

Answers to Frequently Asked Questions about the Consumer Product Safety Improvement Act

Events over the last several years have shattered public confidence in the safety of products sold in the United States -- particularly children's products. The year 2007 was dubbed by consumer groups and the media as the "year of the recall," with 473 recalls including children's toys pulled from the market due to the presence of lead paint, cribs that collapse and toys with dangerously strong magnets that seriously damage children's stomach lining when swallowed, and even toys with toxic chemicals that can induce comas if swallowed. The year 2008 fared even worse, with 563 recalls, including nearly 8 million toys.

In August of 2007, Congress passed and President Bush signed the Consumer Product Safety Improvement Act ("CPSIA"), which requires what many consumers already thought was law—that certain children's products must be tested for safety **before** they are sold. This is one of the most significant steps leading to a safer marketplace for our children. This law will also bring products in line with consumers' expectations, that toys and other children's products on store shelves would be safe – and certainly not harmful – to their children.

Unfortunately, now that the implementation of this new law is upon us, there is a lot of unnecessary fear and incorrect information circulating about the CPSIA and its new requirements. This document attempts to clear up much of this confusion and misinformation in the form of answers to frequently asked questions.

1) Why shouldn't the CPSC issue a blanket determination that natural clothing is inherently safe from lead contamination (so with no certification requirement) and then rely on its own spot testing to confirm this going forward? Isn't that just common sense?

The new law already creates a mechanism giving the CPSC the power to deal with this issue, and the CPSC has already started to make just this kind of determination. On December 24, 2008, CPSC began the rulemaking that would exclude from the regulation certain natural, non-dyed materials such as precious gemstones, wood, cotton, silk, wool, hemp, flax and linen as well as certain metal alloys. This means that products made of these natural materials – without dyes or paints – would be excluded from the certification requirement. Spot testing would not even be required. (See <http://www.cpsc.gov/library/foia/foia09/brief/leadlimits.pdf>)

2) Without an exception for small toy companies, will this law result in the big getting bigger and even more of our toys coming from China?

The intent – and goal – of the law is not to encourage more toys to be imported from China. In fact, this law would even the playing field, because for the first time it will require proper safety testing for all of those toys coming from overseas. Domestic toy companies, irrespective of their size, can make and sell safe toys.

The CPSIA is based on a fundamental principal that products must be tested for safety before they are sold. Before the bill was passed, no testing was required and too many products were on store shelves that were harmful to consumers and violated mandatory and voluntary safety

standards. This situation led to terrible results- toys with lead paint, children's metal jewelry made primarily from lead, cribs that break and cause strangulation and suffocation, and magnets that when swallowed in multiples can rip through intestines.

Any exception or exclusion from testing requirements, as included in the CPSIA must be based on the principle that the product will not harm consumers by causing the absorption of lead. The provisions in this law requiring third party testing of children's products subject to mandatory standards are included to protect the public and especially children from unsafe products.

3) What is your response to comments such as: "I make wooden cars in my garage in Maine to supplement my income and I cannot afford the \$4,000 fee per toy that testing labs are charging to assure compliance with the CPSIA."

Let's not forget common sense. If a small toy maker is using products that have been excluded from the testing and certification requirements (such as wood), they do not have to do any testing or certification. If small toy makers are adding any paint, dyes, or chemical treatments to the natural material, safety-tested and certified paints and other materials are expected to be available on the market very soon. This way we will all be comfortable that the toys will be safe. By the way, if the Maine toy maker would like to test his toys, we seriously believe that the claimed \$4,000 testing fee per toy is grossly overstated.

4) How much do these tests really cost anyway? How many toys have to be tested? All of them? Does every component have to be tested separately?

Our research indicates that U.S. testing laboratories typically charge about \$50 to test for lead. As for components, if they can be accessed by a child, the component needs to be tested to make sure it does not have dangerous lead levels.

Not every toy will have to be tested, just a sufficient sample of them.

5) If a store does not test, it cannot certify. If they cannot certify, they could be sued if they break the law, couldn't they?

Stores do not certify safety; manufacturers test and certify. A store should not sell a toy that has not been certified by its manufacturer. As a side note, the sale of children's products that had excessive levels of lead in their surface paint was already prohibited 30 years before this law was passed. The new law just closes the loophole so that no part of a children's product – including the part of the item under the paint – has dangerous levels of lead.

6) Isn't a second hand store a retailer, therefore responsible for certification that anything it sells meets the FHSA? If not, are they subject to lawsuits?

The law requires testing and certification only by manufacturers, not by retailers. The CPSC has affirmed this in a clear statement that second hand stores will not be required to certify or test the safety of children's products or toys. Further, the CPSC has said that they will focus their enforcement efforts on those products with the greatest risk and largest exposure. The CPSC also laid out in its press release the few products that it does consider to be of greatest risk and

largest exposure: recalled children's products, particularly cribs and play yards; children's jewelry and painted wooden or metal toys; flimsily made toys that are easily breakable into small parts; toys that lack the required age warnings; and dolls and stuffed toys that have buttons, eyes, noses or other small parts that are not securely fastened and could present a choking hazard for young children. Not included in this list are clothes. Clothes make up the lion's share of products sold at second hand and thrift stores. Therefore, although the CPSC did not state it as clearly as it should have in order to aid second hand and thrift stores, it has indicated that it does not intend to go after second hand or thrift stores for civil or criminal penalties for selling products like clothing that may violate the new standard. And even before the CPSIA was passed, however, second hand stores already had the responsibility to make sure they do not sell products that prove dangerous, or that violate a federal safety rule or ban.

It has never been Congress's intent or action to put thrift and second hand stores out of business, and while the CPSC's press release could have done a better job of communicating the fact, the agency enforcement will follow this Congressional intent.

For the CPSC press release, go to <http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09086.html>.

7) The CPSC has proposed exceptions for natural products including untreated wool, cotton and unpainted wood. Does untreated mean no colors at all? No silk screen or laminations? No buttons? No zipper pulls? What's the point? When does that rule take effect?

There have been instances where children's clothing has been recalled due to high levels of lead, such as pajamas with lead-laden decals, skirts with lead-laden grommets, and overalls with lead-laden snaps. According to the information provided by the CPSC, the exclusions under consideration apply to "a material that is untreated and unadulterated by the addition of materials or chemicals, including pigments, dyes, coatings, finishes or any other substance, and has not undergone any processing that could result in lead content that exceeds the CPSIA limits." Any further details, explanation, or guidance on this issue can only – and should soon – come from the CPSC.