

The Consumer Product Safety Improvement Act of 2008 (CPSIA)

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Introduction

- New legislation signed into law August 14, 2008
 - *Consumer Product Safety Improvement Act (CPSIA)*
- Under the jurisdiction of the Consumer Product Safety Commission (CPSC)
- Establishes lead and phthalate limits in children's products, toys, and child care articles
 - ***Limits became effective February 10, 2009!!!***
- Establishes testing and certification requirements
 - ***Delayed until February 10, 2010!!!***
- Establishes tracking and labeling requirements



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Key CPSIA Definitions



- “Children’s Product” – a consumer product designed or intended primarily for children 12 years of age and younger.
- “Children’s Toy” – a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use when the child plays
- “Child Care Article” – a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.



CPSIA Lead Limits (Section 101)

- Lead limits for “Children’s Products”
- Product total lead content limit:
 - 300 ppm as of August 14, 2009
 - 100 ppm on August 14, 2011, if technologically possible
- Printing ink and other input materials are included as they are used in “Children’s Products”
 - *Printing ink is not “lead paint” under lead paint limits*
- Lead limits apply retroactively to products in inventory



CPSIA Phthalate Limits (Section 108)

- Phthalates are “plasticizers”
 - *Make plastics soft*
- Bans on use in children’s toys & child care articles
- Permanent ban
 - *Products may not contain more than 0.1% DEHP, DBP, BBP*
 - *di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl buty phthalate (BBP)*
- Interim ban
 - *Products may not contain more than 0.1% DINP, DIDP, DnOP*
 - *diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP)*
 - *Applies only to Children’s toys that can be placed in the mouth and child care articles*
- Limits apply retroactively



CPSIA Certification & Testing (Section 102)

- Certification based on Third Party Testing
 - *Required beginning February 10, 2010*
 - Applies to lead content and phthalates
 - Certifications currently required for lead paint
 - *Requires testing of finished product by accredited third party laboratory*
 - Component testing allowed for certain input materials and plastic parts
 - *Testing based on “sufficient samples of children’s product, or samples that are identical in all material respects to the product”*
 - *Certification issued by “manufacturer”*
 - *No accredited labs to date*



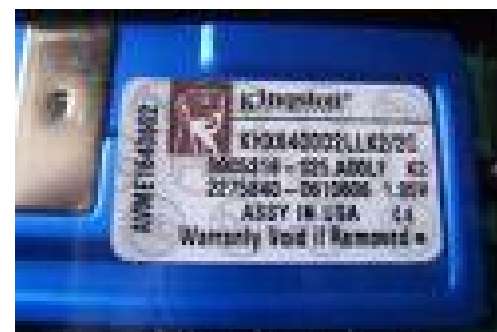
CPSIA Certification & Testing (Section 102)

- CPSIA certifications
 - *Required before product is imported “for consumption or warehousing” or “distributed in commerce”*
- Certifications must include
 - *Identification of product tested*
 - *Identification of appropriate CPSC standard certified*
 - *Identification of manufacturer and/or importer*
 - *Date and place of manufacture*
 - *Date and place where product was tested*
 - *Identification of third-party laboratory*
 - *Contact information for individuals responsible for maintaining testing records*



CPSIA Tracking Labels (Section 103)

- Began August 14, 2009
- Manufacturers required to place “permanent, distinguishing marks” on children’s products and packaging.
- Required Information
 - *Manufacturer*
 - *Location and date of production*
 - *“Cohort” information such as batch, run number, etc, and any other identifying characteristics needed to ascertain the source of the product*



Recent CPSC Guidance & Rulemaking

- Phthalates

- *August 7, 2009 Statement of Policy on Plasticized Component Part Testing*

- www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf

- Lead

- *August 19, 2009 Final Rule on Determinations of Materials not Subject to the Lead Ban*

- www.cpsc.gov/businfo/frnotices/fr09/leaddeterminationsfinalrule-draft.pdf

- *October 29, 2009 Statement of Policy: Testing and Certification of Lead Content in Children's Products*

- www.cpsc.gov/ABOUT/Cpsia/leadpolicy.pdf



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Recent CPSC Guidance & Rulemaking

- Tracking Labels
 - *July 20, 2009 Statement of Policy on Interpretation and Enforcement*
 - www.cpsc.gov/about/cpsia/sect103policy.pdf



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Plasticized Component Part Testing

- Only those parts of a children's toy or child care article that are likely to contain plasticizers need to be tested to demonstrate compliance with section 108 phthalates standard.
- If a children's toy or child care article does not contain plasticizers it does not need to be tested.



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Plasticized Component Part Testing

- Excerpt from Statement of Policy
 - *Manufacturers either know or should know what materials and components go into the products they make, and if the product or its components contain one of the plasticizers specified in section 108 of the CPSIA, the manufacturer or importer certifying the product must test the component or product to ensure that it complies with the CPSIA.*



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Lead Determinations

- Issued August 26, 2009
- Paper and certain printing inks determined by the Commission not to exceed 100 ppm of lead.
 - *Paper and those printing inks no longer subject to section 101 and no section 102 certification required for products made exclusively from paper and printing inks*
 - *Additional work on the issue continuing*
- Notice lab accreditation for testing of both lead and phthalates issued October 30, 2009.



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Lead Determinations

No longer require testing

- Paper
- Any product printed with four color process inks (CMYK)
- Any product coated with varnish, water-based, or UV-cured coatings
- Threads used for book binding
- Animal based glues
- Adhesives that are not accessible*
- Binding materials that are not accessible*

Still require testing

- Spot or PMS inks
- Saddle stitching wire
- Non-animal based glues that are accessible*
- Metal coils both coated and uncoated for coil bound materials
- Plastic coils for coil bound materials
- Foils used in foil stamping
- Laminates

*CPSC has specific rule on accessibility



Tracking Labels

- No uniform one-sized fits all system
- “Label” vs. “distinguishing marks”
 - *Commission does not require a singular collection of information in one discrete location*
- Information must be “ascertainable”
 - *Does not require codes, formats or numbering systems*
- Marking the product and its packaging
 - *In certain circumstances marking only the packaging will be acceptable*



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What is the Printing Industry Doing?

Advocacy Before CPSC

- Formed industry taskforce of leading manufacturers and allied associations, including PIA, AAP, BMI, MPA, AF&PA, & NAPIM
- Launched an online database to collect and disseminate test data
- Engaged in written dialogue with CPSC regarding need for exemption from the CPSIA
- Ongoing meetings with CPSC Commissioners, General Counsel and Compliance Team

What is the Printing Industry Doing?

Advocacy on Capitol Hill

- Met with bipartisan roster of Capitol Hill offices, including Representatives serving on the committees of jurisdiction
- Letter from leading Democrats on key committees (Sens. Rockefeller/Pryor and Reps. Waxman/Rush) to CPSC requesting urgent action on four items, including children's books and component testing
- Letter from minority leadership on Energy & Commerce Committee (Reps. Barton/Radanovich) to Chairman Waxman urging hearings
- At least 40 Members of Congress have voiced concerns and urged the CPSC to issue a determination for industry



CPSIA Next Steps

- Task force analyzed response from CPSC
 - *Test data alone is not sufficient*
 - *CONEG is not sufficient – no 3rd party testing*
 - *Need to present technical reasons why lead can't be used in remaining components*
- Preparing vendor request letters
 - *Need to go back deep into the supply chain*
- Lobby group formed to continue pressure on Congress seeking legislative relief.



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The Lacey Act

- The nation's oldest wildlife protection statute
- First enacted in 1900 to combat impact of:
 - *hunting to supply commercial markets,*
 - *interstate shipment of unlawfully killed game,*
 - *introduction of harmful exotic species and*
 - *killing of birds for feather trade*
- Significantly amended in 1981 and 1988
- A tool to combat trafficking in “illegal” wildlife, fish or plants and products
- Until recent amendments covered all wild animals, but plant defined to include only those both native to the United States and protected.



The Lacey Act

- The Food, Conservation and Energy Act of 2008
 - *Expands Lacey protection to broader range of plants*
 - Prohibits all trade in plant and plant products (e.g., furniture, paper, or lumber) that are illegally sourced from any U.S. state or any foreign country.
 - *Requires importers to declare country of origin for harvest and species of all plants contained in product*
 - Paper deadline - April 1, 2010 to September 1, 2010
- Passed May 22, 2008 (effective immediately)



The Lacey Act

- The Lacey Act makes it unlawful to import, export, transport, sell, **receive**, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the U.S., a U.S. State, or most relevant foreign laws
- Can be a “knowingly” or “**unknowingly**” participant
- Examples of relevant underlying foreign law violations
 - *Theft of timber, including from parks and protected areas*
 - *Harvesting without permission*
 - *Failure to comply with harvesting regulations*
 - *Failure to pay royalties, taxes or fees*



The Lacey Act

- The underlying foreign law violation does not have to be a criminal violation, nor one actively enforced in the foreign country
- The underlying violation need not be committed by the person charged with violating the Lacey Act
 - *A third party might have taken the product illegally*
- The underlying foreign law can be interpreted by U.S. Courts



The Lacey Act

Declaration Requirement For Plant Products

- Declaration must be made at time of importation
- Declaration must contain
 - *Scientific name of plant (including genus & species)*
 - *Value of importation*
 - *Quantity of the plant*
 - *Name of the country in which the plant was harvested*
 - *Paper and paperboard products with recycled content*
 - Ave % recycled content without regard for species/country of harvest
- Declaration does not apply to packaging material used to support, protect or carry another item
 - *Unless the packaging material is item being imported*

The Lacey Act – Sample Declaration

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0579-0349. The time required to complete this information collection is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. FORM APPROVED OMB No. 0579-0349

Plant and Plant Product Declaration Form

Section 3: Lacey Act Amendments of 2008 (16 U.S.C. 3372)

APHIS U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
PLANT PROTECTION AND QUARANTINE

Applicability of Declaration:

You are required to complete this form if you are importing any of the following:
Any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands, except:

- Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);
- * Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that are to be used only for laboratory or field research;
- * Plants that are to remain planted or to be planted or replanted; or
- Plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

* You must still complete this form if you are importing plants described under 3. and 4. that are listed:

- In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);
- As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or
- Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

SECTION 1 - Shipment Information

1. ESTIMATED DATE OF ARRIVAL: (MM/DD/YYYY) 12/31/2009	3. CONTAINER NUMBER: 99999
2. ENTRY NUMBER: 99,999	5. MID: 99999
4. BILL OF LADING: 88888	8. CONSIGNEE NAME: XYZ
6. IMPORTER NAME: XYZ Merchant	9. CONSIGNEE ADDRESS:
7. IMPORTER ADDRESS:	

I certify under penalty of perjury that the information furnished is true and correct:

Signature: _____ Type or Print Name: _____ Date: _____
 knowingly making a false statement in this Declaration by separation may subject the declarant to criminal penalties in accordance with 16 U.S.C. 3375(a).

PPQ FORM 505
DECEMBER 2008
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16 U.S.C. 3372(f))

11. HTSUS NUMBER: 4810.13 (coated paper)
12. ENTERED VALUE: (in U.S. Dollars) \$XX,XXX

ENTRY OF VEST:	16. QUANTITY OF PLANT MATERIAL:	17. UNIT OF MEASURE:	18. % RECYCLED MATERIAL:
	18	kg	0%
	11	kg	0%
	10	kg	0%
	8	kg	0%
	7	kg	0%
	5	kg	0%
	4	kg	0%
	3	kg	0%
	2	kg	0%
	2	kg	0%
	12	kg	0%
	9	kg	0%
	5	kg	0%
	2	kg	0%
	1	kg	0%
	1	kg	0%

and is true and correct:

Merdan 12/31/2009
 knowingly making a false statement in this Declaration by separation may subject the declarant to criminal penalties in accordance with 16 U.S.C. 3375(a).

Type or Print Name: _____ Date: _____
 Version 12-08-2008-0856

at the product is expected to

to this shipment.

in which the product is being

container number, please leave

to this shipment - available from

leave this section blank.

manufacturer or customs broker

individual for the product.

individual in #6.

ed and will ultimately receive

any in #8.

plant product, and its use

enter only the name of the product

merchandise described in #10

imported merchandise described

article, or component of an article,

native item including a wood

em, and record the percent

the scientific name (example:

varies, and the species used to

been used to produce the product.

(example: _____)

ries from which

(example: See below).

#17.

centage of recycled

enter the average

ge of recycled

17. UNIT OF MEASURE:	18. % RECYCLED MATERIAL:
No. 15	
BF 0	

for Customs and Border

the importer must mail the



The Lacey Act

- Situations Requiring Declaration Documents

Paper Manufacturing Location	Printing Location	End Use Location	Declaration Needed
USA	USA	USA	No
Other Than The USA	USA	USA	Yes
USA	Other Than The USA	USA	Yes

The Lacey Act

- Exercise “Due Care” when purchasing paper
 - *“Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”*
 - *Due care applied differently based on expectations*
- Useful tools to demonstrate due care
 - *Asking questions*
 - *Compliance plans*
 - *Industry standards*
 - *Records of efforts*
 - *Changes in above in response to practical experiences*



The Lacey Act

Examples of Common-Sense Red Flags

- Goods significantly below going market rate
- Cash only, or lower price for goods without paperwork
- Paperwork facially invalid or otherwise suspect
 - *Does not match product ordered or anticipated/possible country of origin*
- Unusual sales methods or practices
 - *Deserted loading dock at midnight*
- Transactions fit description of illegal transactions discussed in industry publication
- Inability to get rationale answers to questions
- News articles or internet information indicating a potential problem



Thank you for listening!

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