

# Understanding U.S. Product Safety Apparel Requirements and Risk-Based Targeting at the Border

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Hosted by Canadian Apparel  
Federation

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# Introductions



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# Agenda

- » CPSC Product Safety Rules for Apparel
  - Non-children's apparel
  - Children's apparel
- » CPSC Mandatory Testing & Certification
- » Risk-Based Enforcement
- » Border Stoppages
- » Reconciling Federal versus State Product Safety Rules

# Federal Agencies To Know When Importing Apparel Into U.S.



## CPSC - Overview

- » Regulates consumer products in U.S. at the federal level – including apparel
- » Jurisdiction over consumer products at the point of import
- » Develops standards for consumer products – including apparel
- » Requires product testing and certification for regulated products
- » Enforces through product seizures (denials of entry), recalls, stop sale orders and civil and criminal legal actions in the U.S.

# CPSC Rules for All Apparel

## » Flammability Standard for Wearing Apparel

(16 CFR Part 1610)

- Provides flammability tests for clothing textiles & bans any dangerously flammable clothing textiles
- Does not include “film and fabrics having a nitro-cellulose fiber, finish, or coating”
- Exceptions: *Hats, Gloves, Footwear* (but not hosiery), & *Interlining Fabrics*
- Recognized exemptions from testing:
  - *Plain surface fabrics* (those without intentionally raised fiber or yarn surfaces) *weighing 2.6 oz. per yd<sup>2</sup> or more*
  - Fabrics made entirely from, or a combination of, *acrylic, modacrylic, nylon, olefin, polyester, wool*
- Applies to both adult and children’s apparel
- Requires compliance certifications (GCC or CPC)

# CPSC Rules for Children's Apparel

- » **Flammability Standard for Wearing Apparel**  
(16 CFR Part 1610) – **PLUS** –
- » **Flammability for children's sleepwear** (sizes 0-14)
- » **Lead Content** (100 ppm total content)
- » **Lead in Surface Coating** (90 ppm)
- » **Phthalates** (child care articles for children  $\leq$  3 years old, including children's sleepwear)
- » **Small Parts** (children < 3 years old) (only if applicable)
- » **Sharp Points** (children < 8 years old) (only if applicable)
- » **BAN**: Children's upper outerwear with drawstrings, sizes 2T-16 (16 CFR § 1120.3(b))

# Flammability for Children's Sleepwear

- » 16 CFR Parts 1615, 1616
  - Flammability testing standard for children's sleepwear sized 0 through 14
  - Requires a permanent label with care instructions & unit identification number
  - Rule does not apply to diapers or underwear
  - Exceptions:
    - *Tight-fitting garments* (must meet maximum set dimensions, not have ornament or trim, meet tapering design requirements, bear a permanent sizing label, and bear a hang tag with flammability warnings)
    - *Infant garments* sized  $\leq$  9 months that meet maximum dimension requirements & bear a sizing label

# Lead Rules Exemptions

- » Lead Content testing is not required for certain natural materials that have not been treated or adulterated, as they have been found to meet the lead standard, including:
  - Textiles:
    - *natural fibers* (incl. cotton, linen, hemp, bamboo, silk, wool, angora)
    - *manufactured fibers* (incl. rayon, acetate, polyester, olefin, nylon, spandex)
  - *CMYK process printing inks* (excluding screen prints, transfers, and decals)
  - *Precious metals and gemstones, semiprecious gemstones*
  - *Plant- and animal-derived materials* (incl. fur, feathers, leather)

# CPSC Testing & Certification

- » Testing and certification are required for all products subject to a consumer product or children's product safety rule
- » Importer of record must issue certificate and is responsible that product complies with CPSC rules
- » Importer may rely on testing and/or certificates from suppliers and manufacturers
  - Importer must exercise due care & receive documentation
  - Importer remains responsible that actual products meet standards
- » Certificates must be presented at the port, can be electronic

# New CPSC Third Party Testing and Certification Rules (effective February 8, 2013)

- » Required third party testing for all children's products:
  - Initial certification testing
    - On sufficient samples to provide high degree of assurance (HDOA) that tests demonstrate ability of the product to meet the relevant product safety rules
  - Periodic testing – 3 options:
    - At least once annually to ensure HDOA (default);
    - At least every 2 years implementing site-specific production testing techniques laid out in production testing plan; or
    - At least once every 3 years if doing in-house ISO-certified lab testing
  - Material change testing

# New CPSC Third Party Testing and Certification Rules (effective February 8, 2013)



Parts of the pirate costumes (buttons) contained 1,109 ppm of lead; the acceptable level is just 100 ppm.

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/local/10162012\\_3.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/local/10162012_3.xml)

# New CPSC Third Party Testing and Certification Rules (cont'd)

- » Written Undue Influence Procedures at a minimum require:
  - Corporate policy against undue influence on third party testing bodies
  - Training (and retraining when requirements change) of every “appropriate staff member” and signed attestations from each after receiving training
  - Informing employees that allegations of undue influence will be “reported confidentially to the CPSC” and how such a report will be made
  - Notifying the CPSC “immediately” of any attempt to “hide or exert undue influence over test results”

# New CPSC Third Party Testing and Certification Rules (cont'd)

## » New Documentation Requirements:

- CPCs (including test reports)
- Periodic (Production) Testing Plans (including test reports)
- Records of all material changes in product design, manufacturing process, and sourcing of component parts, and test results
- Undue Influence procedures, training documents and attestations

## » Retain documents for 5 years

- Be able to produce electronically or in hard copy to CPSC upon request
- Okay to maintain in native language of each manufacturing site provided they can be translated to English within 48 hours of CPSC request

# Tracking Labels for Children's Products

- » Permanent tracking labels are required for children's products indicating, *to the extent practicable*:
  1. manufacturer/private labeler;
  2. location and date of production;
  3. cohort information (e.g., batch, run no.)
- » Importers responsible for tracking labels
- » In addition to Children's Product Certificate requirement

# CPSC Enforcement Trends: Recalls

- » Most CPSC recalls are undertaken as “voluntary,” but this year the Staff filed two administrative complaints seeking to force mandatory recalls involving high-powered magnet sets
- » Apparel recalls in the past 12 months:
  - Ongoing recalls of drawstrings in children’s upper outer wear: 10 (29,670 total products affected)
  - Children’s sleepwear failing flammability requirements: 8 (244,150 total products affected)
  - Choking hazards posed by components detaching from children’s apparel: 3 (288,320 total products affected)
- » CPSC may recall products with a simultaneous recall by Health Canada and has done so in recalling apparel

## »U.S. Consumer Product Safety Commission

»Office of Communications Washington, D.C.

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- »FOR IMMEDIATE RELEASE **CPSC Hotline: (800) 638-2772**
- »April 5, 2012 CPSC Media Contact: Carl Purvis, (301) 504-7805
- »Release #12-142

## »Port Surveillance News: CPSC Investigators Find, Stop Nearly 650,000 Unsafe Products at the Start of Fiscal Year 2012

»WASHINGTON, D.C. - Investigators with the U.S. Consumer Product Safety Commission (CPSC) prevented more than half a million violative and hazardous imported products from reaching the hands of consumers in the first quarter of fiscal year 2012.

»Working with U.S. Customs and Border Protection (CBP) agents, CPSC port investigators successfully identified consumer products that were in violation of U.S. safety rules or found to be unsafe. CPSC and CBP teamed up to screen more than 2,900 imported shipments at ports of entry into the United States. As applicable, these screenings involved use and abuse testing or the use of an X-ray fluorescence (XRF) analyzer. Their efforts prevented more than 647,000 units of about 240 different noncomplying products from reaching consumers, between October 1, 2011 and December 31, 2011.

»Topping the list of products stopped were children's products containing levels of lead exceeding the federal limits, toys and other articles with small parts that present a choking hazard for children younger than 3 years old, and toys and child care articles with banned phthalates.

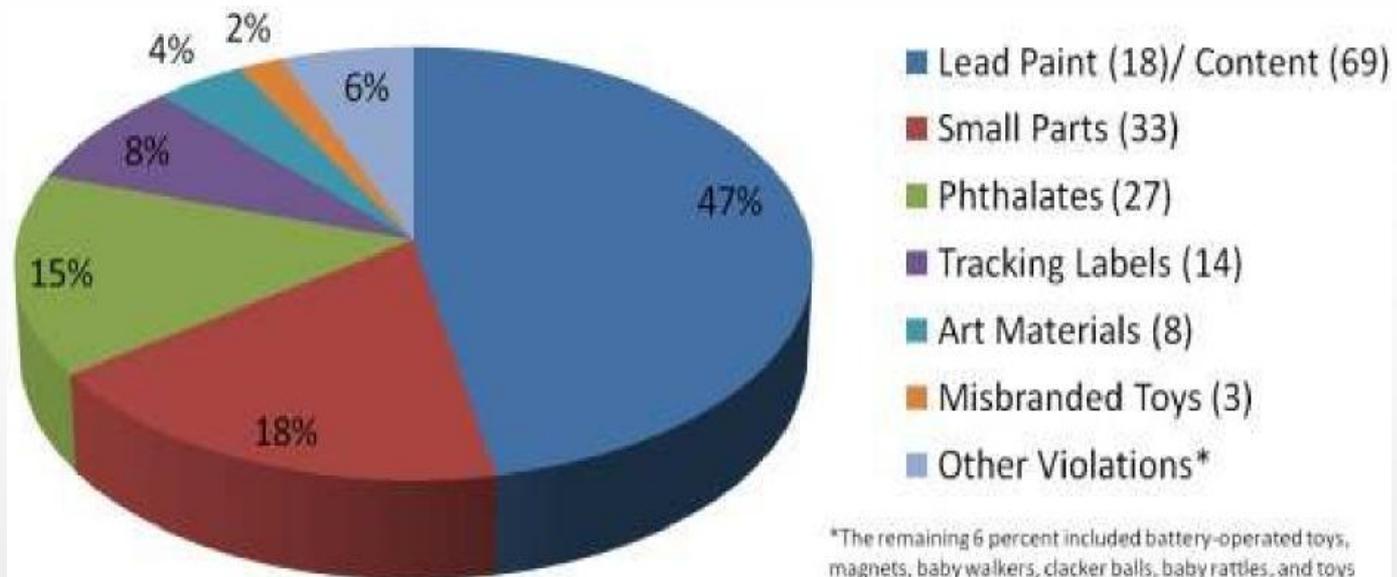
»In addition to violative toys and other children's products, items stopped at import included defective and dangerous hair dryers, lamps and holiday lights.

»"We mean business when it comes to enforcing some of the toughest requirements for children's products in the world. If an imported product fails to comply with our safety rules, then we work to stop it from coming into the United States," said Chairman Inez Tenenbaum. "Safer products at the ports means safer products in your home."

»During fiscal year 2011, CPSC inspected more than 9,900 product shipments at the ports nationwide and stopped almost 4.5 million units of violative or hazardous consumer products from entering the stores and homes of U.S. consumers.

## Children's Products Stopped by Primary Violation/Defect

Total units stopped - 527,950 (82%)



\*The remaining 6 percent included battery-operated toys, magnets, baby walkers, clacker balls, baby rattles, and toys that contained sharp points or were chemically hazardous.

### Violative Products CPSC Stopped from Reaching Consumers

\* The following list includes only seizures of products that violated federal mandatory standards.

Foreign Manufacturer	Importer	Product Name	Country of Origin	Violation	Total
Cbbp International Llc	Larry Chan Dba Yen Yen Kidswear	Fuzzy Jacket - Beige	China	Lead in children's product/FHSA Tracking label violation	50
		Fuzzy Jacket - Pink		Lead in children's product/FHSA Tracking label violation	50
		Fuzzy Jacket - White		Lead in children's product/FHSA Tracking label violation	50
		Hooded Jacket Red/Purple		Lead-in-paint toy/Children's product/CPSC Tracking label violation	50
		Jacket		Lead in children's product/FHSA	50
				Lead in children's product/FHSA Tracking label violation	150
		Kids Jacket		Lead in children's product/FHSA Tracking label violation	100
				Lead in children's product/FHSA Lead-in-paint toy/Children's product/CPSC Tracking label violation	50
		Kids Vest		Lead in children's product/FHSA Tracking label violation	100
Red Fuzzy Coat	Lead in children's product/FHSA Tracking label violation	50			
Sottocoperta Srl	C & C Chhildrens Wear Ltd	Baby Dress Pink Cupcake	Italy	Lead in children's product/FHSA	13
		Baby Pj Set Cupcake		Sleepwear flammability failure	7
		Baby Pj Set Purses		Sleepwear flammability failure	8
		Baby Shirt And Shorts		Lead in children's product/FHSA	5
		Baby Shirtand Pants		Lead in children's product/FHSA Sleepwear flammability failure	18
		Children's Pajama		Sleepwear flammability failure	12
		Children's Pajama		Sleepwear flammability failure	336

# CPSC Enforcement Trends: Penalties

- » Civil Penalties Involving Apparel
  - CPSC has targeted drawstrings in children’s upper wearing apparel for civil penalties for several years
  - **44 firms** (including manufacturers, distributors, and retailers) have agreed to **\$5.62M** total in civil penalties for drawstring-related penalties since 2008
  - Highest and most recent drawstring penalty:  
Burlington Coat Factory, **\$1.5M** on July 26, 2012, for failing to report drawstrings *and* selling recalled products
- » Criminal Penalties: none involving apparel so far

## CPSC Enforcement at the Port

- » Product refused admission into U.S. if –
  - Fails to comply with consumer product safety rule
  - No certificate (or false certificate)
  - Imminently hazardous
  - Defective
    - Violation of a voluntary standard
- » Handling of products refused admission –
  - Modification
  - Destruction
  - Export (upon application)

Note: products exported from the U.S. must comply with CPSC standards

# CBP Calls, Now What?

- » What happened at the border?
  - Reject or Deny Entry
  - Detained for sampling or inspection
  - Conditional release
  - Redelivery of shipment
  - Exportation or destruction
  - Seizure

# CPSC – Import Procedures

- » CPSC may sample and detain product at the port
- » Detained merchandise remains under CBP custody
- » CPSC Issues Notices of Detention
  - Compliance Investigator or Field Investigator will issue
  - Notice will describe the suspected violation and the statute governing that suspected violation; CPSC officer contact information will be on the Notice
  - Notice issued to importer with copies to Customs broker and CBP
  - Deal directly with CPSC

# CPSC – Import Procedures

## » Detentions – Time Frames

- Detention notices to be issued as soon as possible after sampling/examination
- Recipient of Notice has 5 business days to provide information to help resolve the detention; extensions can be granted
- Policy is to try to resolve detentions within 30 days

## CPSC – Import Procedures

- » Detentions and seizures of shipments under both CBP and CPSC authority
  - Detention notifications will be issued by both agencies
  - If CBP seizes that will resolve the CPSC detention but not final CPSC action (Letter of Advice could be issued)
  - If CBP resolves its detention in favor of the importer, it will not release the merchandise without resolution of the CPSC detention

# CPSC – Import Procedures

- » Conditional Release of Merchandise
  - CPSC can allow conditional release of merchandise under CBP bond pending results of examination and testing
  - Merchandise cannot be distributed while under conditional release
  - Case-by-case consideration

# CPSC – Import Procedures

## » Redelivery of Merchandise

- Redelivery notice issued by CBP, must be within 30 days after the end of the conditional release period
- Redelivery could lead to seizure, destruction or exportation
- Failure to redeliver results in assessment of liquidated damages against importer (bond principal) and surety

# CPSC Enforcement at the Port

- » Assessment of liquidated damages
  - Three times the entered value of the shipment (cannot exceed bond amount) or domestic value of merchandise
  - Consideration of mitigating and aggravating factors for liquidated damages claims

# CPSC – Import Procedures

## » Request for a Hearing

- Exhaustion of administrative remedies with CBP
- Importer/owner/consignee can seek a full hearing under the Administrative Procedures Act
- Product will remain under Government custody at importer's expense during the pendency of the hearing
- Custody of goods remains with CBP

## Other Governmental Agency Inspections

- » Trademarks/Counterfeit enforcement
  - Interim rule for disclosure of certain IP rights enforced by CBP
  
- » Import-related licenses from other agencies
  - Fish & Wildlife Service

# State Regulation of Products

- » States may have their own requirements
  - e.g., Illinois, Washington, Maine
  - Other “green chemistry” initiatives
- » California Proposition 65 – grandfathered
  - “Clear and reasonable warning” requirement for goods sold in California
  - Not a ban of any substance or product
  - Covers chemicals known to cause cancer, birth defects, or other reproductive harm
  - California publishes a list of chemicals (appx. 800 currently listed)
  - Applies to businesses with 10+ employees

# Risk-Based Targeting

- » Risk Assessment Methodology
  - Live data screening – International Trade Data System
    - ISF
  - Specific product screening
  - Audits
- » Reducing Your Risk
  - Importer Self-Assessment Program
  - Centers for Excellence & Expertise
    - Textiles, Wearing Apparel & Footwear - 2013

# Thank You.

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