

# SAFEGUARDS

SGS CONSUMER TESTING SERVICES

HARDLINES, SOFTLINES, ELECTRICAL & ELECTRONIC

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## CPSIA UPDATES PART 19: CPSC ENFORCEMENT POLICY ON LEAD IN CHILDREN'S PRODUCTS AND GUIDANCE FOR CERTAIN BUSINESSES

The CPSC spelled out the enforcement policy for new lead limits in children's products established by the CPSIA. Penalties will not be imposed on certain materials or products but sellers are not immune from prosecution if they are aware or continue to sell non-compliant products after being put on notice. The effective date for lead content in accessible materials other than paint / surface coating is February 10, 2009.

On February 6, 2009, the CPSC published a notice to provide clear and reasonable guidance to those affected by the new regulation 'Consumer Product Safety Improvement Act of 2008 (CPSIA)' <sup>1</sup>. This and a second publication summarize the enforcement policy on the new lead content limits <sup>2</sup>. Highlights of the enforcement policies are summarized below.

### 1. Accessibility

Until the guidance on inaccessibility is finalized, the CPSC will accept a manufacturer's determination that a part is inaccessible if it is based on a reasonable interpretation of section 101 (b)(2).

### 1. Electronics

The CPSC has published an interim final rule for exemptions for certain electronic devices. This is effective February 10, 2009.

### 3. Exclusions

The CPSC has issued a notice of proposed rulemaking on the proposed procedures and requirements used to determine an exclusion to the regulation for certain materials or products containing more than 600 ppm lead. The notice of proposed rulemaking may be amended based on comments received but the notice will be used unless and until it is amended by the final rule.

<sup>1</sup> [Safeguards 64/08 revised 'US President Signs Consumer Product Safety Law'](http://www.safeguards.com/08/08_revised_US_President_Signs_Consumer_Product_Safety_Law/), September CPSC Spells Out Enforcement Policy For New Lead Limits In Children Products Effective February 10', Release #09-120, U.S. Consumer Product Safety Commission, February 6, 2009, <http://www.cpsc.gov/cpsc/pub/prerelease/prhtml09/09120.html>

<sup>2</sup> Statement of Commission Enforcement Policy on Section 101 Lead Limits and references therein, February 6, 2009, <http://www.cpsc.gov/about/cpsia/101lead.pdf>  
The term "ordinary book" in this context means one that is published on cardboard or paper printed by conventional methods and intended to be read. It excludes children's books that have plastic, metal or electronic parts.



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#### 4. Materials Whose Lead Content is Consistently Below Prescribed Limits

Until a final rule on materials whose lead content is consistently below the limit of 300 ppm lead is announced, the CPSC shall not prosecute any person for manufacturing, importing, distributing, selling or offering for sale a children's product on the basis that it contains more than 600 ppm lead in any material that is listed in the Commission's preliminary determination of materials that may be consistently below the 300 ppm lead limit. The list of these materials can be found on the CPSC website at <http://www.cpsc.gov/businfo/frnotices/fr09/leadlimits.pdf>. Prosecution will not take place, unless

- a. Such person had actual knowledge that the product contained more than 600 ppm lead.
- b. Continued to manufacture, import, distribute, or sell such children's product after being put on notice of its lead content by CPSC.

#### 5. Product Classes Whose Lead Content is Consistently Below Limits

The CPSC shall not prosecute any person for manufacturing, importing, distributing, selling or offering for sale a children's product (or part thereof) that falls into the below 2 classes of products (a-b) on the basis that it contains more than 600 ppm lead. Such person is not immune from prosecution if they had actual knowledge that the product contained more than 600 ppm lead or continued to manufacture, import, distribute, or sell such product after being put on notice by CPSC.

- a. Ordinary children's books printed after 1985<sup>3</sup>
- b. Dyed or undyed textiles (excluding leather, vinyl or PVC) and non-metallic thread and trim used in children's apparel and other children's fabric products such as baby blankets. This does not include the products above if they :
  - Have undergone further treatment that may impart lead
  - Are ornamented with metal, rhinestones or other objects or
  - Contain plastic or metal fasteners with possible lead content (eg snaps, grommets, zipper or buttons)

#### 6. Reporting Excess Lead Content in Children's Products

Manufacturers, importers, distributors or retailers must report to the CPSC if they become aware of a children's product that exceeds applicable lead limits in any accessible part (including higher limits for certain electronic devices) that is being manufactured for sale in the US, imported for sale, distributed, held for distribution or sale, offered for sale or sold after February 10, 2009.

<sup>3</sup> The term "ordinary book" in this context means one that is published on cardboard or paper printed by conventional methods and intended to be read. It excludes children's books that have plastic, metal or electronic.

<sup>4</sup> CPSC Grants One Year Stay of Testing and Certification Requirements for Certain Products, Release #09-115, U.S. Consumer Product Safety Commission, January 30, 2009, <http://www.cpsc.gov/cpsc/pub/prerele/prhtml09/09115.html>  
Safeguard 20/09: 'Stay of Enforcement of the Critical Provisions of Consumer Product Safety Improvement (CPSIA)', February 2009

#### 7. Exports of Children's Products Containing Excessive Lead

Any children's product containing excess levels of lead will be considered a banned hazardous substance. It is unlawful to export for sale any banned hazardous substance. If the items are being exported for any reason other than for sale (such as destruction), the Commission must be notified more than 30 days in advance so that it can notify other governments of the matter.

#### 8. Testing and Certification

A schedule has been established for children's products under which all required certifications will eventually have to be based on testing by an accredited laboratory.

On January 30, 2009, the CPSC voted to stay enforcement of most of the broader testing and certification requirements for 1 year<sup>4</sup>. This stay makes it unnecessary for any regulated party to have mandatory third party accredited testing or to certify compliance with the lead limits before February 10, 2010 with the following exceptions.



- a. Children's products that are manufactured after December 21, 2008 and bear paint or a similar surface coating,
- b. Children's metal jewelry manufactured after March 23, 2009.

To address certain aspects of the new law, the CPSC recently published a guidance for small businesses, resellers, crafters and charities<sup>5</sup>. This guidance addresses a series of topics such as FAQs on definitions, timetable for compliance and testing, exemptions / exclusions, and commonly resold children's products and materials. Highlights of a number of these concerns are summarized below.

The following materials or components can be used (separately or in combination) and sold provided they have not been treated or altered or undergone any processing that could result in the addition of lead:

1. Precious gemstones: diamond, ruby, sapphire or emeralds,
2. Semi-precious stones provided that the mineral or material is not based on lead and is not associated with any mineral based on lead,
3. Natural or cultured pearls,
4. Wood,
5. Other natural materials including coral, amber, feathers, fur, and untreated leather,
6. Surgical steel,
7. Gold of least 10 karats,
8. Silver of at least 925/1000 ,
9. Platinum, palladium, rhodium, osmium, iridium and ruthenium,
10. Yarn (dyed or undyed),
11. Dyed or undyed textiles (cotton, wool, hemp, nylon, etc) including children's fabric products such as baby blankets, and non-metallic thread and trim. This does not include products that have rhinestones or other ornaments that may contain lead or have fasteners with possible lead content such as buttons, metal snaps, zippers or grommets,



12. Children's books printed after 1985 that are conventionally printed and intended to be read, as opposed to used for play.
13. Certain educational materials such as chemistry sets.

SGS is committed to inform as development on CPSIA and other legislations occur.

Throughout our global network of laboratories, we are able to provide a range of services, including analytical testing and consultancy for lead, phthalates and other restricted substances in a comprehensive range of children's products and other consumer products for the US and worldwide markets. Please do not hesitate to contact us for further information.

<sup>5</sup> Guidance on the Consumer Product Safety Improvement Act (CPSIA) for Small Businesses, Resellers, Crafters and Charities, U.S. Consumer Product Safety Commission , <http://www.cpsc.gov/about/cpsia/smbus/cpsiasbguide.html>

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