



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 5: Admissibility Requirements |

Module 19: Consumer Product Safety Commission (CPSC)

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INTRODUCTION

The Consumer Product Safety Commission (CPSC) is an independent Federal agency tasked with protecting consumers from unreasonable risks of injury and death from consumer products under agency jurisdiction. The CPSC estimates that deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually.

The CPSC was created in 1972 and was authorized by the Consumer Product Safety Act (CPSA). Significant amendments to the CPSA were made by the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Public Law 110-314).

The CPSC also enforces the following laws:

- Federal Hazardous Substances Acts (15 U.S.C. 1261, *et seq.*)
- Flammable Fabrics Act (15 U.S.C. 1191, *et seq.* and 16 CFR 1602, *et seq.*)
- Poison Prevention Packaging Act (15 U.S.C. 1471, *et seq.*)
- Refrigerator Safety Act of 1956 (15 U.S.C. 1211, *et seq.*)

The CPSC manages any product that poses consumer risk as well as products with established mandatory standards and voluntary standards.



Lesson 1: Mandatory Standards

Products with mandatory standards are products that contain specific regulatory requirements under the CPSC or one of the above stated Acts. A table of regulated products with a cross-reference to the applicable regulation can be found at <https://www.cpsc.gov/Regulations-Laws-Standards/Regulations-Mandatory-Standards-Bans/>.

For awareness, let's look at a few products that are regulated under each of the Acts under CPSC enforcement.

The Consumer Product Safety Act regulations (16 CFR 1101 – 1450) include the following products:

- Adhesives that are extremely flammable
- All-terrain vehicles
- Appliances that burn coal or wood
- Infant bath seats
- Bicycle helmets
- Cigarette lighters
- Cribs
- Drawstrings of apparel items
- Furniture painted with lead paint
- Hair dryers
- Lawnmowers

The Federal Hazardous Substances Act regulations (16 CFR 1500 – 1513) include:

- Art materials
- Baby bouncers/jumpers/walkers
- Balloons and plastic mixtures
- Bicycles
- Charcoal
- Children's products containing lead or painted with lead paint
- Choking hazards
- Dolls and stuffed animals
- Fireworks
- Infant cushions
- Matches
- Pacifiers
- Rattles



Certain products which could pose a fire hazard are regulated under the Flammable Fabrics Act regulations (16 CFR 1602 – 1633):

- Carpets
- Apparel
- Mattresses and mattress pads
- Children's sleepwear
- Vinyl plastic film

The following products, which are harmful or fatal if swallowed by children, are regulated under the Poison Prevention Packaging Act regulations (16 CFR 1700 – 1702):

- Acetaminophen
- Antifreeze, ethylene glycol
- Aspirin products
- Caustic poisons
- Controlled drugs
- Cosmetics
- Over-the-counter drugs

The Refrigerator Safety Act regulations require refrigerators with more than 2 cubic feet of capacity to be able to be easily opened from within (16 CFR 1750).

Lesson 2: Voluntary Standards

Many safety standards for consumer products are developed in collaboration with voluntary standard organizations (like ANSI, ASTM, CSA, UL, and others). In many cases, these standards bring industry groups, government agencies, and consumer groups together to agree on best consumer product safety practices.

The CPSC maintains a list of their current activities regarding voluntary standards at: <https://www.cpsc.gov/Regulations-Laws--Standards/Voluntary-Standards>. They are currently working on approximately 70 voluntary standards for products like infant slings (sling carriers), liquid laundry packs and garage door operators.

Lesson 3: Standards Not Stated

The CPSC defines consumer products as articles produced or distributed for sale to consumers for personal use in or around households, schools, in recreation, or otherwise. The definition of consumer product is found in Section 3(a) of the CPSA (19 U.S.C. 2052(a)(5)).



Looking at the lists, you can see that a large number of consumer products are not specifically listed. Does this mean they are not within CPSC's jurisdiction? Not at all. In fact, voluntary and mandatory requirements often arise from reports of problems with products that were once not covered under a specific standard.

Lesson 4: Recalls

The CPSC can become aware of product concerns in a number of ways including an online reporting system and manufacturer voluntary reporting.

Under Section 15 of the CPSA, a firm is required to report potentially hazardous products that it manufactures, distributes, imports or sells. The firm must:

- Report products that do not comply with a safety rule issued under the Consumer Product Safety Act or any other Act administered by CPSC.
- File a report within **24 hours** of getting information that reasonably lets you know that a product does not comply with safety rules.
- Report products that contain a defect that could create a substantial risk of injury to the public or that presents an unreasonable risk of serious injury or death.

CPSC has aggressive timetables for reporting and acting on recalls.

Lesson 5: Consumer Product Safety Improvement Act (CPSIA)

The CPSIA of 2008 granted the CPSC significant new regulatory and enforcement authority and tools by amending and enhancing several CPSC statutes, including the Consumer Product Safety Act.

Key provisions of the CPSIA addressed, among other things:

- Lead
- Phthalates
- Toy Safety
- Durable infant or toddler products
- Third-party testing and certification
- Tracking labels
- Imports
- ATVs
- Civil and criminal penalties
- SaferProducts.gov, a searchable database of reports of harm



In the above list, you may see a number of provisions related to children's products. As such, it is not uncommon for some to erroneously call it the Children's Product Safety Improvement Act.

Lead

With few exceptions, Section 101 reduced the total lead content allowed in children's products to **100 parts per million**.

If the CPSC determines that the 100 parts per million limit is not technically feasible for a product or a class of products, they may establish, via regulation, an alternate limit below 300 parts per million that is technically feasible.

The CPSC may also exclude products from the limit if it determines that the lead will not be absorbed into the human body or have adverse impact on public health or safety.

Products that exceed the limits are treated as a banned hazardous substance under the Federal Hazardous Substances Act.

Stricter lead limits

With regard to surface coatings such as paint, the lead concentration may not exceed **90 parts per million**. This applies to all children's products and some furniture, for adults and children.

Household paint must also meet this higher standard. Paint or any similar surface coatings for consumer use that exceeds 90 parts/million and products specified in 19 CFR 1303.1 that bear such paint or coatings are banned hazardous products.

It is important to note that some states, such as Washington and California, have stricter lead limits than the federal government. Importers intending to sell in those states may elect to manufacture to the higher standard.

Phthalates

Phthalates are chemical compounds that are used, among other things, for softening of plastics. Section 108 of the CPSIA prohibits the sale of children's toys and child care products that can be placed in the mouth, and contain more than .01 percent of 6 types of phthalates. The applicable regulations are found in 16 CFR 1199.1.

Toys

CPSIA Section 106 mandates compliance with ASTM F963-11 "The Standard Consumer Safety Specification for Toy Safety." A summary may be viewed on the website of ASTM International. The standard in its entirety is available for purchase. The standard addresses prevention of injuries from small parts, sharp edges, projectiles, and other hazards.



Toys or other articles intended for use by children under 3 that present choking, aspiration, or ingestion hazards because of small parts are classified as a banned hazardous substance (16 CFR 1500.18(a)(9)). No toy or other article intended for children under 3 shall be small enough to fit in a cylinder constructed to the specifications in 16 CFR 1501.4. Toys or other articles for children under 3 must be subjected to tests that simulate normal use and abuse to ensure that small parts that present a choking hazard will not become loose. Any parts that come loose must be inserted into the cylinder for size/choking testing.

Lesson 6: Testing and Certification

Federal law requires manufacturers and importers to test many consumer products for compliance with consumer product safety rules. Firms with products subject to CPSC rules should develop a comprehensive testing protocol for each subject product and periodically review the protocol for sufficiency. Based on successful test results, importers must certify that the product complies with each applicable safety requirement.

Children's products must be tested for compliance by a third-party laboratory that is accredited by CPSC. The CPSC maintains on its website an up-to-date list of accredited laboratories.

General use products may use in-house testing. These products require a reasonable testing program which provides a high level of assurance that the products comply with all applicable consumer product safety rules.

Small Batch Importers

Small batch manufacturers can obtain relief from the requirement to have certain products tested by third parties. The qualifying products are listed in Group B on the Small Business Resources page of the CPSC website:

- ASTM F963-1
- Total lead content in children's products
- Ban on phthalates in children's toys and certain childcare articles
- Bicycle helmets
- Bunk beds
- Rattles
- Dive sticks
- Bicycles
- Carpets and rugs
- Vinyl plastic film
- Wearing apparel
- Clacker balls



- Children's sleepwear
- Electronically operated toys
- All-terrain vehicles
- Mattresses

Although relief from testing can be granted for certain products, small batch manufacturers must still ensure that their products comply with all Consumer Product Safety Rules and must issue a General Certificate of Conformity.

To qualify as a small batch manufacturer, a manufacturer or an importer must register with the CPSC and attest that total annual revenue from all consumer products is not more than \$1,000,000 adjusted annually by the percentage increase in the Consumer Price Index, and that no more than 7,500 units of the covered product were manufactured. Registration is done annually on a calendar year basis. The maximum revenue in 2014 to qualify as a small batch manufacturer in 2015 was \$1,086,336. For importers to qualify as a small batch manufacturer, the products that they import must be produced by a small batch manufacturer.

Certification

Importers show compliance with CPSC rules by providing a certificate of compliance, which is referred to as General Certificate of Conformity (GCC) for general use products, or a Children's Product Certificate (CPC) for children's products. The form and content of the certificate is specified in 16 CFR 1110. The certificate may be in written form or electronic form. An electronic certificate must be identified by a unique identifier that is created in advance, and a reasonable means to access the certificate must be provided. The following information is required in a General Certificate of Conformity:

- Identification of the product
- Citation to each requirement to which the product is being certified
- Identification of importer
- Contact information of custodian of records
- Date and place of manufacture
- Date and place of testing
- Identification of any third-party laboratories.

Please note that the certificates have very specific product information and any changes to the details may render the GCC or CPC invalid for a shipment. For example, the certificates include date and place of manufacture. If an importer changes the supplier of a product, it also changes its date and place of manufacture. If a supplier changes the internal factory from which it sources, the details on the certificate are again incorrect. In that case, new testing will have to be conducted and certificates issued based on that testing.



The certificate of compliance must accompany the shipment, and it must be provided to distributors and retailers. Certificates do not need to be filed with the CPSC; however, they do need to be available to the Commission upon request as soon as the shipment becomes available for inspection in the United States. Certificates can be provided electronically, such as through a dedicated website URL that is provided on the invoice.

Brokers should develop a mechanism for exercising responsible supervision of GCC/CPC documents from importers.

Lesson 7: Tracking Labels and Product Registration

Children's Products are subject to stricter requirements than general use products. Children's Products are consumer products designed or intended primarily for children 12 years of age or younger (16 CFR 1200.2(a)). These products are required to have distinguishing markings, normally called tracking labels, on the product and on the packaging (15 U.S.C. §2063(a)(5)). Whether a product is primarily intended for children 12 years of age or younger is determined by considering the four statutory factors:

- A statement by a manufacturer about the intended use of such product, including a label on such product if possible;
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; or
- The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

Some products may be marked as appropriate for persons over 12 years of age. It is equally important that these products not be marketed, displayed, promoted, or advertised using children 12 years and under. If they are, those products will likely become subject to the stricter requirements for children 12 years and under.

Markings on products should be durable enough to remain on the product for the useful life of the product. Markings on disposable packaging must be durable enough to last until the product reaches the consumer.

The purpose of tracking labels is to improve the effectiveness and response rates of recalls by identifying the source of the products and aiding in identifying other products that could be defective. The requirement applies to manufacturers of all sizes. The required information includes:



- Name of manufacturer or private labeler
- Location and date of production
- Detailed information on the manufacturing process, batch or run number, or other identifying characteristics
- Any other information to facilitate ascertaining the specific source of the product

Another requirement, which also has the purpose of improving recall effectiveness, is registration of consumers who purchase durable infant or toddler products. Manufacturers or importers must provide a postage paid consumer registration card with each product. They must maintain records of the names, addresses, e-mail addresses, and other contact information of consumers who register their products. The manufacturer name and contact information, model name and number, and date of manufacturer must be permanently placed on each durable infant or toddler product in a location that would be conspicuous to the consumer. Consumer registration cards must offer the alternative of registering by email or internet. The requirements and format for consumer registration cards are found in 16 CFR 1130.

Lesson 8: Import Enforcement

The CPSC has authority to sample shipments and refuse admission to products that fail to comply with any applicable consumer product safety rule (15 U.S.C. 2066). CPSC's Office of Import Surveillance (EXIS) works in conjunction with CBP to identify and examine consumer product imports. EXIS has co-located investigators at ports of entry who work side-by-side with CBP staff. EXIS also works to educate importers, manufacturers, and Customs brokers on CPSC's standards and procedures.

The CPSC uses a targeting system, known as the RAM (Risk Assessment Methodology) to analyze certain data provided by CPB about shipments of consumer products, and then make risk-based decisions about which shipments to inspect.

When there is a violation of a mandatory standard, the CPSC issues a Letter of Advice (LOA). The LOA advises the manufacturer or importer of the violation and of the necessary corrective action. Corrective actions include the following:

- Correct future production
- Stop sale and correct future production
- Consumer level recall
- Distribution level recall

When a product fails to comply with a consumer product safety rule but appears that it could be reconditioned to comply with the rule, the CPSC may defer its decision on the admissibility of



that product. The CPSC can allow such a product to be conditionally released under CBP bond pending results of examination.

When detention is necessary to determine admissibility of a product, a Notice of Detention will be issued by the CPSC. The importer will communicate directly with the CPSC. Notices of Detention allow the importer 5 days to respond with information that could resolve the detention. Reasonable extensions may be allowed under certain circumstances.

Products that cannot be modified to comply with all consumer product safety rules must be destroyed. Exportation is an alternative to destruction when approved.