

ANSI Legal Issues Forum

October 6, 2009



Nancy Nord
Commissioner

U.S. Consumer Product Safety Commission

www.cpsc.gov

CPSIA Ballot Votes

August 14, 2008-October 6, 2009

Accreditation Requirements for 3rd party Lead paint
Labeling Requirement for toy and game advertisements
3rd party conformity assessment body accreditation requirements for Crib and pacifier
Labeling Requirement for toy and game advertisements
Final Rule Draft FR notice ANSI/SVIA Standard for 4-wheeled ATVs
ANPR for Crib Safety Hazards
3rd party conformity assessment body accreditation requirements for small parts
Rule for Certificates for importers
3rd Party conformity assessment body children's metal jewelry
Proposed Interpretative Rule Providing Guidance on Inaccessibility Exemption for Certain Electronic Devices;
NPR Proposed Determinations Regarding Lead Content Limits on Certain Materials or Products;
NPR Procedures and Requirements for a Commission Determination or Exclusion
NPR Amendments to 16 CFR Part 1101
Amendment to Lead-Containing paint CFR 1303
State submissions under the toy safety standard preemption provision
Request for Emergency Stay of effective date of lead limits under CPSIA (NAM Petition)
Stay of Enforcement of Testing and Cert. Requirements
Exemptions for Certain Electronic Devices
Draft statement of Commission Enforcement policy on Sec. 101
Draft FR notice of Availability of Draft guidance regarding which children's products are subject to the requirements of CPSIA
Sec 108 Request for comments
Section 103 of CPSIA, Tracking Labels
Notice of inquiry Procedures and Requirements for a Commission Determination or Exclusion of children's products containing lead
Guidelines and Requirements for Mandatory Recall Notices
FR Notice for Cribs and other sleeping environments for infants roundtable
Request for Exclusion from Lead limits under Section 101 (b)(1) of CPSIA
Approval of Baja Inc Proposed ATV action Plan
Approval of KTM ATV Action Plan
Stay of Enforcement of Lead Content limits for Certain Youth Motorized Rec. Vehicles
Approval of Taotao USA ATV Action Plan
Approval of L&R Racing Inc ATV Action Plan
NAM Petition for Stay of enforcement for Tracking Labels
CHAP Questionnaire
KYMCO USA ATV Action Plan
Proposed revision to ASTM F963
Requirements for Consumer Registration of Durable Infant or Toddler products
NPR Stay of enforcement on bicycles
Draft letter to Pen people on 101(b)(1) of CPSIA Request for Exclusion from Lead limits under Section 101 (b)(1) of CPSIA
Notice of consultation Pursuant to Section 106 of CPSIA
Wildfire Motors ATV Action Plan
Section 101(b)(1) exclusion request for Rhinestones
Statement of Policy Concerning Tracking Label requirement in Section 103(a)
Approval of 7 firewalled labs Final interpretive rule on inaccessible component parts
Audit Requirements for 3rd party conformity assessment bodies
Tomoto Industries ATV Action Plan
Section 108 Component part testing
Statement of Policy Concerning Tracking Label requirement in Section 103(a)
Determinations regarding lead content limits on certain materials or products
ATV Action Plans (6 sets of ballots)
Interim Final Rule Interpreting Factors to be considered when seeking civil penalties, withdrawal of previous proposed interpretive rule
3rd party testing requirements for conformity with parts 1203, 1510, 1512, 1513, and 1500.86(a)(7)
Bath Seats Sec 104 Baby walkers Sec 104 Revocation of baby walkers CFR
PowerGroup ATV Action Plan
NST Inc ATV Action Plan
ETON America ATV Action plan
Jianshe USA ATV Action Plan
Extension on reporting for Bicycle industry
Galaxy Powersports ATV Action Plan
Peace Industry ATV Action Plan
Comment Request on CPSIA 3rd party lab registration form
Goldenville ATV Action Plan

Other CPSIA Related Activities

August 14, 2008-October 6, 2009

Designed an entirely new website just to house CPSIA information
Posted and answered almost 100 FAQs
Drafted, cleared and posted Section by Section summary of law
Issued timeline for CPSIA deadlines
Performed training sessions to Vietnamese and Chinese counterparts on CPSIA
Outreach to State Department Bureau of Economic and Business Affairs Advisory Committee on International Economic Policy
New section of website designated for ATVs Section 232 All-Terrain Vehicle Standard:
Submission of ATV Action Plans Required Under Section 232
Outreach at International Product Safety and Liability Prevention Conference Outreach Conference at Strategies for Protecting Consumers in a Globalized World
Revised statute compilation published
Outreach to the National Association of Manufacturers
Outreach to ABA Section of Litigation Products Liability Committee
Webinar on CPSIA
Sample Document drafted and posted on the General Certificate of Conformity
Posted Guidance Document on lead test
Issued Thrift Store Guidance press release Issued Press release on Stay of Testing and Certification
Issued a press release on CPSC Statement of Enforcement Policy
Issued a statement of Commission Enforcement policy on Sec. 101 (lead)
Issued phthalates guidance Posted a Guidance document for thrift stores, crafters, and charities
Posted Guidance Document on phthalates test
Proposed a Process for approving Government labs Proposed a Process for approving proprietary labs
Translated various CPSIA documents into foreign languages for website
Meeting with representatives from Mattel
Meeting with Toy Industry Association
Meeting with representatives from Mattel
OGC meeting with Art & Creative Materials Institute, Inc.
Compliance meeting with Bicycle Products Suppliers Association
Meeting with Association of American Publishers
Held all day Public Meeting on Overview of CPSIA
Held Public Meeting on ATV requirements
Health Sciences meeting with Coalition for Safe Ceramicware
Meeting with stakeholders to discuss NPR on Labeling Requirements for Toy and Game Advertising
Meeting with National Association of Manufacturers
Engineering sciences meeting with Underwriters Laboratories
Health sciences meeting with Fashion Jewelry Trade Association
Held all day Public Meeting on lead Held all day Public Meeting on XRF testing
Compliance meeting with National Customs Brokers and Freight Forwarders Association
Held Public Meeting on apparel
Held Public Meeting on books
Meeting with Goodwill
Meeting with Home School Legal Defense Association
Meeting with Gift and Home Trade Association
Compliance meeting with Representatives of Test Labs
Issued OGC Opinion on retroactivity of lead
Issued OGC Opinion on phthalates ban applying to shoes
Issued OGC Opinion on toothbrushes
Issued OGC Opinion on reconsideration of retroactivity of lead
Issued OGC Opinion on the exclusivity of phthalates ban on apparel
Issued OGC Opinion on Books
Posted 5 states requests for Existing State or Political Subdivisions of a State Toy and Children's Product Safety Standards in Effect
Letter to the the National Academy of Sciences to begin CHAP process
Prepared for and litigated NRDC Phthalates Case

Issues Still Pending for Action on CPSIA

- Publish accreditation procedures for labs to all remaining children's product safety rules
- Rule for due process protection for delisting/withdrawal of labs
- Rules regarding periodic testing, random sampling, 3rd party testing verification, and safeguarding against undue influence
- Component testing
- Labeling products as compliant
- Audit rule 102 (d)(1)
- Product Registration Cards
- Electronic Devices and Lead
- Mandatory Recall Notices
- Issue NPR on Cribs
- Mandatory rule on bath seats
- Mandatory rule on baby walkers
- 15j Substantial hazard listing for drawstrings
- 15j Substantial hazard for hair dryers
- Tracking label rule to formalize guidance
- Finish existing ATV rulemaking
- Finish Civil Penalty Factors
- Interpretive rule on children's product, what products must have tracking label
- Additional lead determinations
- Possible rule on F963 toy standards
- Finish additional 104 rules: Bassinets, Toddler beds, bedrails, play yards, High chairs, gates, stationary activity centers, infant carriers, strollers, swings
- Possible rule makings on other issues identified in the conference report: ceramics and lead, charcoal briquettes, nanotechnology, garage door openers

“15 Month” Rule

Continuing Testing for Compliance

- Purpose:
 - Prevent non-complying product from entering marketplace
 - Ensure program working as intended
- Timing: Will be proposed in November, 2009;
Finalized in 2010

“15 Month” Rule

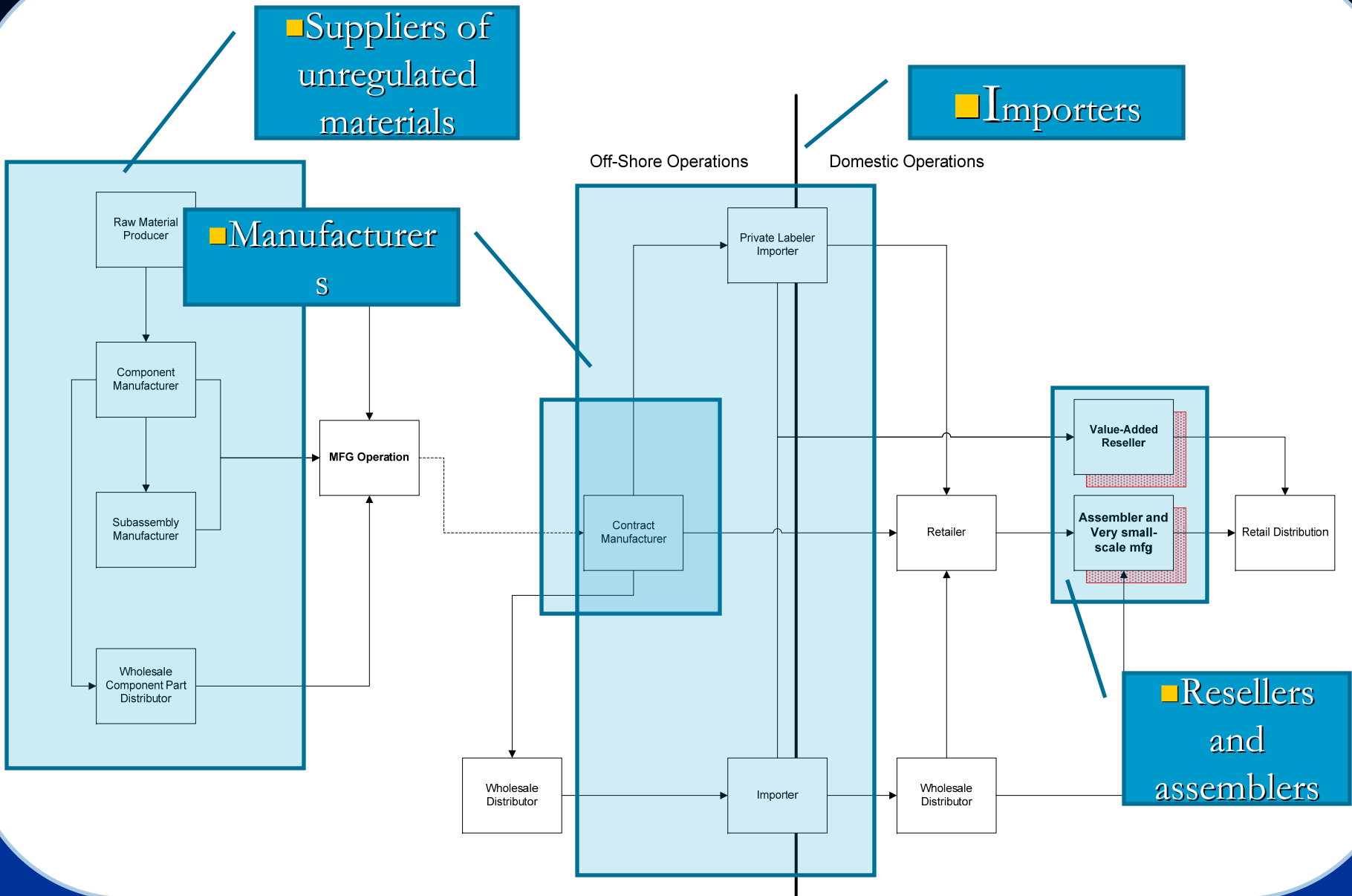
- The Commission shall by regulation establish protocols and standards for:
 1. Ensuring that a children’s product tested for compliance with an applicable children’s product safety rule is subject to:
 - Testing periodically
 - Testing when there’s been a material change in:
 - The product’s design
 - The manufacturing process
 - The sourcing of component parts

Prevent non-compliant products from entering the marketplace

“15 Month” Rule

- The Commission shall by regulation establish protocols and standards for:
 2. The testing of random samples to ensure continued compliance
 3. Verify that a children’s product tested by a conformity assessment body complies with applicable children’s product safety rules: and
 4. Safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer

Ensure the program is working as intended



Globalization has made for longer, more complex supply chains

Questions

- Does this require third party testing? Where in supply chain?
- Do we need to define “reasonable testing program”?
- How is compliance verified?
- How is material change defined?
- How to deal with component part testing?
- What criteria should be used to determine testing frequency?
- How is sample size determined?

Section 9 : Standards for Durable Nursery Products

- Assess effectiveness of voluntary consumer product safety standards for durable infant/ toddler products
- Promulgate mandatory standards substantially the same (or more stringent if it would further reduce risk of injury)
- Rulemaking for 2 categories of durable infant/toddler products every 6 months, beginning August 14, 2009
 - Bath Seats and Infant Walkers

Section 9: Standards of Durable Nursery Products

Challenges:

- Copyright issue for voluntary standard when referenced in a proposed mandatory standard
- How to keep national consensus group developing a voluntary safety standard when CPSC is going to create a mandatory standard?

Section 9: Standards of Durable Nursery Products

Copyright issue

- Voluntary Standard organization provided free link “read only”

Voluntary safety standard v. mandatory standard

- Coordinating group created for synergy of ideas