



# The American Companies

## "News Flash"

August 1, 2009

### Several requirements of the Consumer Product Safety Improvement Act of 2008 that affect manufacturers and importers of children's products<sup>2</sup> will take effect in August 2009.

On August 14, 2009, the lead content limit for children's products will become more stringent; the limit on lead in paint/surface coatings for toys, etc. will become more stringent; and "tracking labels" will be required for newly manufactured children's products. On August 17, 2009, the 2008 version of the ASTM F963 toy standard will become mandatory for newly manufactured toys.

#### **Unlawful to Manufacture or Import Consumer Products Not CPSC-Compliant**

These requirements affect importers as well as manufacturers because, among other things, the CPSIA makes it unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the U.S. consumer products that are not in conformity with CPSC-enforced standards, rules, bans, etc.

#### **Lead Content - Lead Content Limit for Children's Products to Drop to 300 ppm on Aug. 14th**

Effective August 14, 2009, consumer products designed or intended primarily for children 12 and under that have more than 300 parts per million (ppm) (from 600 ppm) of total lead content by weight in any accessible part will be considered banned hazardous substances. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child.

**Also applies to products sold from inventory.** The stricter lead content limit will affect all subject merchandise sold on or after August 14, 2009, including products manufactured earlier that are sold from inventory or store shelves.

**Exemptions and "inaccessibility."** Certain accessible components of children's electronic devices have already been exempted from the lead content limit. In addition, CPSC has posted a final rule on what product components or classes of components will be considered inaccessible and therefore not subject to the lead content limits. The final rule involves using accessibility probes and certain testing to determine inaccessibility.

**Testing/certification not yet required.** CPSC issued a one year enforcement stay (until February 10, 2010) of certain CPSIA testing and conformity certification requirements, including for lead content. However, CPSC did not stay underlying product compliance. Therefore, children's products must still meet the CPSIA lead content limits or be considered banned hazardous substances. (Note that for one product, children's metal jewelry, third-party testing and certification was not stayed.)

#### **Lead in Paint - Limit on Lead in Paint/Surface Coatings to Drop to 90 ppm on Aug. 14th**

Effective August 14, 2009, the "lead paint ban" of 16 CFR Part 1303 will become more stringent. Specifically, paint and similar surface coating materials that contain lead or lead compounds in which the lead content is in excess of 0.009% (from 0.06%) of the weight of the total nonvolatile content of the paint or the weight of the dried paint film, will be considered banned hazardous products. (CPSC also expresses the 0.009% limit as 90 ppm, and the 0.06% limit as 600 ppm.)

The "lead paint ban" pertains to lead in (1) paint for consumer use, as well as the paint used on (2) toys and other articles intended for use by children that bear paint and (3) furniture for consumer use that bears paint. **Also applies to products sold from inventory.** The stricter limit for the lead paint ban will affect all subject merchandise sold on/after August 14, 2009, including products manufactured earlier that are sold from inventory or store shelves.

The American Companies

50 Moonachie Road (HQ Office - Full Service)  
Moonachie, NJ 07074 (201-478-4600)

400 Oceangate, Suite 1106 (Full Service)  
Long Beach, CA 90802 (562-435-2327)

881 Route 83 (Full Service)  
Bensenville, IL 60106 (630-860-0782)

Domestic USA Ground Operations  
Domestic USA Air Operations  
Asheville NC 828-271-2061

3PL Locations  
Fairview, NJ  
Carson, CA  
Bensenville, IL

**Third-party testing & certification.** Domestic manufacturers and importers of children’s products subject to the lead paint ban that are manufactured after December 21, 2008 are required to have those products tested by a CPSC-accredited third-party lab, and based on that testing, issue a certification of compliance. (This requirement was not included in CPSC’s one year testing and certification stay.) Therefore, subject products will continue to be required to meet the CPSIA testing and certification requirements but will have to demonstrate compliance with the new, stricter limit.

**Tracking Labels - Children’s Products Manufactured on/after Aug 14th Must Have Tracking Labels**

Effective August 14, 2009, manufacturers of children’s products must place permanent “distinguishing marks” on such products and their packaging, to the extent practicable, that will enable: (i) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and (ii) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information.

**For products manufactured on/after Aug 14th.** This CPSIA “tracking label” requirement will apply to children’s products (and packaging) manufactured on or after August 14, 2009. It does not apply to children’s products made before that date.

**Importers must ensure compliance.** The “manufacturer” of the product is responsible for compliance with the CPSIA tracking label requirement. As “manufacturer” is defined by statute to include both the manufacturer and importer, CPSC has stated that importers should work with their foreign manufacturing sources to ensure compliance.

**Permanent distinguishing marks, not “label.”** CPSC has previously stated that while the CPSIA references tracking “labels,” CPSC believes that the focus of the statutory text is “distinguishing marks.” As such, manufacturers (and importers) should look at the totality of the information permanently marked on the product and packaging and not interpret “label” to mean a singular collection of information in one discrete location. CPSC points out that the required information may already be marked on the product.

**Enforcement discretion.** CPSC has also stated that it anticipates that there will be a period of education when the tracking label requirement first takes effect. Given good faith efforts by manufacturers to educate themselves on the requirement and to consider ways to apply it to their business, CPSC will not likely seek penalties if required information was inadvertently omitted.

**ASTM F963-08 Toy Standard - Toys Manufactured on/after Aug 17th Must Comply with ASTM F963-08**

Toys manufactured on or after August 17, 2009 will have to comply with the ASTM F963-08 toy standard.

(The CPSIA made the ASTM toy standard (version ASTM F963-07) and any successor standard not objected to by the CPSC a mandatory consumer product safety standard for toys manufactured on or after February 10, 2009. As the CPSC recently voted to adopt the successor version (ASTM F963-08) of the standard, toys manufactured on or after August 17, 2009 need to comply with this newer 2008 version.)

**Testing/certification not yet required.** CPSC issued a one year enforcement stay (until February 10, 2010) of certain CPSIA testing and conformity certification requirements, including for the ASTM toy standard. However, it did not stay underlying product compliance with the standard.

The following are highlights of the changes made to the ASTM toy standard that will become mandatory for products manufactured on or after August 17, 2009:

**Magnet restrictions.** The size restrictions for intact magnets and magnetic components will be increased along with the relevant product age range. Specifically, under ASTM F963-08, hazardous magnets or magnetic components (those that fit inside the “small parts cylinder”) will no longer be allowed in toys intended for children up to age 14, with exceptions for hobby, craft, and science kit-type items. (The current standard allows toys intended for children between 3 and 8 years of age to contain such hazardous magnets, if the product has a warning label.)

---

The American Companies

---

250 Moonachie Road (HQ Office – Full Service)  
Moonachie, NJ 07074 (201-478-4600)

400 Oceangate, Suite 1106 (Full Service)  
Long Beach, CA 90802 (562-435-2327)

881 Route 83 (Full Service)  
Bensenville, IL 60106 (630-860-0782)

Domestic USA Ground Operations  
Domestic USA Air Operations  
Asheville NC 828-271-2061

3PL Locations  
Fairview, NJ  
Carson, CA  
Bensenville, IL

**Magnet warnings and testing.** The new version of ASTM F963 will not require warning labels on toys with hazardous magnets or magnetic components intended for children from 3 to 8 years of age as the use of such magnets in toys intended for children up to age 14 will be prohibited. However, ASTM F963-08 adds specific use and abuse testing for toy components containing hazardous magnets.

**Folding mechanisms.** ASTM F963-08 adds a list of examples to clarify the scope of the folding mechanisms requirement. In addition, the new version of the toy standard requires locking devices to automatically engage and requires that the locking device either require a minimum force of 10 pounds to release or have a double-action release mechanism.

<sup>1</sup>Enacted as Public Law 110-314 on August 14, 2008.

<sup>2</sup>“Children’s products” under the CPSIA are consumer products designed or intended primarily for children 12 years old or younger. In determining whether a consumer product is primarily intended for such children, the CPSIA outlines certain factors to be considered, including a statement by the manufacturer about the intended use of the product, whether the product is represented in its packaging as such a product, etc.

CPSIA Website on the CPSIA available at <http://www.cpsc.gov/about/cpsia/cpsia.html>

If you have any further questions, or require additional information, please do not hesitate to contact us at [Compliance@shipamerican.com](mailto:Compliance@shipamerican.com)



---

The American Companies

250 Moonachie Road (HQ Office – Full Service)  
Moonachie, NJ 07074 (201-478-4600)

400 Oceangate, Suite 1106 (Full Service)  
Long Beach, CA 90802 (562-435-2327)

881 Route 83 (Full Service)  
Bensenville, IL 60106 (630-860-0782)

Domestic USA Ground Operations  
Domestic USA Air Operations  
Asheville NC 828-271-2061

3PL Locations  
Fairview, NJ  
Carson, CA  
Bensenville, IL