Art Materials at Import: How to Comply with CPSC Safety Requirements

Presented by:
Stephen Lee, Small Business Ombudsman Team
Jamie Stricklen, Office of Import Surveillance

Disclaimer: This presentation was prepared by CPSC Staff and may not necessarily reflect the views of the Commission.
• Background
• LHAMA requirements
• What is an “art material”?
• Art material examples
• Children’s products
• General use products
Background

- Labeling of Hazardous Art Materials Act (LHAMA)

- Codified at 16 CFR § 1500.14(b)(8)
  - www.ecfr.gov

- www.cpsc.gov/artmaterials
LHAMA requirements: Toxicology Review and Submission

- Art materials subject to the Act must be reviewed for chronic toxicity by a toxicologist
  - Per 16 CFR § 1500.14(b)(8)(i)(C)(6), must be done at least every 5 years
- Toxicology review criteria must be submitted to CPSC’s Division of Regulatory Enforcement [16 CFR 1500.14(b)(8)(ii)(C)]
  - Email toxicology review criteria to RegulatedCMT@cpsc.gov
  - Must include a list of any art materials that require labeling
  - Submission of product formulation upon request
After a toxicologist performs the chronic hazard review, the product must bear a conformance statement:

- “Conforms to ASTM Practice D-4236”;
- “Conforms to ASTM D-4236”; or
- “Conforms to the health requirements of ASTM D-4236.”

Conformance statement can be on: product, package, poster/display at point of sale, separate explanatory literature available on requirements at the point of purchase, response to a formal request for bid or proposal.

Conformance statement required regardless of other labeling requirements.
LHAMA requirements: Cautionary Labeling (Chronic Hazards)

- If the toxicologist determines a chronic hazard exists, cautionary labeling is required per Federal Hazardous Substances Act (FHSA)
  - See Chronic Hazard Statements [16 CFR 1500.14(b)(8)(i)(F)]
  - See Precautionary Statements [16 CFR 1500.14(b)(8)(i)(G)]
- Children’s products that contain a hazardous substance is a "banned hazardous substance" [16 CFR § 1500.3(b)(15)(i)(A)]
How LHAMA labeling differs from FHSA Labeling

- Signal word “WARNING” if only chronic hazard determined
  - Defer to acute hazard signal word requirement when applicable
- Name, US address, US phone number of producer or repackager [16 CFR 1500.14(b)(8)(ii)(D)]
  - FHSA does not specify US address nor requires phone number
- Must provide information source in case of exposure:
  - 24-hr toll-free US phone number
  - “Contact a physician for more health information”; or
  - “Call your local poison control center for more health information”
QUESTION: Do LHAMA requirements need to be cited on a Certificate of Compliance (CPC/GCC)?

- No. Compliance to LHAMA is not based on a reasonable testing program; therefore, certification to LHAMA per section 14 of the CPSA does not apply.
- Additional note: Cautionary labeling per FHSA is also not based on a reasonable testing program; therefore, cautionary labeling requirements under FHSA does not need a certificate.
QUESTION: Does the conformance statement have a type size requirement?

• No. The conformance statement is not part of a cautionary label per FHSA; therefore, it is not subject to the type-size nor any other placement, prominence, or conspicuousness requirement under 16 CFR § 1500.121.
What is “art material”? 

- Art material or art material product – “any raw or processed material, or manufactured product, marketed or represented by the producer or repackager as intended for and suitable for users as defined herein.”
- Users – “artists or crafts people of any age who create, or recreate in a limited number, largely by hand, works which may or may not have practical use, but in which aesthetic considerations are paramount.”
What is “art material”?

• Takeaway: a material that consumers use to create art

• Examples of art materials often include (depending on marketing and intended use):
  • modeling clay, chalk, colored pencils, crayons, paint and painting kits, watercolor discs, certain types of glues (including craft glue), markers.
What is not considered “art material”?

- General use products not intended to create art
  - Common wood pencils, single-colored pens/markers/chalk
Commission Determination on Art Materials

- Tools, implements, furniture used in the creation of art
  - Brushes, chisels, easels, frames
Commission Determination on Art Materials

- Surface materials upon which art material is applied
  - Coloring book pages, canvas
- Miscellaneous materials
  - Paper, cloth, plastic, films, yarn, threads, rubber, sand, wood, stone, tile, masonry, metal
Art material comparison
QUESTION: Slime kits often come with glue. Is glue in a slime kit subject to LHAMA?

• No. Glue used in slime kits is not intended to create art (slime is not considered art).

• Polyvinyl acetate glue (aka PVA/craft/white glue) sold by itself is commonly recognized as intended for art; therefore, it would likely need to meet LHAMA requirements.
  • See second half of 16 CFR § 1500.14(b)(8)(iv)(B)
Additional requirements for children’s products

- Children’s products
  - Small parts (children under 3)
  - Lead in substrate
  - Lead in paint
  - Tracking label
  - Third-party testing
  - Children’s Product Certificate

- Children’s toys
  - ASTM F963
  - Phthalates
  - Choking hazard labeling
Children’s art material and CPC

Identification of the product covered by this certificate
Watercolor set w/ brush (Models 123, 234, 345)
Children’s art material and CPC

Citation to each CPSC children’s product safety rule to which this product is being certified

15 U.S.C. § 1278a – Total lead content
16 CFR part 1303 – Paints and similar surface coatings
16 CFR § 1500.14(b)(8) – Art materials
Children’s art material and CPC

Identification of the importer or domestic manufacturer certifying compliance of the product

Paints and More, Inc.
123 Artist Circle
Nowhereland, AA 00000
(555) 555-5555
Children’s art material and CPC

Contact information for the individual maintaining records of test results

John Smith
Paints and More, Inc.
123 Artist Circle
Nowhereland, AA 00000
(555) 555-5555 x55
j.smith@paintsandmoreinc.com
Children’s art material and CPC

Date and place where this product was manufactured
  Jan 2022 to Jul 2022
  Shenzhen, Guangdong, China
Children’s art material and CPC

Provide the date(s) and place when the product was tested for compliance with the consumer product safety rule(s) cited above

Jan 2022
Shenzhen, Guangdong, China
16 CFR § 1500.91(d)(4) – Determination regarding lead content for wood
16 CFR § 1500.91(d)(8) – Determination regarding lead content for fur
Children’s art material and CPC

Identify any third-party, CPSC-accepted laboratory on whose testing the certificate depends

Attestation of Global Compliance (Shenzhen) Std & Co., Ltd.
2, 6/F., Building 2, Sanwei Chaxi Industrial Park, Sanwei Community, Hangcheng, Street, Bao’an District
Shenzhen, Guangdong China 518049
0755-25234088
Jessie.liang@agc-cert.com
General art material and GCC?

- Unlikely a GCC is required
- **16 CFR § 1303.3** lists exemptions from scope of the ban on lead in paint and similar surface coating
  - Artists’ paints and related materials [16 CFR § 1303.3(c)(2)]
Import Surveillance

- Port operations
  - At a Glance
  - Targeting
  - Two-way Messaging
  - Product Screening
  - Detention and Conditional Release Process
  - Sampling and Evaluation Process

- National Statistics for FY 2021
  - Detention Rates
  - Violation Rates

- eFiling
CPSC Port Ops At a Glance

Shipments targeted for exam?

Yes

Exam/Field screen

- May not meet requirements
  - Sampled, detained/CR
  - Enters Testing/Eval queue

- Appears to meet requirements
  - Official CPSC testing or evaluation

No

May proceed/1 USG message

Enters into U.S. commerce

- Appears to meet applicable standard
- Does not meet applicable standard

Shipment rejected
Port Operations: How are CPSC exams targeted?

- Local targeting
  - Risk Assessment Methodology (RAM)

- National operation/program
  - Commercial Targeting and Analysis Center (CTAC)

- Referrals
  - U.S. Customs & Border Protection (CBP)
Two-Way Messaging

• What is it?
  • A system that will allow CPSC to communicate directly with CBP and the trade via ACE within existing CBP automated communication pathways. This facilitates real-time communications among all trade entities.

• How does it work?
  • Filer will receive an “Under Review” message from ACE
  • If no examination is required, or if the allotted timeframe for review has expired, CBP and the Filer will receive a “May Proceed” message.
  • If an examination or further review is required, CBP and the Filer will receive an Intensive Exam Request or Hold Intact Notice.
# Two-Way Messaging

## Timetables

<table>
<thead>
<tr>
<th>Mode of Transport</th>
<th>Entry is Filed 3 or more Business Days Before an Estimated Date of Arrival (EDA) from an Entity with a Compliant CPSC History.</th>
<th>Entry is Filed 3 or more Business Days Before the Actual Arrival.</th>
<th>Entry Filed Fewer than 3 Business Days Before the Actual Arrival OR The Entry has Additional Risk Factors.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air and Truck</td>
<td>8 Business Hours after Entry is Filed.</td>
<td>5 Minutes after Actual Arrival event message received</td>
<td>8 Business Hours after the latter of Actual Arrival or CPSC receiving the Entry</td>
</tr>
<tr>
<td>Ocean</td>
<td>16 Business Hours after Entry is Filed.</td>
<td>5 Minutes after Actual Arrival event message received</td>
<td>16 Business Hours after the latter of Actual Arrival or CPSC’s receiving the Entry</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>Not Subject to CPSC 1USG</td>
<td></td>
</tr>
</tbody>
</table>
CPSC at the port: How are CPSC products screened?

Products are screened according to the applicable standard:

- Consumer Product Safety Act (CPSA)
- Consumer Product Safety Improvement Act (CPSIA)
- Federal Hazardous Substances Act (FHSA)
- Flammable Fabrics Act (FFA)
- Labeling of Hazardous Art Materials Act (LHAMA)
- Poison Prevention Packaging Act (PPPA)
- Various ASTM and ANSI standards (*i.e.*, US Toy Standard ASTM F963-17)
Did you know?

Some consumer products may be regulated under multiple Acts!
CPSC at the port:
How are CPSC products screened?

Products are screened using tools, templates, and screening guides:

- XRF: X-ray fluorescence spectrometry analyzer
- FTIR: Fourier-transform infrared spectroscopy device
- Screening templates:
  - Small parts cylinder
  - Rattle template
  - Pacifier template
  - Small ball template
  - Toys with spherical ends template
  - Expanding materials template
CPSC at the Port: When products fail screening

- Samples are collected for evaluation and testing as required
  - Physical samples – A receipt is issued to CBP and the Customs Broker/Importer of Record (IOR)
  - Documentary samples – Documents and photographs only; no units removed

- Shipment is detained or conditionally released
  - CPSC Form 352 – Notice of Sampling and Detention
  - CPSC Form 353 – Notice of Sampling and Conditional Release
When Products Fail Screening

**Conditional Release**

Product is held intact at IOR/Consignee premises or third-party location approved by CPSC/CBP

**Detention**

Product held intact, at a CBP-bonded facility (typically CES) until completion of CPSC testing/evaluation
Final Disposition

Should testing/evaluation determine that a product does not meet requirements, a Notice of Violation is issued by the Office of Compliance and Regulatory Enforcement directly to the Importer of Record. This Notice will detail one of three actions:

• Correct Future Production/Importations
• Recondition
• Seizure
<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry Lines Risk Scored in RAM</td>
<td>4,957,773</td>
<td></td>
</tr>
<tr>
<td>Entries Screened/Examined</td>
<td>9,689</td>
<td>0.2%</td>
</tr>
<tr>
<td>Samples Collected</td>
<td>2,349</td>
<td></td>
</tr>
<tr>
<td>Violations Found</td>
<td>2,017</td>
<td>85.9%</td>
</tr>
<tr>
<td>Samples Seized</td>
<td>1,071</td>
<td>45.6%</td>
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<tr>
<td>Samples Released for Reconditioning</td>
<td>222</td>
<td>9.5%</td>
</tr>
<tr>
<td>Samples Released with LOA/CFP</td>
<td>415</td>
<td>17.7%</td>
</tr>
<tr>
<td>Samples Released for Destruction/Export</td>
<td>66</td>
<td>2.8%</td>
</tr>
<tr>
<td>Average Evaluation Period</td>
<td>51 Days</td>
<td></td>
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</table>
### CPSC FY21 Violations

<table>
<thead>
<tr>
<th>Primary</th>
<th>Rate</th>
<th>Secondary</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATV</td>
<td>25%</td>
<td>Certificates</td>
<td>50%</td>
</tr>
<tr>
<td>Lead</td>
<td>19%</td>
<td>Tracking Labels</td>
<td>48%</td>
</tr>
<tr>
<td>Chemical</td>
<td>17%</td>
<td>Product Registration</td>
<td>2%</td>
</tr>
<tr>
<td>Mechanical</td>
<td>16%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electrical</td>
<td>7%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flammability</td>
<td>6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phthalates</td>
<td>6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fireworks</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lighters</td>
<td>1%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note that entries may have more than one violation type.
Best Practices and Recommendations

To avoid delays during your examination, here are some recommendations from CPSC Investigators across the country:

• Ensure that the submitted packing list has sufficient detail
• Including markings, labels, and/or FBA numbers on the packing list
• Provide a copy of your Certificate of Compliance with your entry documents or uploaded separately in DIS with the “cps” tag
• Include a point of contact for the importer of record
eFiling Initiative

• What is it?

  • eFiling is a CPSC initiative to enable importers of regulated consumer products to file electronically certain data elements from a certificate of compliance, via a CBP Partner Government Agency (PGA) Message Set

  • December 18, 2020, the Commission approved staff's recommended plan to implement a permanent eFiling program at CPSC
eFiling Initiative

Why?

- eFiling will enhance CPSC’s risk assessment, targeting, and enforcement ability to interdict noncompliant consumer products at the ports.
- Risk scores will decrease for importers who electronically file valid data elements, resulting in fewer examinations of their cargo at the port.
eFiling Initiative

More information

• Arthur Laciak, eFiling Program Specialist
  • eFilingPilot@cpsc.gov

• www.cpsc.gov/efiling

• https://cpsc.gov/Newsroom/Public-Calendar
Contact us!

Stephen Lee
Small Business Ombudsman Team
SLEE@cpsc.gov

www.cpsc.gov/SBOContact

Toll Free: (888) 531-9070

sbo@cpsc.gov

Jamie Stricklen
Seattle Field Office
JStricklen@cpsc.gov

James Joholske
Director of Import Surveillance
JJoholske@cpsc.gov

Sabrina Keller
Deputy Director of Import Surveillance
SKeller@cpsc.gov