

Consumers Union * Consumer Federation of America * Union of Concerned Scientists * Kids in Danger * U.S. Public Interest Research Group * Public Citizen * National Research Center for Women & Families

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; toys with dangerously strong magnets that seriously damage a child's stomach lining when swallowed; and even toys with toxic chemicals that can induce comas if swallowed. The year 2008 was even worse, with 563 recalls, including nearly 8 million toys.

In August of 2008 - after many months of discussion, multiple hearings, and input from all stakeholders, including the toy industry - Congress overwhelmingly (89-3 in the Senate, and 424-1 in the House) passed, and President Bush signed, the Consumer Product Safety Improvement Act ("CPSIA"). The CPSIA 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 misinformation circulating about the CPSIA and its requirements. This document attempts to set the record straight.

Lead testing is important to ensure safety

Lead has been found to cause brain damage, learning disabilities, and behavior problems if ingested or inhaled. In large dosages, it can be lethal. Children are particularly susceptible to the effects of lead exposure.

Under the CPSIA, beginning February 10, 2009, children's products cannot be sold if they contain more than 600 parts per million (ppm) total lead. The total lead limit drops to 300 ppm on August 14, 2009. It drops to 100 ppm in 2011 unless the CPSC finds it is not technologically feasible.

Children's products are defined as consumer products designed or intended primarily for children 12 years of age or younger. To comply with the lead ban, manufacturers and importers are required to certify that children's products made after February 10 meet the lead standard. The certification that manufacturers must obtain has to be based on testing of a sample of the product by an independent, third-party, accredited laboratory.

Exclusions from testing requirements are permitted by new law

The new law gives the CPSC the power to exclude certain components or products from the lead testing requirements, and the CPSC has already started to make just this kind of determination. On December 24, 2008, CPSC began a 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. We agree 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>)

Further exclusions from testing should be addressed by the CPSC

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 currently 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." If further details, explanation, or guidance on this issue are needed, they should come from the CPSC and should be provided quickly.

The new law treats all manufacturers equally

The new law treats U.S. companies fairly, and the goal is to place big toy makers as well as small ones on the same safe playing field. Simply put, the intent of the law is to ensure that children's products sold in the U.S., no matter where they are made, are not harmful to children. In fact, this law will help create fairness in the marketplace because for the first time it will help ensure proper safety testing for all of those toys coming from overseas, a large source of past product safety recalls. At the same time, domestic toy companies, irrespective of their size, can and should make and sell safe toys.

To protect public health, exclusions to the new law must be supported by scientific evidence

The CPSIA is based on a core principle that products must be tested for safety before they are sold. Before the law 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 - children were harmed by swallowing toys with lead paint, or ingesting children's jewelry made primarily from lead. No one wants to see this happen, and no toy makers want to sell unsafe products. However, in order to ensure that the public health is protected, exceptions or exclusions from testing requirements must be based upon a showing that the product will not harm children by causing the absorption of lead. The size of the manufacturer alone cannot be the reason for an exemption from the testing standards. Indeed, there have been documented product hazards involving manufacturers who produced less than 50,000 units per year, as evidenced by numerous product recalls. Here are just a few examples:

Toy Zone Recalls Toy Dinosaurs Due to Violation of Lead Paint Standard
<http://www.cpsc.gov/cpscpub/prerel/prhtml09/09068.html>

Children's Jewelry Recalled By Daiso Due to Risk of Lead Exposure
<http://www.cpsc.gov/cpscpub/prerel/prhtml08/08579.html>

Halloween Figurines Recalled by Coyne's & Company for Lead Hazard
<http://www.cpsc.gov/cpscpub/prerel/prhtml09/09028.html>

However, there are ways to ensure that these products are safe without an undue burden on small companies.

Small toy makers need further guidance and information from the CPSC

No one wants to put craft-makers, hobbyists, and small toy makers out of business. Those individuals who are doing the best they can to make safe products should be given guidance by the CPSC to assure them that compliance with the law will not put them out of business. However, first and foremost, children's products must be safe. The goals of the law are clear – but implementation and enforcement are up to the CPSC.

For instance, if a small toy maker is using components that have been excluded from the testing and certification requirements (such as wood), we believe that they would not have to conduct *any* testing or certification of those components. If small toy makers are adding any paint, dyes, or chemical treatments to the natural material, those materials must be safety-tested. We hope the companies that make the paints and other supplies that crafters, hobbyists, and other very small toy makers use will *very soon* include certification with their products that the materials are certified lead-free. This way, hobbyists and crafts makers, as well as parents, will be able to rest easy that safety is being addressed.

We suggest that certification of compliance with CPSIA regulations of components and materials used in the manufacture of handmade toys could be considered as an alternative to testing the final produced product for compliance. The Arts and Creative Materials Institute provides safety certifications for arts and crafts materials that are often used by small toys makers and artisans who rely on this upstream safety check. The CPSC could evaluate this certification program and simply require that small toy manufactures use only certified components and materials.

Costs of Testing

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. Lead-containing components of a children's product that are not accessible to a child through foreseeable use and abuse are exempt from lead test requirements. Not every toy will have to be tested, just a sufficient representative sample.

Manufacturers have the responsibility to test and certify, not retailers

Stores, including resellers and consignment shops, are not responsible for certifying compliance with the new lead standards; *manufacturers* have the responsibility to test and certify. Under the law, a store cannot sell a product that exceeds the lead limit. It is important to note that the sale of children's products that had excessive levels of lead in the surface paint was already prohibited 30 years before this law was passed. The new law merely 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.

Second-Hand Retailers should not be put out of business

The law requires testing and certification *only by manufacturers, not by retailers*. The CPSC has affirmed this in a January 8 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 January 8 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.

It should be noted that the CPSC did not include clothes in its list of high risk items. 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.

Even before the CPSIA was passed, second-hand stores already had the responsibility to make sure that they do not sell products that are dangerous, or that violate a federal safety rule or ban. Further, the CPSIA prohibits the sale by any retailer of a recalled product. Many responsible second-hand retailers already have systems in place to prevent the selling of such recalled products.

It was not Congress's intent to put thrift and second-hand stores out of business, and while the CPSC's January 8th press release could have done a better job of communicating this fact, the agency enforcement likely will follow this Congressional intent. For the CPSC press release, go to <http://www.cpsc.gov/cpsc/pub/prere1/prhtml09/09086.html>.