



Consumer Product Safety Improvement Act of 2008 (CPSIA)

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QBP General Counsel

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Today's Presentation

- WHY did the CPSIA happen?
- WHAT does the new law require?
- WHICH products are covered?
- HOW can retailers comply?
- WHAT is the bike industry doing?

AND - HOW DOES IT AFFECT *ME*?

What is the CPSIA?

- First revision of the law that created the Consumer Product Safety Commission way back in 1972
- Became effective August 14, 2008
- Gave the CPSC sweeping new powers
- Requires new testing, certification, and material standards
- Requires the CPSC to create a series of new regulations

Why Now?

“There was a major problem.
There was a need to do this.”

- Senator Amy Klobuchar (D.Minn.)

Seems Harmless Enough



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A Tragic Death

- In mid-February 2006, a 4 year-old boy was brought to a pediatric emergency department in Minneapolis
- Despite medical efforts, he died within a few days from cerebral edema (swelling of his brain)
- Upon autopsy, a heart-shaped charm imprinted with "Reebok" was removed from the child's stomach
- The charm consisted of 99.1% lead

The Consequences

- Reebok recalled 300,000 charms
(these were “giveaway” items)
- CPSC fined Reebok \$1,000,000
- Not counting the lawsuit

From 2006 to 2008, toy manufacturers recalled **millions** of toys because of lead

Just a Couple of Them

[A&A Global Industries Recalls Children's Bracelets Due to Lead Poisoning Hazard \(April 3, 2007\)](#)
[Regent Products Corp. Recalls Stuffed Ball Toys Due to Lead Hazard \(March 28, 2007\)](#)
[Children's Mood Necklaces Recalled by Rhode Island Novelty Due to Lead Poisoning Hazard \(March 15, 2007\)](#)
[Children's Necklaces Sold Exclusively at Claire's Stores Recalled Due to Lead Poisoning Hazard \(March 15, 2007\)](#)
[Toys "R" Us Recalls "Elite Operations" Toy Sets Due to Lead and Laceration Hazards \(March 13, 2007\)](#)
[Children's Necklaces Sold Exclusively at Accessories Palace Recalled by United Imports Due to Lead Poisoning Hazard \(March 13, 2007\)](#)
[Discount School Supply Recalls Children's Two-Sided Easels Due to Lead Poisoning Hazard \(March 7, 2007\)](#)
[Children's Rings Sold at Big Lots! Stores Recalled By Lari Jewelry Company Due to Lead Poisoning Hazard \(February 23, 2007\)](#)
[Children's Jewelry Sold Exclusively at Kmart Recalled by Crimzon Rose Accessories Due to Lead Poisoning Hazard \(February 23, 2007\)](#)
[Samara Brothers Recalls Boys' Jackets Due to Lead Poisoning Hazard \(February 13, 2007\)](#)
[Children's Bracelets Recalled by DM Merchandising Due to Lead Poisoning Hazard \(February 7, 2007\)](#)
[Children's Rings Recalled by Shalom International Due to Lead Poisoning Hazard \(February 7, 2007\)](#)
[U.S. Toy Co. Recalls More Children's Butterfly Necklaces Due to Lead Poisoning \(January 18, 2007\)](#)
[Samara Brothers Recalls Children's Two-Piece Overall Sets. Snaps Contain Lead \(January 5, 2007\)](#)
[Celebrate Express Inc. Recalls Gigantic Gemstone Ring Party Favors Due to Lead Poisoning Hazard \(December 19, 2006\)](#)
[Children's "Powerpuff Girls" Necklaces Recalled Due to Lead Poisoning Hazard \(December 13, 2006\)](#)
[Lifetime Brands Inc. Recalls Lemonade Jars For Lead Exposure Hazard \(December 13, 2006\)](#)
[Children's Butterfly Necklaces Recalled by U.S. Toy Co. Due to Lead Poisoning Hazard \(December 13, 2006\)](#)
[The Land of Nod Recalls Furniture Due to Lead Paint Hazard \(December 5, 2006\)](#)
[Children's Necklaces Recalled Due to Lead Poisoning Hazard \(December 4, 2006\)](#)
[Target Recalls Various Toys Due to Lead and Laceration Hazards \(November 15, 2006\)](#)
[Decorative Snaps and Metal Clips Recalled by Provo Craft Due to Lead Poisoning Hazard \(November 15, 2006\)](#)
["Cars" Toy Chests Sold at Toys "R" Us Recalled by Delta Enterprise Due to Lead Poisoning Hazard \(November 9, 2006\)](#)
[Atico International USA Recalls 9-Foot Patio Umbrellas Sold at Longs Drug Stores for Lead Hazard \(September 7, 2006\)](#)
[Lead Poisoning Hazard Prompts Recall of Fun Express Children's Toys Given Away at Libraries \(August 17, 2006\)](#)
[Juicy Couture Children's Jewelry Recalled for Lead Poisoning Hazard \(May 10, 2006\)](#)
[Metal Charms Sold with Twentieth Century Fox DVDs Recalled for Toxic Lead Hazard \(May 5, 2006\)](#)
[Children's Necklaces Recalled for Lead Poisoning Hazard \(April 27, 2006\)](#)
[A&A Global Industries Recalls Children's Bracelets Due to Lead Poisoning Hazard \(April 3, 2007\)](#)
[Regent Products Corp. Recalls Stuffed Ball Toys Due to Lead Hazard \(March 28, 2007\)](#)
[Children's Mood Necklaces Recalled by Rhode Island Novelty Due to Lead Poisoning Hazard \(March 15, 2007\)](#)
[Children's Necklaces Sold Exclusively at Claire's Stores Recalled Due to Lead Poisoning Hazard \(March 15, 2007\)](#)
[Toys "R" Us Recalls "Elite Operations" Toy Sets Due to Lead and Laceration Hazards \(March 13, 2007\)](#)
[Children's Necklaces Sold Exclusively at Accessories Palace Recalled by United Imports Due to Lead Poisoning Hazard \(March 13, 2007\)](#)
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Congress Actually Can Reach Across the Aisle – to Protect America's Children

The CPSIA passed the Senate **89-3**

The House **424-1**

It was signed into law by President Bush
effective August 14, 2008

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Which Products are Involved?

1. Everything already subject to any CPSC regulation (bicycles and helmets) has to be tested and certified to the applicable standards
2. Plus new standards for:
 - All “children’s products”
 - Toys (child product with “play value”)
 - Childcare articles, cribs, walkers, etc.

Bikes and Helmets

Bikes: must now be “certified” to comply with all applicable standards (Good Old 16 CFR Section 1512)

- This is self-certification by **manufacturer** or **importer** based on a “reasonable testing program”
- Example: ISO, ASTM, ANSI, CEN, CPSC or other “reasonable” testing

Helmets: CPSC testing and labeling was the model – we are already there!

“Certificate of Compliance”

Issued by manufacturer or importer, made available online, and must include:

- ID of Manufacturer/private labeler
- Date & place of manufacture
- Mailing addresses
- Contact information for person with test records
- Each regulation/rule applicable to product

“Children’s Product” Standards

Lead Paint: Current standard is 600 ppm, lowers to 90 ppm on August 14, 2009. NEW 3rd Party lab testing and certification requirement

Lead Content: NEW - under 600 ppm in any accessible component part, limit drops to 300 ppm on August 14, 2009

Toys: NEW - six phthalate (plasticizer) compounds cannot exceed 1000 ppm by weight

3rd Party Testing - Lead Paint

Each painted part of a children's product manufactured after 12/22/08 must be tested by a CPSC-accredited lab

- Applies to any painted children's product
- Certificate of compliance is required to import
- Older product must still meet the 600 ppm standard for lead in paint

CPSIA Product Analysis

1. Is it a “children’s product?”
2. Is it a “toy”?

If so:

- Does it have any painted parts?
- Are there metal or plastic parts that may contain lead or phthalates?
- Can the supplier provide a certificate of compliance for the product?

What is a Children's Product?

A children's product is:

any product “designed or intended primarily for children 12 years of age and younger.”

So...a children's product is ...

a product... for children?

Thank you, government, for clarifying that.

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What is a Children's Product?

- Manufacturer's statement or label about intended use if reasonable
- Representation on package, display or advertising about intended user
- "Commonly recognized by consumer" as a product for children age 12 or younger
- CPSC Age Determination Guidelines (about 300 pages long)

CPSC: Err on the side of "it is"

Reasonable Determinations

A manufacturer or retailer must make “reasonable determinations” about:

1. whether their products are “children’s products” and
2. whether components are “accessible” and therefore subject to testing for lead.

“..but we reserve the right to bite you in the ass if you are wrong.” -The CPSC

The Key is “Primarily”

“If the product is intended for adults **or for general use by consumers of all ages**, then it is not intended primarily for children.”

“ Products **marketed and priced** in a manner that would not make them appropriate for use by a child would also not be intended primarily for children.”

Guide to the CPSIA, 2/10/09

Children's Products - YES

- Joggers, strollers, kid carriers
- Sidewalk bikes under 20" wheels
- Ride on toys (Strider etc.)
- Child-sized clothing and helmets
- Miniature bikes, finger skateboards, other "toy like" products
- Accessories *targeted* at children's market such as streamers, bags, horns

Children's Products – BMX?

- “Mini” BMX bikes and products - yes
- 20” wheels?
- 24” cruiser?
- Dirt Jump or BIG MX category (26”)?
- Small size mountain or road bikes?

CPSC: “a bike with a 24” wheel size or smaller would **generally** be considered a children’s bike”

What about this?

KHE Paris III Pro Flatland Bike

QBP Price: \$1490 MSRP: \$\$\$\$\$\$



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What about this?

Greenfield kickstand
Proudly made in the USA
Cast aluminum alloy
“Fits most bikes”
Fun for the whole family

Children’s product?



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What about this?

Steve Flagg's favorite hamburger bell

- Sesame bun
- Is that *cheese*?

Children's product
or "crossover" for
kids of all ages?



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What is a TOY?

A toy is a product intended for a child 12 years of age or younger **for use while playing.**

“General use balls, bath toys/bath books, dolls and inflatable pool toys are examples of toys that might be covered by the law and might contain phthalates. **Bikes ... and sporting goods (except for their toy counterparts) are not considered toys.**”

Guide to the CPSIA, page 8

Bicycle Squirt Toy

Squirts water
Loads of fun
Packaging says
“Toy” right on it

This whale could
not be saved...



© GBP

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Recap: Product Analysis

Is it a “children’s product” or a “toy”?

If so, then:

- Does it have any painted parts?
- Are there metal or plastic parts that may contain lead or phthalates?
- Does the supplier have a certificate of compliance or test results available?

Where is the Lead?

- Brass inner tube valves
- Brass spoke nipples
- Aluminum castings (lower quality alloys)
- Recycled steel
- Locks (brass cylinders)
- PVC (vinyl) plastics (remember Prop 65?)
- Coloring agents
- Existing inventories – UNTESTED

Accessibility

- Some components may contain lead but cannot be “accessed” by a child
- Test is whether the part can be touched by a child’s finger or tongue (probe)
- Internal and other inaccessible parts do not need testing

Example: brass inner tube valves with plastic caps – NOT ACCESSIBLE

Testing Costs vs. Profitability

- Mfg. must test each “component part” for lead if it can be touched (accessible)
- Ordinary kid’s bike – about 140 parts
- Paint – all colors plus graphics

If it’s a toy:

Test for lead and lead paint plus six tests for phthalates (if plastic) for each PART or COLOR used – this killed the whale

What is the Industry Doing?

- BPSA met with CPSC officials in November to discuss “bike” issues
- Filed formal petition for temporary exemption for lead in alloys of steel, aluminum and brass
- Lobbying Congress with Bikes Belong to gain favorable consideration

Strategies for Compliance

THE GOOD NEWS:

- 26"+ bikes are NOT “children’s products”
- Bikes are NOT “toys”

Manufacturer Strategies:

- Test and certify children’s products
- Change materials - get the lead out
- Change packaging and marketing
- Launch a PR campaign!?

Lead law throttles youth powersports



By [William M. Welch](#), USA TODAY

IRVINE, Calif. — A new federal law aimed at protecting children from lead in toys has also forced a nationwide halt in sales of off-road motorcycles and recreational vehicles built for young riders, killing off a multimillion-dollar industry that was thriving despite the recession. Thousands of powersports dealers were told to halt sales of vehicles designed for children 12 and younger because of new lead restrictions in an act of Congress that took effect Feb. 10. Kevin Matty, finance director at Temecula Motorsports in Temecula, Calif., (where the desert is a big draw for dirt bikers) estimates the ban will wipe out half of his business sales.

"I thought it was a joke," Matty said, until the manufacturers told him he had to take the youth vehicles off the showroom floor.

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What Should Retailers Do?

DON'T PANIC! - Bob Burns, TREK

- CPSC has stated that it is most concerned with products and companies that have already violated the law (imported toys and children's jewelry)
- Likelihood of enforcement in the near future is remote, mass market most likely, small retailers very unlikely

Potential Penalties

- Recall of products
- Civil penalties increase to \$100K per violation up to a max of \$15 million
- Primarily directed at manufacturers and importers, not retailers
- State attorney generals can enforce the standards
- Increased criminal penalties:
 - Up to 5 years in prison
 - Violations are now a Felony

The State of the CPSC

- CPSC is overwhelmed, understaffed, and under funded
- Decisions are being challenged by consumer advocates, manufacturers, lobbyists and Congress

RESULT: CPSC has “stayed enforcement” of most testing and certification requirements until February 10, 2010

But ... the new standards are in effect

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What Should Retailers Do?

- Understand the CPSIA requirements
- Check for “children’s products” or “toys”
- Talk to your vendors!
- Ask for certificates or test results
- Reduce inventory of suspect or untested product – be wary of soft vinyl toys
- Wait for clarity (exemption, regulations)
- Consider contacting your representatives

Should I Test My Inventory?

Paint and components can be quickly “screened” for lead using an X-Ray Fluorescence gun or “XRF”

- This is fairly accurate and suggested by the CPSC for high value products only
- It is expensive
- Provides reassurance, but if it fails, then what do you do?

Resources For You

- CPSIA website
- Email alerts
- Guide to the CPSIA for Retailers
- Vendors

QBP certificates are at:

<http://online.qbp.co/cgi-bin/qbp.com/cpscquery>

QBP's Compliance Staff

Tony Janey
Compliance Supervisor
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Future: Lower Lead Standards

By August 14th, 2009, children's products must have less than 300 ppm lead in components and 90 ppm in lead paint

Enforcement of testing and certification requirements will resume on February 10th, 2010

Supply chain needs to work towards the August 14th deadlines

Future: Phthalate Bans

Permanently banned in toys:

DEHP

DBP

BBP

Interim ban in mouth-able toys or child care items (some water bottle parts?):

DINP

DIDP

DnOP

Several states have their own phthalate bans or are considering them!

Future: Tracking Labels

A “Permanent Distinguishing Mark” will be required on all children’s products by August 14, 2009. Must show:

- Location and date of production
- Cohort Information (batch, run, etc.)
- Name of manufacturer/private labeler/source of product
- Will definitely identify a product as being a “children’s product”



Thank You!

...and have a lead-free Frostbike!

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