



## CONSUMER PRODUCT SAFETY IMPROVEMENT ACT Q&A

Q. What is this new consumer product safety law?

A. The President signed the Consumer Product Safety Improvement Act (CPSIA) into law on August 14, 2008 as Public Law 110-314.

Q. Why should I worry about it?

A. The CPSIA changed many of the basic federal consumer product safety laws and created new responsibilities for those who make, distribute and sell consumer products. While the provisions that created new standards for children's products got most of the attention, there are some provisions that apply to any product that is subject to a federal consumer product safety ban, rule, regulation or standard. These range from new penalties for violations of federal consumer product safety laws to new recall responsibilities.

A major new responsibility requires the issuance of "General Conformity Certificates" by a manufacturer or importer for *any* product which is subject to a federal consumer product safety rule ban, standard or regulation under any Act enforced by the Consumer Product Safety Commission (CPSC), that the product meets or is conformance with the federal consumer product safety ban, standard or regulation.

However, the new requirements regarding children's products have gained the most attention in the promotional products industry.

Q. What's a children's product?

A. A consumer product designed or intended primarily for children 12 years of age or younger. The law provides these factors shall be considered in the determination:

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

Q. Can you be more specific about when promotional products are considered children's products?

A. No, we wish we could. This is going to be one of the difficult challenges for our industry. We are participating in every activity we can with the CPSC and have submitted questions and requests for guidance from the CPSC on this point.

Q. What are some of the new requirements for children's products?

A. Some of the major ones include standards for the lead content in children's products and the phthalate content in children's products (note: the definition of children's products for phthalate content is slightly different, see phthalate FAQs); a hazards safety standard for toys has been made mandatory; the existing standard for the amount of lead in paint/surface coatings for children's product is being lowered. In addition, third-party testing and certification will be required to demonstrate compliance with those standards for children's products.

There are several other new standards and requirements for children's products.

Q. So many new rules. Is there a simple way to see what I have to do when?

A. The CPSC has published a [timeline](#), but even it is not all-inclusive.

## **GENERAL CONFORMITY CERTIFICATES AND THIRD-PARTY CERTIFICATION**

Q. What is a General Conformity Certificate?

A. The General Conformity Certificate (GCC) is a self certification required by the Consumer Product Safety Improvement Act (CPSIA). The new law requires a manufacturer or importer of product, which is subject to a federal consumer product safety rule ban, standard or regulation under any Act enforced by the CPSC, to certify that the product meets or is conformance with the federal consumer product safety ban, standard or regulation. A GCC must be issued as of November 12, 2008 for any existing rule, ban, standard or regulation and as of the effective date of any new rule, ban, standard or regulation. The GCC for a particular product might have to cover multiple rules, bans, standards or regulations.

Q. What does a General Conformity Certificate look like?

A. The CPSC has provided a [sample certificate](#).  
It must include:

1. Product identification
2. Citation to each CPSC product safety regulation for which the product is certified
3. Identification of the importer or domestic manufacturer that is certifying compliance of the product: identification includes name, full mailing address and telephone number

4. Contact information of the individual who maintains records of the test results: name, full mailing address, e-mail address and telephone number

5. Date and location of compliance testing: city, country and/or administrative region included

6. Identification of the third-party laboratory involved in the testing that resulted in certification: name, full mailing address and telephone number.

Q. How do I find out if my promotional products need to have a General Conformity Certificate?

A. Unfortunately, the CPSC is unwilling and unable to provide a list. Said the CPSC in their [Federal Register Notice on Certificates \(FRNC\)](#): “Staff has been deluged with hundreds and hundreds of requests to evaluate specific individual products and specify what bans, standards, regulations, etc., might apply to them. First, the CPSC does not have, or expect to have, sufficient resources to evaluate every one of the products within the scope of the *thousands of types* of products within its jurisdiction in this manner. The CPSC has never preapproved products for compliance with its standards, bans, regulations or rules in this manner in any event.”

The structure of the regulatory system for federal consumer product safety is a combination of regulation by hazards and some regulation by specific product. Given the breadth of promotional products, any attempt to summarize is likely to omit some promotional product and/or hazard. Hazard rules, bans and regulations for which a GCC is currently required include:

- Federal Hazardous Substance Act (FHSA) bans and requirements adopted by the Commission as well as bans defined by statute (banned hazardous substance by definition)
- FHSA labeling rules adopted by the Commission
- Flammable Fabric Act
- Poison Prevention Packaging Act “special packaging” standards
- Refrigerator Safety Act standard for refrigerators

The CPSC has a list of hazards and products that includes links to statutory and regulation citations as well as some of their regulatory summaries. It is the best place to start:

[www.cpsc.gov/businfo/reg.html](http://www.cpsc.gov/businfo/reg.html)

Q. What kind of testing do I have to do to support my GCC?

A. According to CPSC’S [certification summary](#), it must be based on a test of the product or a “reasonable testing program” According to CPSC’s [conformity certificate presentation slide no. 12](#): “Type and frequency of tests are up to the issuer of the certificate; not necessary to use the exact test procedure prescribed by the regulations; may be advantageous to use stricter test; and should be stringent enough to detect variations that would cause a product to fail.”

Q. Does a General Conformity Certificate have to be based on third-party lab tests?

A. According to CPSC's certification summary: "These general conformity certifications do not need to be based on testing done by a third-party laboratory."

Q. If I use a testing laboratory to support my general conformity certificate, does the laboratory have to be CPSC approved?

A. Not for the GCC. However, for third-party testing and certifications, a laboratory must be approved by CPSC. The CPSC has begun to publish lists of approved laboratories for specific third-party testing and certification requirement. The list can be found at: [www.cpsc.gov/cgi-bin/labapplist.aspx](http://www.cpsc.gov/cgi-bin/labapplist.aspx). The list is a good starting point for finding a laboratory for GCC purposes.

Other alternatives include: The American Council of Independent Laboratories (ACIL) has a Listserve service on its website, [www.acil.org](http://www.acil.org). The National Voluntary Laboratory Accreditation Program (NVLAP; <http://ts.nist.gov/standards/accreditation/index.cfm>) in the NIST and the American Association for Laboratory Accreditation (A2LA; [www.a2la.org](http://www.a2la.org)) are the two largest accreditation bodies in the U.S., others are the Assured Calibration and Laboratory Accreditation Select Services (ACLASS; [www.aiclasscorp.com](http://www.aiclasscorp.com)), owned by ANSI and the American Society for Quality National Accreditation Board (ANAB; [www.anab.org](http://www.anab.org)).

Q. I am confused. What's the difference between a General Conformity Certificate and a Third Party Certification?

A. The new law created different requirements. For certain children's products, the new law specified that third-party testing and certification will be required. Separately, it established a requirement that *any* product subject to a federal consumer product safety standard, rule, regulation or ban must have a general conformity certificate. As a result, for some products and/or hazards, there will not be a third-party testing and certification requirement but there is a general conformity certificate requirement.

For other products, there is an overlap between the two requirements regarding the timing. In some cases, a GCC may already be required, for example, lead in paint/surface coatings (often referred to as "Part 1303" for the section of the regulations) or small parts in toys and children's product ("Part 1501"), but the third-party testing and certification has not taken effect. When third-party testing and certification does take effect, it supersedes the GCC requirement.

In some cases, the GCC is not yet required because the standard has not taken effect. When the standard takes effect, the GCC will be required but the third-party testing requirement might not yet have taken effect. During the "gap" a GCC is required. Examples of standards that will become effective before the third-party testing and certification requirement becomes effective are the lead content in children's products standard, the phthalate content in certain children's products standard and the mandatory safety hazard for children's products standard (ASTM F963-07).

For any product for which third-party testing and certification is ultimately required, the third-party testing and certification supersedes the GCC requirement.

Q. Can I use any testing laboratory for third-party testing and certification?

A. No. Only CPSC-approved laboratories can be used to fulfill a third-party testing and certification requirement. The CPSC has begun to publish lists of approved laboratories for specific third-party testing and certification requirements. The list can be found at [www.cpsc.gov/cgi-bin/labapplist.aspx](http://www.cpsc.gov/cgi-bin/labapplist.aspx).

Q. I am still confused. Do I have to provide a General Conformity Certificate for the lead content, safety hazard standard or phthalate content now?

A. No. You must provide GCCs for those specific standards after February 10, 2009, and until the third-party certification requirement for those standards take effect. (See CPSC's [timeline](#))

According to the CPSIA, the CPSC will publish notice of the requirements for accreditation of a third-party testing facility that would test children's metal jewelry by December 12, 2008.

Third-party testing certification will not take effect until 90 days after the CPSC has sent accreditation criteria notice to testing labs—in the case of metal jewelry, this is March 2009.

The accreditation notice to testing labs for lead content in other children's products is expected in May, therefore third-party and certification for lead content in those products would take effect in August 2009.

The accreditation notice for toy safety testing for children's products may be published up to 10 months after the law's enactment, which would be June 2009, making third-party testing certification effective September 2009. This will cover phthalate content too.

However, a GCC still may be required for a promotional product now for a different existing federal consumer product rule, regulation, ban or standard, for example the lead in paint/surface coating standard or the small parts in toy standard.

Q. Can you confuse me any more about the lead content rule?

A. Yes. In the new law, the timeline for establishing third-party testing and certification requirements sets out a separate timeline for lead content of "children's metal jewelry" and for lead content in other children's products. In both cases, the 600 ppm standard takes effect on February 10, 2009 and GCCs will be required. However, the third-party testing certification requirement for children's metal jewelry will take effect some time in March and supersede the GCC requirement. The third-party testing and certification for lead content in other children's products will not take effect until August. So for a period of time children's metal jewelry will have to be third-party tested and certified to the 600 ppm lead content level and other children's products will have to have a GCC for 600 ppm. On August 14, 2009, the lead content standard for all children's products will drop to 300 ppm, the third-party testing and certification requirement for all children's products is expected to be in place and all children's products including jewelry will have to have third-party certification and testing for lead content at the 300 ppm level.

Q. Am I required to provide a general conformity certificate if a product is covered by Proposition 65?

A. The answer is no. Proposition 65 is a state law. However, some products covered by Proposition 65 are also covered by a federal consumer product safety rule, ban, regulation or standard.

Q. I have products that are being imported that are en route to the U.S.; do I need a General Conformity Certificate (GCC)?

A. The CPSC has said in the [FRNC](#), it [GCC] must be created prior to arrival of the shipment in question into U.S. domestic commerce ... [it must be made available to CPSC] as soon as the product or shipment itself is available for inspection in the United States.

Q. Our products are manufactured in other countries; do have I have to reveal the name of the foreign manufacturer in the General Conformity Certificate?

A. No. The [FRNC](#) requires only the domestic manufacturer or an importer's information has to be listed.

Q. Do I need to provide a General Conformity Certificate with each product shipment?

A. The [FRNC](#) states: "The certificates required [must] accompany each product or product shipment and be furnished to each distributor and retailer of the product in question."

Q. Does a certificate have to physically accompany each shipment? I am importing a large shipment of items and breaking them into many smaller decorated orders.

A. Not physically. The [FRNC](#) provides an alternative method. An electronic certificate satisfies the "accompany" requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the CPSC or to the Customs authorities as soon as the product or shipment itself is available for inspection.

An electronic certificate satisfies the "furnish" requirement if the distributors and retailers of the product are provided a reasonable means to access the certificate.

Q. How long to I need to keep records of the GCCs?

A. CPSC recommends that each issuer maintain test records supporting the certification for at least three years as is currently required by certain consumer product specific CPSC standards.

Q. I am a distributor; what do I have do with the General Conformity Certificate?

A. So far as we can tell, nothing. The responsibility is on the manufacturer/importer to provide them to you. There is no requirement that we can identify that they be provided to the consumer. They may be useful to have on hand if there is a problem with the product to demonstrate that you relied on the certifications of the manufacturer or importer. Of course, if you knowingly receive GCCs that are false, you may be subject to penalties.

Q. I am distributor; how long do I have to keep the General Conformity Certificates I receive?

A. We know of no specific retention requirement. As noted, the CPSC is suggesting manufacturers and importers keep the test records for three years. Hopefully, you will not have to keep anything in your files. The CPSC is encouraging manufacturers and importers to make them available electronically.

## **LEAD IN PAINT/SURFACE COATING AND LEAD CONTENT**

Q. When do the lead in paint/surface coating limits go into effect for children's products?

A. The lead in paint/surface coating limit is currently 600 ppm for children's products. It will be lowered to 90 ppm on August 14, 2009.

Q. What certifications are required for children's products that are tested for lead in paint/surface coatings?

A. For currently effective lead in paint/surface coating limits (600 ppm), general conformity certification is required for products manufactured after November 12, 2008 based on a test of the product or a reasonable testing program for products. Third-party testing of the product for currently effective lead in paint/surface coating limits by accredited third-party laboratories is required for products manufactured after December 21, 2008.

When the lead paint limit is lowered to 90 ppm on August 14, 2009, third-party testing by accredited third-party laboratories will be required for children's products manufactured after that date.

(Note the existing lead in paint rule applies to more than children's products.)

Q. What is a paint or similar-surface coating material?

A. According to the CPSC: "These terms apply generally to liquid or semi-liquid products that change to a solid film when you apply a thin coating to wood, stone, metal, cloth, plastic or a similar surface. Printing inks, materials such as pigments for plastic that become part of an article itself, and materials such as ceramic glaze which become bonded to the surface of a product are not paints or similar surface coating materials."

Q. Although it is clear that the new lead standards for children's products cover components as well as the final product, how will CPSC consider borosilicate enamels that are vitrified with the

substrate to form a product such as a children's mug? Would the borosilicate enamel need to meet the standard as if it were a component that is a distinct separate part of that product? Or would the standard apply only to the finished glass or ceramic item where the borosilicate enamel has been vitrified with the item itself?

A. The law and regulations provide that paint and other similar surface-coating materials does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing. In most instances, when vitrification has occurred, the materials would be considered to be part of the substrate of the product as one whole part for testing purposes.

Q. What are lead content standards for children's products?

A. The limits on the amount of lead in children's products are phased in over the course of three years. By February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. On August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. The limit goes down to 100 ppm on August 14, 2011, unless the CPSC determines that it is not technologically feasible to have this lower limit.

Some children's products may be exempted or excused from these new lead limits if a component part containing lead is inaccessible. The CPSC will provide guidance by rule on what component parts are inaccessible within a year. The CPSC will also evaluate whether certain electronic devices, including devices that contain batteries, must comply with the lead limit.

Q. The tip on ballpoint pens are made from leaded brass and there is no source for materials as the lead in the brass is required to machine. Is it okay for children to use ballpoint pens?

A. The lead ban is applicable to children's products containing lead. The term "children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. Accordingly, to the extent that these pens are general purpose items not being marketed to, or advertised as being intended for use by children 12 years or younger, these pens would not be subject to the lead limits under CPSIA.

Q. A bag factory in China has told me that the new requirement of lead content in the material for children's bags (we are looking at backpacks specifically) is 300 ppm, effective August 14, 2009. Is this a general requirement referred to in the CPSIA legislation or is there somewhere where bags and/or bag materials are referred to specifically?

A. The CPSIA provides that any children's product designed or intended for children 12 years of age or younger, which would also include children's bags, must meet the lead limits. Bags and bag materials are not discussed separately in the legislation.

Q. Do stuffed animals falling within the scope of the CPSIA's lead limits or phthalate limits?

A. According to the CPSC, “most stuffed animals would be considered to be children’s products and presumably toys. A manufacturer would need to determine whether the design of the stuffed animals is such that it is subject to the lead paint limits, the lead content limits or the phthalate limits.” We would add also most likely the toy safety standard as well.

Q. What about existing inventories of children’s products with lead content that exceeds 600 ppm; can they be sold after February 10, 2009?

A. The CPSC’s General Counsel has rendered an [opinion](#) that says they may not. According to the CPSC, “Children’s products that contain more lead than 600 ppm are banned in the U.S. after February 10, 2009, and the sale of those products can result in significant civil and criminal liability.”

Q. Are there ways to make the product acceptable even though it has lead in it?

A. The law provides that paint, coatings or electroplating will *not* be considered a barrier that would make the lead content of a product inaccessible to a child.

Q. How is the lead content determined?

A. The CPSC says, “The lead limit is total lead content by weight for any part of the product. It is the total lead content, not soluble lead.” The CPSC says it mills or grinds each part, digests it in hot, concentrated acids and analyzes it by Inductively Coupled Plasma (ICP) spectroscopy.

Q. Can XRF technology be used to support general conformity certification as to lead paint or lead content limits?

A. Yes. Where third-party testing by an accredited laboratory is required as the basis for certification, that testing cannot be based on XRF technology at this time; however, XRF testing, either by a manufacturer or by a laboratory, may serve as the basis for general conformity certification. Manufacturers are cautioned, however, to be careful in their use of XRF for this purpose given the difficulties in screening for lead in paint with that technology.

Q. I still have questions about lead in paint/surface coatings and lead content. Are there any other answers?

A. Yes. The CPSC has other FAQs. See [CPSC Lead in Paint and Lead Content Questions](#).

## **PHthalATES**

Q. What kind of products does the phthalates prohibition apply to?

Three phthalates, DEHP, DBP and BBP, have been permanently prohibited by Congress in concentration of more than 0.1% in “children’s toys” or “childcare articles.” A “children’s toy” means a product intended for a child 12 years of age or younger for use when playing, and a

“childcare article” means a product that a child three and younger would use for sleeping, feeding, sucking or teething.

Three additional phthalates, DINP, DIDP and DnOP, have been prohibited pending further study and review by a group of outside experts and the CPSC. This interim prohibition applies to childcare articles or toys that can be placed in a child’s mouth or brought to the mouth and kept in the mouth so that it can be sucked or chewed that contains a concentration of more than 0.1% of the above phthalates.

Q. When does the phthalate prohibition take effect?

A. February 10, 2009

Q. What about existing inventories with phthalate content; can they be sold?

A. The General Counsel of the CPSC has rendered an [opinion](#) that unlike with lead content items, items contained phthalates may be sold after that date. The ban is on the manufacture of the items as of February 10, 2009.

Q. Do I have to provide a GCC for Phthalates Content for children’s toys and childcare articles?

A. Yes, beginning on February 10, 2009.

Q. Will I have to have third-party testing and certification that children’s toys and childcare articles do not contain phthalates?

A. Yes, when the third-party testing and certification for children’s products takes effect, most likely in September 2009.

## **MANDATORY TOY SAFETY STANDARD**

Q. When does the toy safety standard become effective.

A. The provisions of American Society for Testing and Materials (ASTM) International Standard F963–07 Consumer Safety Specifications for Toy Safety (ASTM F963-07) become a mandatory federal consumer product safety standard on February 10, 2009.

Q. What is ASTM F963.07?

A. It is a comprehensive set of standards for safety hazards for children’s products. It covers all sorts of hazards include mechanical, electrical, flammability, chemical and so on.

Q. Where can I find ASTM F963.07?

A. It is proprietary standard and at the moment it can be purchased through [www.astm.org](http://www.astm.org) and [www.ansi.org](http://www.ansi.org).

Q. Do I have to provide a General Conformity Certificate for this mandatory safety standard, F963-07, for a children's product?

A. Yes, as of February 10, 2009. However, it should be noted that some elements of F963-07 already exist as a federal consumer product safety standard such as small parts in toys, lead in paint/surface coatings. In such cases, a GCC may already be required.

Q. While I have to provide third-party testing and certification for compliance with F963-07?

A. Yes, when the accreditation of laboratories for this purpose takes effect, most likely in September 2009.

## **CATALOGS AND CAUTION STATEMENTS**

Q. I heard something about changes to catalogs and internet advertising; what is that all about?

A. The new law did establish new responsibilities for a very limited range of children's products and ranges, regarding the cautionary warnings required in section 24 of the Federal Hazardous Substances Act--specifically, cautionary statements regarding choking hazards presented by small parts, small balls, marbles and balloons.

It applies to catalogs and other printed material advertisements which provide a direct means of purchase or order of products. (See [Catalog Advertising Rule](#).) Since most promotional product catalogs do not permit a direct means of purchase, it would seem the rule does not apply.

In addition, the CPSC's catalog advertising rule provides for an exception for catalogs that are used for business-to-business transactions.

However, the final rule provides that catalogs that are distributed solely between businesses are exempted from the requirements unless the recipient business is one that could be expected to be purchasing the product for the use of children instead of for resale. According to the CPSC, "Examples of businesses that could be expected to purchase products for the use of children include schools, daycare centers, churches and recreational facilities."

Q. We have those type of customers in our customer base; what should we do?

A. We cannot give a definitive answer to this question. The basic scope of the coverage is the "provide a direct means of purchase or order of products." Typically, a supplier catalog does not provide for that option. At a minimum, distributors and suppliers should be aware of the potential responsibility for cautionary warnings in catalogs given to those types of businesses for those types of products.

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