



## CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008 (CPSIA)

Widely publicized as intended to address the use of lead in children's products, the Consumer Product Safety Improvement Act (CPSIA) actually is the most sweeping overhaul of consumer product safety law since the Consumer Product Safety Commission (CPSC) was created in 1972. Although the CPSC has never played a significant role in regulating decorated glass and ceramicware, CPSIA has changed that. It is expected ultimately to affect virtually all manufacturers, importers, distributors and retailers of consumer products.

The law gives the CPSC very limited discretion in implementing its provisions, regardless of the risk to children's safety. Perhaps most significant for decorators of children's products is that CPSIA establishes strict limits on lead *content* rather than exposure through leaching. This relates to the requirement that "normal and reasonably foreseeable use and abuse activity will not result in absorption of **any** lead into the body."

**Key provisions affecting glass & ceramic decorators.** Prior to enactment of CPSIA, CPSC had little regulatory authority relating to decorated glass and ceramic ware, most of which was regulated only by the Food and Drug Administration and some states. The most relevant portions of the 2008 law for the decorating industry are those relating to lead in children's products. These provisions include:

- Applies to all products *intended for use by children* age 12 and under. See below for discussion of how CPSC may determine what constitutes such a product.
- The lead *content* in children's products manufactured on or after August 14, 2009, may not exceed 300 ppm. Earlier, the limit was 600 ppm. Products exceeding 300 ppm cannot be sold in the U.S. or exported. This limit is based on content, not exposure through leaching. A general conformity certification [see definition below] is required to document that these products meet the 300 ppm limit based on testing by third party laboratories accredited by CPSC. Although the limit on lead content is in effect, CPSC deferred the testing and certification requirement until February 10, 2010.
- The lead content in products manufactured after August 14, 2011, may not exceed 100 ppm, *if technologically feasible*. However, CPSC is not able to set any limit greater than 300 ppm. *CPSC has been asked to rule that it is not technologically feasible to achieve 100 ppm for decorated glass and ceramicware.*
- Requires labeling of products and packaging. CPSC has issued a fact sheet on the law's labeling requirements but has stated only that it "may" issue more detailed guidance on how to comply. To improve tracking and identification of recalled products, both domestic and imported, the law mandates, "to the extent practicable," permanent tracking labels on children's products and their packaging manufactured on or after August 14, 2009. Labels must provide *permanent* marks that will enable the ultimate purchaser to ascertain the manufacturer or private labeler, the location and date of production and the batch, run number, and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks. According to a staff document, "each manufacturer is ultimately responsible for making a reasonable judgment about what information can be marked on their product and packaging, given the character and type of their product and packaging, and what required information can be ascertainable, given the character and type of their business. When considering the reasonableness of a manufacturer's decision regarding what information to include in its markings, the

Commission intends to look at the individual manufacturer's situation along with the practices of peer manufacturers."

- Manufacturers from outside the U.S. may submit samples of products for testing in the United States without certifying them. However, before shipping any products other than the samples, *i.e.*, products imported for consumption, warehousing or distribution in commerce in the United States, the products must have the required certifications.
- Within the context of CPSIA, manufacturers, retailers, and importers are all considered to be the equivalent of manufacturers.

**Effect on decorated glass and ceramicware.** Details of how CPSC will implement the law are continually evolving, and decisions by CPSC Commissioners overruling earlier staff interpretations make it clear that the agency will interpret the law strictly. Some guidance issued to date is helpful to the decorating industry.

- An early staff "FAQ" document contained information directly relevant to glazes and ceramic enamels. The question asked whether CPSC would consider "borosilicate enamel ... as if it were a component that is a distinct separate part of that product or would the law apply only to the finished glass or ceramic item where the borosilicate enamel has been vitrified with the item itself?"

CPSC staff replied that "paint and other similar surface-coating materials does not include printing inks or those materials which actually become a part of the substrate, such as ...ceramic glazing. In most instances, when vitrification has occurred, the materials would be considered to be part of the substrate of the product as one whole part for testing purposes." This means that as long as the decorated product does not exceed the limits using the CPSC test method, there would be no violation.

- In a formal response to a request from the Writing Instrument Manufacturers' Association for exclusion from provisions of the CPSIA for ball point pens that contain lead in the tips, the Commissioners described in some detail how they would define whether ball point pens are children's products. Their advice offers significant information on how the Commissioners would likely determine whether other specific products constitute items intended for use by children.

CPSC noted that "A 'children's product' means a consumer product designed or intended *primarily* for children 12 years of age or younger. Accordingly, to the extent that these pens are general purpose items not being marketed to, or advertised as being intended for *use* by children 12 years or younger, these pens would not be subject to the lead limits under CPSIA." Further, "the vast majority of pens are not intended specifically for children, even if they are sold to schools. Even the majority of 'novelty pens' are not considered to be primarily intended for children," CPSC added. "Even if a pen were colorful, decorated or embellished, such colors, decorations or embellishments, alone, might not result in a 'children's product.' .....Even a pen with a cartoon character may have mass appeal and not be intended primarily for children if its price point and marketing suggest that it is intended for both adults and children.....Pens that are as likely to be used by adults as by children do not fall within the scope of Section 101(a) of the CPSIA because the pens are not marketed to, and used primarily by children and therefore do not require testing and certification for lead content...."

- In the experience of SGCD past president Walter Lumley, past enforcement practices by CPSC interpret children's products, particularly products relating to babies, in a pragmatic manner. For example, a picture frame decorated with a baby theme and baby banks were not considered to be children's products because they were not intended for *use* by the baby. SGCD is investigating whether such interpretations will apply to these items under CPSIA.

**Certification and testing.** Numerous provisions increase certification and testing requirements.

- For children’s products, certification must be based on testing by an independent, third-party laboratory that is accredited under rules issued by the Commission. Although originally scheduled to go into effect in August 2009, the Commission deferred the requirement for third-party testing to February 10, 2010.
- The CPSC has issued a specific test method for glass & ceramic products (CPSC-CH-E1002-08), similar to one used by EPA (EPA 3052). It includes a procedure for digesting samples of siliceous materials [glass and ceramics] and a separate procedure for plastics. The general approach is to grind an entire glass or ceramic item including the glaze, decoration and substrate to a powder, digest the powder in a combination of hot, nitric and hydrofluoric acid, and analyze by Inductively Coupled Plasma-Optical Emission Spectroscopy (ICP-OES). “Other analytical methods may be used...under appropriate conditions...using applicable, recognized analytical techniques,” according to the CPSC document. The full text of the test method is online at: [www.cpsc.gov/about/cpsia/CPSC-CH-E1002-08.pdf](http://www.cpsc.gov/about/cpsia/CPSC-CH-E1002-08.pdf).
- The law requires the Commission to accredit labs to test to specific rules and then testing will be required for products manufactured 90 days after the Commission designates the process by which it will accredit the laboratories for testing.
- Test labs are accredited for specific test methods. Not all labs are accredited to perform all test methods. For a list of accredited labs, go to [www.cpsc.gov/cgi-bin/labapplist.aspx](http://www.cpsc.gov/cgi-bin/labapplist.aspx). At that site, you can click on the name of a specific lab to see if it is accredited for the glass & ceramic test method CPSC-CH-E1002-08.
- The certification and testing requirements apply to all products whether they are manufactured domestically or imported.

**Provisions applicable to all products include:**

- Significant budget increases to the CPSC for new hiring, safety and enforcement initiatives.
- Substantial increase in civil penalties (up to \$15 million) for violation of CPSC laws.
- Lower burdens of proof for criminal prosecution.
- A mechanism for state attorneys general to enforce federal product safety laws. It is widely expected that several states will take action in the future to expand enforcement of CPSIA.
- Greater authority for CPSC to dictate the terms of product recalls and enforce product safety laws.
- A requirement that the CPSC develop a searchable database, accessible to the public through the Internet, on the safety of consumer products, and which includes manufacturers' names, product names and other information.
- A whistle blower provision that prohibits employers from taking any adverse action against a company employee who reports a violation or cooperates in investigations.
- Stepped-up enforcement efforts involving other federal agencies, foreign product safety regulators and state health agencies.

### **CPSC Certificate of Conformity**

An acceptable General Certification of Conformity includes the following information.

1. **Identification of the product.** Describe the product covered by the certification in enough detail to match the certificate to each product it covers and no others.
2. **Citation to each applicable CPSC product safety regulation.** Identify separately each applicable rule, ban, standard or regulation under the Acts administered by the CPSC that is applicable to the product and for which the product is being certified.
3. **Foreign or domestic manufacturer.** Provide the name, full mailing address, and telephone number of the foreign or domestic manufacturer of the product.

4. **U.S. importer, if applicable.** Provide the name, full mailing address, and telephone number of the U.S. importer, if applicable, of the product. This information may be omitted if the importer chooses to certify separately.
5. **Private labeler, if applicable.** Provide the name, full mailing address, and telephone number of any private labeler certifying the product. This information may be omitted if the private labeler chooses to certify separately.
6. **Contact information for the individual maintaining records of test results.** Provide the name, full mailing address, e-mail address and telephone number of the person maintaining test records in support of the certification.
7. **Date and place of manufacture.** Provide the date(s) when the product was manufactured by at least the month and year. For the place of manufacture, if different from the manufacturer's address in item 3, provide at least the city and country or administrative region, of the place where the product was finally manufactured or assembled. If the same manufacturer operates more than one location in the same city, provide the street address of the factory.
8. **Date and place of testing.** Give the date of the tests or test report(s) on which certification is being based and the location(s) of the testing. [The general conformity certification must be based on a test of each product or a reasonable testing program.]
9. **Third-party laboratory identification.** If a third-party laboratory tested the product or conducted a testing program on which the certification is based, give the name, full mailing address and telephone number of the laboratory.

All required information on the certificate of conformity must be provided in English.

A staff document indicates that CPSC will accept electronic certificates of conformity provided that CPSC has reasonable access to the certificate electronically. The certificate will be regarded as "accompanying" the shipment if the following requirements are met: (1) the certificate is identified by a unique identifier and can be accessed via an Internet URL or other electronic means and (2) the URL or other electronic means and the unique identifier are created in advance and available with each shipment. CPSC staff also believes the CPSIA requirement that certificates of conformity be furnished to distributors and retailers can be satisfied if the distributors and retailers are given a reasonable means to access the certificate electronically. The CPSC Web site lists information that is required for an acceptable General Certification of Conformity at: [www.cpsc.gov/about/cpsia/faq/elecfaq.pdf](http://www.cpsc.gov/about/cpsia/faq/elecfaq.pdf).

**More details.** The CPSC Web site contains links to numerous additional documents that may be of interest. It can be accessed at [www.cpsc.gov/about/cpsia/cpsia.html](http://www.cpsc.gov/about/cpsia/cpsia.html).

If you have any questions about how this law will affect your company or a specific product, please email SGCDpro Legislative/Regulatory Liaison Sandy Spence at [sandyspence325@gmail.com](mailto:sandyspence325@gmail.com). She will work to secure an answer for you.

**Disclaimer:** SGCD regulatory information is compiled from public sources that, to our best knowledge, are true and correct. While we intend to present only accurate information, SGCD accepts no liability or responsibility in the event any information contained herein is erroneous.

The information contained in this particular document is based on the best information available from the CPSC in November 2009. New information is being issued almost daily. Accordingly, this document is advisory only. It has not been reviewed by legal counsel. Please consult with your own legal counsel in addressing your company's specific concerns.