children's product knows that the product violates the lead paint rule, that product will be subject to the rules of this section. The following are additional children's products that are not subject to the lead limits in Section 101:

1. Dyed or undyed natural or synthetic fibers (cotton, linen, wool, rayon, spandex, nylon);
2. Plant or animal-derived materials (e.g., feathers, shells, fur);
3. Surgical and certain stainless steels;
4. Precious metals;
5. Paper and similar cellulose based materials
6. Certain printing inks that use the four-color CMYK process;
7. Certain gemstones, minerals, and pearls

**B. Section 102 (15 U.S.C.A. §2063)** requires mandatory third-party testing for many types of children's products to ensure that the product complies with the "rules, bans, standards, or regulations applicable to the product" under CPSIA. <sup>2</sup> Manufacturers must submit samples of their product to a [CPSC recognized third-party laboratory](#) for testing. <sup>3</sup> After ensuring compliance with CPSIA through third-party testing, manufacturers must then issue a Children's Product Certificate that certifies that the product complies with CPSIA. Samples submitted to the third-party tester must be representative of the product and continually tested to confirm compliance.

The testing requirements typically do not apply to ordinary books, but books that have "inherent play value" must be tested. Inherent play value books are those designed for children up to three years of age, or non-paper books. Bicycles' metal components generally need not comply with testing requirements of Section 102.

**C. Section 103 (15 U.S.C.A. §2063)** mandates tracking labels for children's products. Unless impracticable, all children's products must have permanent distinguishing marks on the product itself and the packaging. The labels are required to include a) the location of production; b) date of production; c) citation to each CPSIA requirement to which the product is certified; d) identification of the importer/manufacturer of the product; e) identification of the CPSC-accepted laboratory that tested the product; and f) ascertainable cohort information (i.e. batch or lot number). The purpose of the label is to identify the source of each product in a visible and legible manner.

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A children's product does not need to be marked if a) the product is too small; b) the product is intended to be stored in a box, such as board games; c) the product is sold through a bulk vending machine; d) the permanent mark would weaken or damage the product; e) the surface of the product would be impossible to permanently mark; or f) the mark would ruin the aesthetics of the product. The CPSC may further exclude a children's product from the tracking label requirements if it is not practical.

**D. Section 105 (15 U.S.C.A. §1278)** amends Section 24(a) of the Federal Hazardous Substances Act (FHSA), and requires cautionary labeling for toys or games that contain small parts and are designed for use by children between three (3) to six (6) years of age. Under the amendment, if the children's product must contain a cautionary statement on the product, the advertising of the product must also contain that cautionary statement. The cautionary statement must be consistent with [16 CFR Part 1500](#), must be conspicuous and legible, and must be presented in the primary language used in the advertisement. Section 105 typically applies to cautionary statements regarding choking hazards.

**E. Section 106 (15 U.S.C.A. §2056b)** adopts ASTM F963-11 for mandatory toy safety standards that manufacturers and importers must follow. ASTM F963-11 is a very comprehensive standard that addresses numerous potential hazards related to toys. It applies to toys manufactured after June 12, 2012 that are intended or designed for children under fourteen (14) years of age. It covers a wide range of safety requirements, from material quality of toys, to jaw entrapment in toy handles and steering wheels, to limits on soluble amounts of various metals in toy substrates. Safety labeling requirements, test methods, and design guidelines for children's toys are also discussed in ASTM F963-11. Although toys falling within certain sections of the toy safety standard under ASTM F963-11 are exempted from the third-party testing requirement governed by Section 102 of CPSIA, all toys must still be certified as being fully compliant with all applicable sections of [ASTM F963-11](#). For the products that are exempt from third-party testing, manufacturers are still expected to test each product to ensure that the product has been subjected to a reasonable testing program.

The ASTM toy safety standards generally do not apply to toys with inherent hazards, as well as a long list of children's products that includes bicycles, playground equipment, craft items, crayons, sporting goods, and powered models of vehicles.

**F. Section 108 (15 U.S.C.A. § 2057c)** – This section prohibits the sale of certain children's products, including children's toys, containing specified amounts of phthalates. Such products may not contain more than 0.1% of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP). Toys that can be placed in a child's mouth may not contain more than 0.1% of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP). These rules typically do not apply to toy parts that are not accessible by reasonably foreseeable use and abuse of the toy.

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Careful adherence to the applicable rules and requirements of CPSIA and ASTM F963-11 is crucial. The rules and requirements set forth in these standards are quite voluminous, and a careful and thorough reading and understanding of them are important steps to be taken by all manufacturers, distributors and importers of children's toys in the United States.

CPSC continually releases updates, final rules and orders on their website, such as mandatory compliances with other ASTM standards. Staying abreast of these developments can aid businesses in avoiding hefty fines, as well as promoting the safety of all toys and the wellbeing of children who use them. If you have any questions or wish to discuss further details on the standards, rules and regulations set forth in CPSIA and ASTM F963-11, please contact [Michelle Corrigan](#), or your usual Stinson Leonard Street contact.

<sup>1</sup> A hyperlink to the Age Determination Guidelines is included above. The guidelines may also be found on the [CPSC website](#).

<sup>2</sup> 15 U.S.C.A. 2063(a)(1)

<sup>3</sup> A hyperlink is included above for a listing of the CPSC-accepted testing laboratories, as well as a listing of the rules for types of products that must be third-party tested. These listings can also be found [here](#).

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