

# A Guide to Complying with the Federal Requirements for Toys in the United States

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### LEGAL NOTICE

This document contains legal guidance only. It is intended to explain obligations and how to fulfil them. However, readers are reminded that the text of the original regulation, directive or standard is the only authentic legal reference and that the information in this document does not constitute legal advice.

## 1. Introduction

Toy Safety legislation in the United States is complex, as there are both Federal laws (applying to the whole of the USA) and individual state laws to consider.

This guide covers the Federal requirements for toys intended for use in play by children under 14 years of age and is intended to help UK companies wishing to sell their product in the USA.

It should be noted that toys containing art materials are subject to additional requirements in the Labeling Of Hazardous Art Materials Act (LHAMA) and the Federal Hazardous Substances Act (FHSA) that are outside the scope of this guidance. Examples of art materials include, but are not limited to: ceramics and clay, chalk, stencils, coloured pencils, crayons, glue, jewellery-making kits, markers, paints, painting kits, polymer clay packs, certain stickers, and watercolour discs.

This guide does not cover individual state requirements as separate BTHA guides are available for these.

Where companies have any doubt about their ability to interpret the USA requirements, third party expert help may be needed.

## 2. The Consumer Product Safety Improvement Act (2008) (CPSIA)

Consumer Product Safety Improvement Act (2008) (CPSIA) is an amendment to the CPSA (Consumer Product Safety Act) and is the main piece of legislation for toy safety and it applies to children's toys, child care articles and children's products for children 12 years and under. The requirements are set out in the following sections of the CPSIA:

- Mandatory third-party testing - 16 CFR 1107,
- Mandatory toy safety standard - CPSIA Section 106(a)
- Component testing 16 CFR 1109
- Children's Product Certificate - 16 CFR 1250
- Tracking labels - CPSA section 14(a)(5)
- Phthalates - CPSIA Section 108
- Lead in substrates and coatings - 5 U.S.C. 1278a

In addition to the information found in the CPSIA further clarification concerning certain aspects of legislation can be found in Code of Federal Regulations (CFR) and the Federal Register (FR). These are quoted where appropriate in this guide.

Enforcement is carried out by the Consumer Product Safety Commission (CPSC).

## 3. Definitions

*Toy*—any object designed, manufactured, or marketed as a plaything for children under 14 years of age. (F963)

*Children's product* - a consumer product designed or intended primarily for children 12 years of age or younger. (16 CFR 1200)

## 4. Mandatory Third Party Testing

CPSA/CPSIA requires that all toys intended for use by children 12 years of age and under must be third-party tested by a CPSC accredited laboratory. Each lab is assessed and accredited for specific test requirements.

Third-party testing to the United States toy standard ASTM F963 (currently F963-17) is required and this standard includes requirements for certain soluble chemical elements (see section

8.2), mechanical and physical hazards, flammability and electrical hazards. It should be noted that there may be additional requirements for some specific types of toys not found in ASTM F963 e.g. 16 CFR Part 1500.86(a)(5) includes requirements for Clacker Balls. CPSC accredited laboratories should be able to advise on any additional requirements for specific toys.

ASTM standards applicable to toys can be viewed on the BTHA BS Online service.

Additional chemical restrictions, e.g. for total lead, soluble heavy metals and phthalates also require mandatory testing (for specific requirements related to individual substances see section 8).

There may be some relief from the requirements of third-party testing for “small batch manufacturers” however it is unlikely that any UK companies will qualify as a small batch manufacturer.

## 5. Mandatory Toy Safety Standard

Compliance to all applicable clauses of ASTM F963 is required. This standard applies to all toys for children under 14, excluding bicycles, tricycles, scooters, sling shots, pointed darts, playground equipment, non-powder guns, kites, toy chests, sporting goods, camping goods, athletic equipment, musical instruments, juvenile products, furniture, powered models, and constant air inflatables.

The CPSIA requires mandatory third-party testing for certain specified sections of F963. This [link](#) provides helpful information

Although the scope for children’s products ends at 12 years it would be prudent to also apply the requirements of ASTM F963 to toys for children up to 14 years to match the scope of ASTM F963 although this is not legally required by CPSIA.

## 6. Children’s Product Certificate –

Importers and domestic manufacturers of toys in the US must certify, in a written Children’s Product Certificate (CPC), based on test results from a CPSC-accepted laboratory, that their children’s products comply with applicable children’s product safety rules.

The CPC and supporting test reports must be in English. The contents of the CPC are listed below:

Requirement	Detail
Product Identification	Description allowing identification of the individual product and no other
Reference of each CPSC children’s product safety rule that applied	Each applicable rule should be stated E.g., Phthalates
Identification of the importer or US manufacturer that is certifying the product	Name, full address and telephone number
Identification of the individual maintaining test records that support the CPC.	Name, full address and telephone number
Date of manufacture	Must include the month and year as a minimum

Place of manufacture	City (or administrative region), state (if applicable), and country where the product was manufactured or finally assembled
Date(s) and place when the product was tested for compliance	Provide the location(s) of the testing and the date(s) of the test(s) or test report(s)
Details of the laboratory on whose testing the certificate depends	Name, full address, and telephone number Note that “small batch manufacturers” (SBM) exempt from third party testing must provide their SBM CPSC registration number

## 7. Tracking Labels

Children’s products that are designed or intended primarily for use by children ages 12 or younger must have distinguishing permanent marks (generally referred to as “tracking labels”) that are affixed to the product and the packaging or, if not practicable, its packaging only.

Tracking labels must contain the following information:

- Manufacturer or private labeller name;
- Location and date of production of the product;
- Detailed information on the manufacturing process, such as a batch or run number, or other identifying characteristics; and
- Any other information to facilitate ascertaining the specific source of the product.

All tracking label information should be visible and legible.

## 8. Mandatory Reporting

Companies involved in the manufacture, importation, distribution or sale of consumer products have obligations for reporting to the Consumer Product Safety Commission (CPSC) where a product has been found to have a defect or pose an unreasonable risk of serious injury or death.

A company must report to the CPSC within 24 hours of obtaining "reportable" information. Obtaining means that a company employee capable of appreciating the significance has received information.

The CPSC encourages early reporting of potential hazards even whilst still investigating the issue. However, where there is uncertainty about whether the issue can be defined as reportable, a period for investigating not exceeding 10 days can be undertaken.

After each report the Commission will investigate the issue and come to its own preliminary determination.

Companies should note that there is also a Fast Track Product Recall Program. In this case the reporting company will have voluntarily decided to recall the product and no preliminary determination will be made by the Commission. However, the Commission will work with companies on the subsequent corrective action plans.

The CPSC has produced a recall handbook including all relevant obligations and steps required and this can be found at [CPSC.gov](https://www.cpsc.gov) under Business & Manufacturing - Recall Guidance.

Companies are advised to make themselves familiar with the requirements within the handbook.

## 9. Chemical restrictions

There are three groups of chemicals that are regulated under the Act:

- Phthalates
- Soluble Elements
- Total Lead

### 9.1 Phthalates

Toys and childcare articles shall not contain over 1% of the following substances in accessible plasticized components or any other component that is made of other materials that may contain phthalates.

Butyl benzyl phthalate (BBP)
Di-(2-ethylhexyl) phthalate (DEHP)
Dibutyl phthalate (DBP)
Diisononyl phthalate (DINP)
Di-n-octyl phthalate (DnOP)
diisobutyl phthalate (DIBP)
di- <i>n</i> -pentyl phthalate (DPENP)
di- <i>n</i> -hexyl phthalate (DHEXP)
dicyclohexyl phthalate (DCHP)

16 CFR 1307 provides a list of materials that are unlikely to exceed the limits

## 9.2 Soluble Elements – Mandatory toy safety standard

The federal requirements make testing to ASTM F963 mandatory. ASTM F963 includes the requirements for soluble elements.

All materials are subject to the testing requirements unless specifically listed in the exclusions

CAS No	Substance	Limits in mg/kg		
		All materials	Modelling clays	metallic toys and metallic components
7439-92-1	Lead (Pb)	90	90	
7440-36-0	Antimony (Sb)	60	60	
7440-38-2	Arsenic (As)	25	25	
7440-43-9	Cadmium (Cd)	75	50	0.2
7439-97-6	Mercury (Hg)	60	25	
7440-39-3	Barium (Ba)	1000	250	
7440-47-3	Chromium (Cr)	60	25	
7782-49-2	Selenium (Se)	500	500	
<b>Exclusions</b>	Toys and parts of toys which, due to their inaccessibility, size, mass, function, or other characteristics, cannot be sucked, mouthed or ingested as defined by ASTM F963			
<b>Testing</b>	<p>The federal requirements require mandatory testing to show compliance using defined methods by CPSC approved laboratories.</p> <p>Finished product testing for soluble elements is not mandatory where component part testing has been carried out according to 16 CFR 1109.</p> <p>Compliance can be shown by using a total screening method or by testing to ASTM F 963 migration.</p> <p>Results of testing or compliance measures should be included in the “Children’s Product Certificate” by citing the legal reference CPSIA Section 106</p>			

### 9.3 Total Lead – CPSIA Section 101 and ASTM F963-16

The federal requirements for Total Lead are included in both the CPSIA Section 101 and ASTM F963.

All materials are subject to the testing requirements unless specifically listed in the exclusions

CAS	Substance	ASTM and CPSIA limits
7439-92-1	Lead (Pb)	100ppm total content in toy material 90ppm total content in surface coatings
<b>Exclusions</b>		<ol style="list-style-type: none"> <li>1. CPSIA excludes inaccessible materials according to 16 CFR 1500.87</li> <li>2. Untreated and unadulterated: <ul style="list-style-type: none"> <li>- precious and semiprecious gemstones,</li> <li>- natural or cultured pearls,</li> <li>- wood,</li> <li>- paper and similar materials,</li> <li>- paper printing inks including CMYK process printing inks that are part of their substrate,</li> <li>- textiles,</li> <li>- natural and manufactured fibers,</li> <li>- other plant or animal derived materials,</li> <li>- stainless steel and precious metals,</li> </ul> <p>according to 16 CFR 1500.91</p> </li> <li>3. Certain electrical and electronic components listed in 16 CFR 1500.88</li> </ol>
<b>Testing</b>		<p>The federal requirements require mandatory testing to show compliance using defined methods by CPSC approved laboratories.</p> <p>Finished product testing is not mandatory where component part testing has been carried out according to 16 CFR 1109.</p> <p>The following test methods must be used.</p> <p>Lead Content in Children's Metal Products, Standard Operating Procedure for Determining Total Lead (Pb) in Metal Children's Products (including Children's Metal Jewelry), Revision June 21, 2010, Test Method CPSC-CH-E1001-08.1, Test Method CPSC-CH-E1001-08.2, and Test Method CPSC-CH-E1001-08.3.</p> <p>Lead Content in Children's Non-Metal Products, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, Revision June 21, 2010, Test Method CPSC-CH-E1001-08.1, Test Method CPSC-CH-E1002-08.2, and Test Method CPSC-CH-E1002-0</p> <p>Results of testing or compliance measures should be included in the "Children's Product Certificate"</p>

## 10. Additional resources

- **Regulatory Robot**

The Regulatory Robot is a CPSC resource intended to guide companies through the requirements for manufacturing or importing products into the USA.

<https://www.cpsc.gov/Business--Manufacturing/Regulatory-Robot/Safer-Products-Start-Here/>

- **The Toy Association (TTA)**

TTA is the trade association representing all businesses involved in creating and delivering toys and youth entertainment products for kids of all ages.

<http://www.toyassociation.org>

- **The Consumer Product Safety Commission (CPSC)**

The CPSC is an independent agency of the US government. The CPSC promotes the safety of consumer products by addressing “unreasonable risks” of injury (through coordinating recalls, evaluating products that are the subject of consumer complaints or industry reports, etc.

The CPSC has produced a recall handbook including all relevant obligations and steps required and this can be found under Business & Manufacturing, Recall Guidance.

<https://www.cpsc.gov>

- **BS Online**

BSI on line is a BTHA member service giving viewing access to British and ASTM standards applicable to toys. The service is available for full BTHA members.

<https://bsol.bsigroup.com/>