



Today's Agenda

- > CBP's Current Trade Strategy
- > Importer Security Filing (10+2) Update
- > Lacey Act Update
- > Consumer Product Safety Improvement Act (CPSIA)



CBP's Current Trade Strategy

Kathleen Murphy
Drinker Biddle & Reath
July 8, 2009

Drinker Biddle

Inquiring Minds Want to Know

- I. What is U.S. Customs and Border Protection's ("CBP") strategic vision for the foreseeable future?
- II. What changes or concerns should the trade community anticipate?
- III. How should an importer prepare for CBP's emerging trade strategy?



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CBP's Strategic Vision Announced at 2008 Trade Symposium

A multilayered approach intended to “ensure” legitimate trade.

- > Advance information to improve risk assessment and targeting initiatives.
- > Partnerships with the trade community and other U.S. Government agencies.
- > Risk management approach, using advance information and cooperation with Partners to improve targeting. Focus on Priority Trade Issues (“PTI”).
 - CPSIA (CPSC) and CPSC-ISA Program
 - Lacey Act Amendment (AG/APHIS)
 - FDA Secure Supply Chain Program



CBP's Strategic Vision Announced at 2008 Trade Symposium (cont.)

Next Step: Implement Strategy

- > Concentrate on known risk areas - - the Priority Trade Issues
- > Measure and document progress
 - Expand pre-entry and post-entry verification
- > Apply consistent and swift enforcement actions



CBP's Emerging Trade Strategy - - Priority Trade Issues (“PTIs”)

- > Usually announced and updated annually, the PTIs are:
 - Revenue Collection
 - Penalties
 - Intellectual Property Rights
 - Antidumping/Countervailing Duties
 - Textiles
 - Agriculture
 - Import Safety



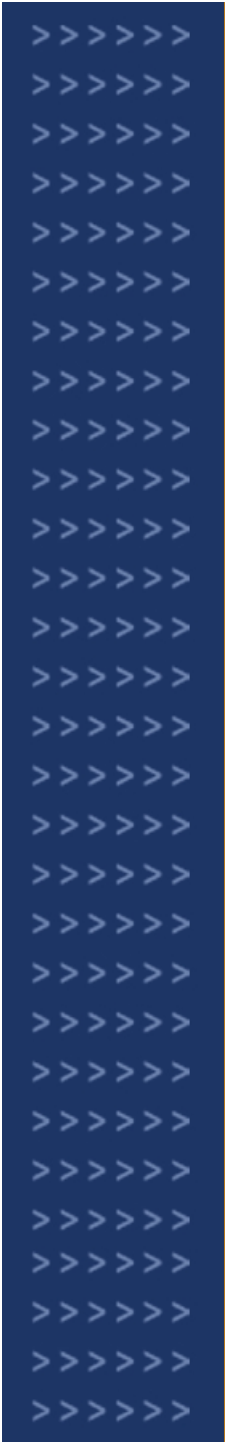
Revenue Collection PTI

- > This PTI prompted by concerns that CBP is not collecting accurate revenue payments.
- > What is CBP planning to do?
 - Evaluate revenue processes to improve reliability and transparency in collection and information sharing across CBP.
 - Educate personnel on the laws and requirements pertaining, in particular, to commodities and issues that have been targeted as PTIs.
 - Expand pre and post-entry compliance verification and enforcement activities.

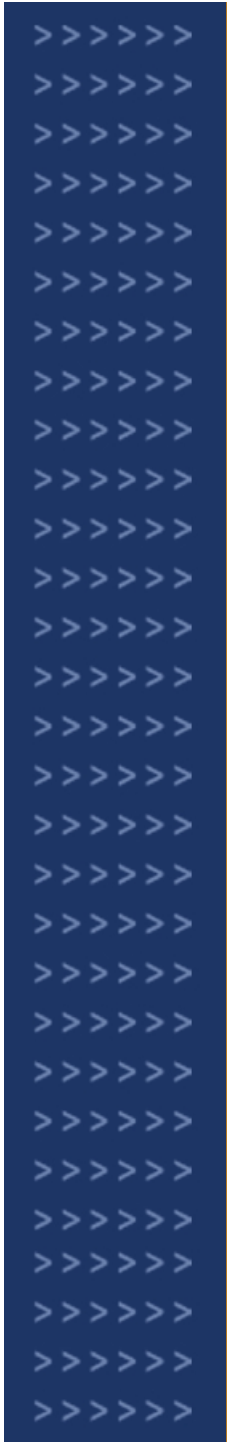


Example of Current Initiative Targeting Accurate Revenue Collection?

- ITC Investigation of use of the “First Sale Rule.”
 - Response to CBP’s effort in 2008 to eliminate the use of the “first sale” in multi-tiered transactions for valuing imports.
 - ITC is required in the Farm Bill to report to Congress within one year the number of importers that declare the transaction value of imported merchandise on the basis of the first sale.
 - Report to include the aggregate transaction value of all merchandise imported during the one-year period.
 - Reliance on CBP Form 28 to collect data
 - FA Risk Area
 - Subject of QRA



DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection REQUEST FOR INFORMATION 19 CFR 151.11		OMB No. 1651-0023 Exp. 05-31-2011	
		1. Date of Request 11/03/2008	
		2. Date of Entry and Importation	
3. Manufacturer/Seller/Shipper		4. Carrier	5. Entry No.
5a. Invoice Description of Merchandise		5b. Invoice No.	6. HTSUS Item No.
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM: U.S. Customs and Border Protection Laredo, TX 78045	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.	
<input type="checkbox"/> B. Identify and give details of any additional costs/expenses incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number and description _____ _____ from container _____ mark(s) and number _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned.	
<input checked="" type="checkbox"/> E. See item 14 below.			
14. CBP Officer Message			
Was Transaction Value per 19USC1401(a) used as the basis for the import value claim on this line? This request for information is being made in accordance with Part 163 of the Code of Federal Regulations, and 19 U.S.C. Sect 1509. Failure to produce the information demanded may result in a penalty pursuant to the provisions of 19 U.S. Sect. 1909(g). The statutory maximum penalty for negligence is 40% of the appraised value of the release of merchandise or \$10,000, whichever is less, or for the willful failure, 75% of the appraised value of merchandise or \$100,000, whichever is less.			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	16b. Signature
		16c. Telephone No.	16d. Date
17. CBP Officer		18. Team Designation	19. Telephone No.



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Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.	11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse		
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14. CBP Officer Message		
CBP is collecting information on Transaction Value to support annual reporting requirements to Congress. Please answer the following question with a "Yes" or "No" regarding the specific merchandise/line item under review. "Not Applicable" may only be used for some Chapter 98 imports. 1) Was Transaction Value per 19 USC 1401(a) used as the basis for the import value claim on this line? CBP is establishing a baseline of best practices related to import safety. Please answer the following questions with a "Yes" or "No" regarding the specific merchandise/line item under review. "Not Applicable" is an acceptable answer if you believe the commodity is not regulated or the question does not apply. 1) Were the goods imported by your company purchased directly from the manufacturer/producer, or are you the manufacturer/producer? 2) Do you maintain documentation that evidences product testing for all applicable safety standards? 3) If the merchandise is a consumer product or will be incorporated into a consumer product, do you have a documented recall procedure for this merchandise?		
17. CBP Officer	18. Team Designation	19. Telephone No.

CBP Form 28 (02/02)



Another Example of Current Initiative Targeting Accurate Revenue Collection?

- Transaction Value is the preferred method of valuation.
19 U.S.C. 1401a; 19 C.F.R. Part 152.
- CBP has taken an increased interest in related party transaction:
 - “Transaction Value” relies on competing businesses to freely negotiate the fair market value of imported merchandise.
 - CBP believes transactions between related parties are not subject to the same market forces as those between independent parties.
- Further, there is an inherent conflict between the IRS rules and CBP rules on how imported goods from related parties should be valued.
 - IRS generally insists on a low transfer price to ensure greatest income in the U.S.
 - For CBP, the higher the dutiable value of imported goods, the greater the revenues for the agency.



Another Example of Current Initiative Targeting Accurate Revenue Collection? (cont.)

- CBP updated its Informed Compliance Publication entitled “Determining the Acceptability of Transaction Value for Related Party Transactions” in April, 2007.

Highlights:

- What is the proper weight to be given to information an importer prepares for tax purposes?
- Application of the arm’s length principle for CBP purposes v. IRS purposes.
- Relevance of Advanced Pricing Agreement (APA) and Transfer Pricing Study to Customs Valuation.



Another Example of Current Initiative Targeting Accurate Revenue Collection? (cont.)

CBP's key observations:

- APA or similar pricing study by itself is not sufficient to show that a related party transaction is acceptable for customs purposes.
- Information in the APA or transfer pricing study may contain information relevant to determining the acceptability of the transfer prices for CBP, such as:
 - Pertinent information about the way the related parties transact business.
 - Information on sales of similar products to unrelated purchasers.
- If using APA or transfer pricing study to support circumstances of sale test, importer must identify the relevant information, explain its relevance, and submit supporting documentation to CBP.



Importer's Obligations Regarding the Declaration of Value in Related Party Transactions

- Importer has an obligation to use “reasonable care” in declaring the value of imported goods.
- Questions to consider before declaring the value based on transaction value:
 - Is related party transaction value acceptable based on either circumstances of sale test or test values?
 - Do I have sufficient information and/or documentation to demonstrate how the test is met?
 - Do I conduct periodic testing of related party transactions?

Penalties PTI

- > Goal of trade penalties strategy: improve effectiveness of the trade fraud penalty process.
- > Devise a Penalties Trade Strategy that promotes, on a national and uniform basis, the use of penalties to obtain compliance.
- > Penalties will be “strictly assessed” with reduced opportunity for mitigation if a PTI is involved.
- > CBP’s focus is on the entry or importation by way of false acts, information, or omissions including false information, false descriptions or material omissions in the entry of goods.



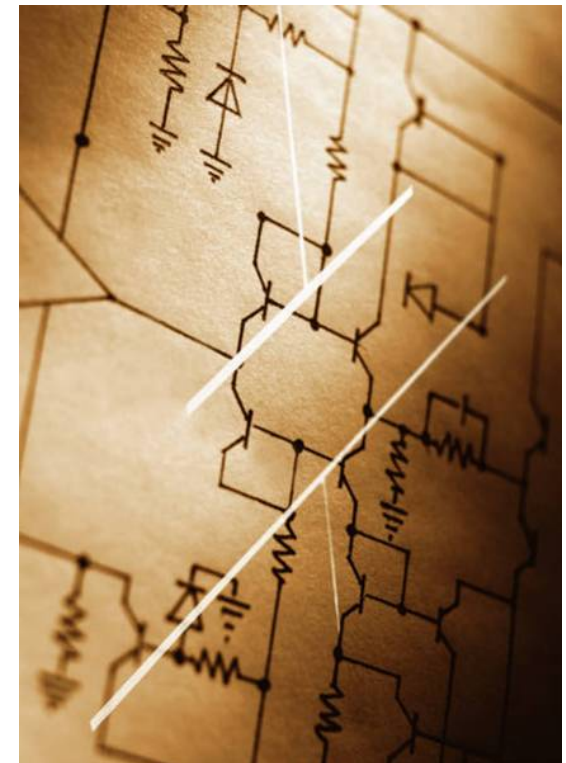


Is CBP Linking Revenue Collection to Trade Enforcement?

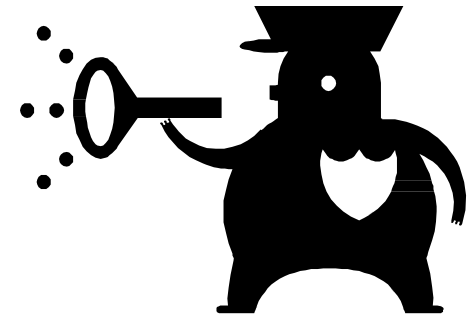
- Increased data-mining at both the national and local levels.
- Decreased opportunities for duty savings.
- Increased referral of cases to Fines Penalties and Forfeitures and to Immigration and Customs Enforcement.
- Decreased willingness by CBP to mitigate penalties, especially for cases involving PTIs.
- CBP may not be able to increase level of culpability (e.g., from simple negligence to gross negligence) due to PTI, but can offset impact of traditional mitigating factors.

Intellectual Property PTI

- > Stopping the flow of counterfeit goods is critical to our economic and physical well-being.
- > CBP is a key player as the leading border enforcement agency.
- > Traditional targeting and exams continue.
- > CBP has also identified new methods for IPR enforcement.
 - IPR statistical and electronic risk-modeling
 - Multi-agency initiatives (STOP)
 - Designated IPR risk area in Focused Assessments
 - Quick Response Audits
 - e-Allegations on-line Trade Violation Reporting System



What Will CBP Do?



- > CBP will enforce rights “at the border.”
 - Counterfeit/infringing goods will be seized.
 - Goods marked with confusingly similar trademark or trade name will be denied entry.
 - CBP will notify IP owner of possible infringement.
- > CBP may demand redelivery of goods released from customs custody.
- > CBP may assess civil penalties.
- > CBP may refer safety violations for potential criminal action.



CBP IPR Seizures – Statistics for FY08

- > CBP has found the following goods to have been particularly problematic for IPR violations:
 - **Footwear** (No. 1 commodity seized, \$102.3M domestic value)
 - **Handbags/Wallets/Backpacks** (\$29.6 domestic value, >100% increase from prior year)
 - **Pharmaceuticals** (primary safety concern, \$28.1 domestic value, >100% increase from prior year)
 - **Wearing apparel**
 - **Consumer electronics**
 - Sunglasses/parts
 - Computers and computer hardware
 - Perfume
 - Cigarettes
 - Media
 - Luxury goods
 - Toys
 - Electronic games
 - Watches and watch parts
 - Batteries



CBP IPR Seizure Statistics

- > Domestic value of seizures for FY08 as compared to FY07 increased 38.6%
 - FY07 - \$196.7 Million
 - FY08 - \$272.7 Million
- > The number of IPR seizures increased by 9.7% in FY08, from 13,657 to 14,992.
- > 124% increase in value of seizures of infringing products that pose safety or security risks (\$27.8M to \$62.5M).
- > Goods imported from China accounted for 81% of the total domestic value of IPR seizures (increase of 40% by value).
- > India (6%), Hong Kong (5%), Taiwan (1%), no other country represented as much as 1% for FY 2008.
- > CBP also working in coordination with foreign Customs agencies to intercept counterfeit products at the source.
 - Sharing information and building enforcement efforts.



How to Protect IPR Rights at the Border?

- > Products registered with US-PTO or Copyright Office are not fully protected until recorded with CBP.
- > Imported goods with a confusingly similar trademark will not likely be seized unless recorded with CBP.
- > Formal recordation with CBP is required to receive highest level of CBP protection.
- > Patents may not be recorded with CBP. (Think § 337 proceeding instead!)
- > Gray market protection may be requested where U.S. trademark holder and foreign trademark holder are not under common control.
- > IP rights are entered into an electronic database accessible by CBP officers across the country.
- > CBP uses its database to actively monitor shipments and prevent the importation of infringing goods.
- > CBP will partner with IP owners to target infringing products.

E-Recordation



- New method for filing initial trademark and copyright recordation.
- On-line application.
 - Decreases time for filing.
 - Reduces amount of paperwork normally required.
- Payment of fees may be made by credit card.
 - processed within 3 business days.
- No on-line form for trade name recordation.
 - Information can be sent via e-mail to CBP.

Section 337 Actions

- The International Trade Commission (ITC) provides a forum to challenge the importation of infringing goods into the United States.
- The ITC investigates complaints filed by the owners of domestic IP rights and can issue orders against manufacturers, importers and distributors of infringing goods.
- Section 337 of the Tariff Act of 1930, as amended, provides authority to the ITC to defend domestic IP rights.





The International Trade Commission

- The ITC is an independent federal agency.
- Complaints are filed with the ITC, which then has 30 days in which to decide whether an investigation is appropriate.
- The ITC almost always opens an investigation.



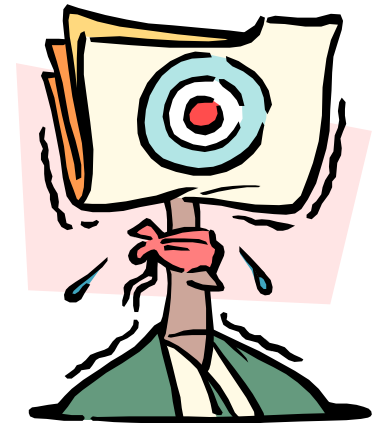
What is a 337 Action?

- A 337 action is, in effect, a large piece of litigation stuffed into a very short period of time.
- Similar to a federal court case, except faster.
 - Accelerated discovery and motion practice.
 - Generally no longer than 12-15 months from filing to completion.
 - Discovery is often completed in 6-9 months.
- One significant difference is that the ITC Staff Attorney assigned to the case will actually get involved in discovery and the case itself.
- Remedies are limited to injunctive relief – no damages.
 - Exclusion orders.
 - Cease and desist orders.

CBP Quick Response Audits

Example: IPR PTI

- > Focus on companies that CBP believes are “high risk” for importing counterfeit and infringing merchandise.
- > Based on:
 - Importer history
 - Foreign shipper history
 - Country of export
 - Commodity type
 - Trade/competitor concerns
 - Previous IPR violations
- > Note: ISA participants are not exempt from QRAs
- > IPR audits FY05 – June 2008
 - 46 completed audits at high risk importers
 - 37% had insufficient internal controls





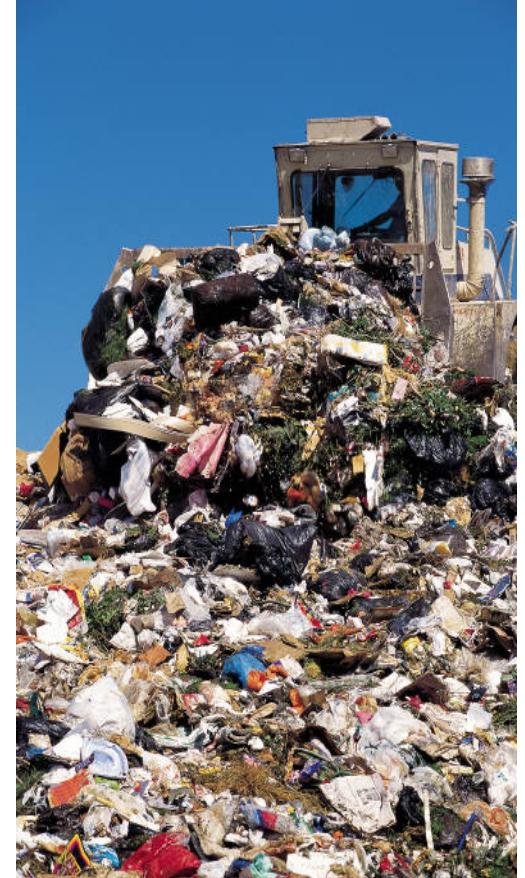
Focused Assessment: Application to PTIs

IPR Enforcement

- > New WEIC posted to FA handbook.
- > Targets IPR rights generally; Manufacturers, Distributors, Wholesalers, & Retailers
- > Risk factors and red flags include:
 - No communication or control over foreign vendors or agents regarding IPR protection
 - Certain imported commodities (footwear, textiles, pharma, and retail)
 - Country of manufacturer and foreign vendors utilized
 - Royalty payments reflected on company's books
 - History of IPR disputes
 - Vague product descriptions or packaging
 - Lack of product numbers
 - Missing lot codes, expiration dates, or other markings
 - Designer products shipped in bulk rather than retail packaging

AD/CVD PTI

- > AD/CVD has PTI status to ensure:
 - > a concerted, systematic approach to facilitating legitimate trade
 - > detecting and deterring circumvention of the AD/CVD laws
 - > timely liquidation of transactions with correct determinations on final duties owed



Textiles PTI

- > Goals: robust enforcement of this area through detentions, seizures, on-site verifications, review of production records, lab analysis, audits and penalties.
- > Textile and apparel products considered high-risk in nature.
 - Numerous requirements placed on textile products entering the U.S. under Free Trade Agreements and Legislative Preference Programs.



Agriculture PTI

- Detect and prevent intentional and unintentional entry of unsafe agricultural and food products, pests or diseases.
- Covers the traditional mission of protecting the safety of the food supply and U.S. agricultural sectors from the unintentional harm posed by plant diseases and animal pests.
- Imports involved: live animals, fresh fruits, vegetables, prepared foods, beverages.





Import Safety PTI

- > Ensure unsafe products do not enter the commerce of the U.S.
 - Work with other government agencies and foreign governments
 - Define and assess risk through automation and information sharing
- > Key Participants for this PTI:
 - Parties in production and supply chain
 - Domestic and foreign governments
 - International trade community



Milestone Dates

- SAFE Port Act (October 13, 2006)
- Notice of Proposed Rulemaking (“NPRM”) was issued on January 2, 2008.
- Interim Final Rule was published November 25, 2008.
- Implementation began January 26, 2009 (Informed Compliance – 12 months).
- Full enforcement expected on January 26, 2010.

The Data

Provided by Importer

1. **Manufacturer (Supplier) name and address**
2. **“Ship to” name and address**
3. **Country of origin of the goods**
4. **Commodity / HTS number (six digits)**
5. **Container stuffing location**
6. **Consolidator name and address**
7. **Buyer name and address**
8. **Seller name and address**
9. **Importer of record**
10. **Consignee number**
11. **Master B/L Number or House B/L Number (lowest level)**

Provide by Ocean Carrier

1. **Vessel stow plan**
2. **Container status message**



NOTE: *The manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number must be linked to one another at the line-item level.*

The Numbers *

- > More than 1.4 million ISFs received to date (approximately 60% of entries have an ISF).
- > Average of 18,000 filings per day.
- > Error rate averaging at just under 3%.
- > On time filings averaging 46%.
- > 3 - 5% are doing unified filings.
- > 1 - 2% are taking advantage of flexible filing options.
- > Biggest problem is duplicate filings.
- > 57,000 importers, brokers, and forwarders have submitted an ISF.
- > Approximately 50,000 are SMEs.
- > Approximately 1,500 filers – holding steady.

** As of July 7, 2009*

Progress Reports

- > CBP will send electronic report cards every 30 days to *entities doing the filings*.
- > Batch reports will be broken out by Importer of Record number.
- > Filers must register to receive reports (opened April 6, 2009).
- > Format and data to be included is limited and not uploadable.
- > Some Tier 3 C-TPAT Importers are receiving reports directly.



Penalties *

- > Potential Penalties:
 - Failure to file an ISF
 - Late filing
 - Inaccurate filing
 - Failure to withdraw a filing

- > Each of the above penalties has the potential for liquidated damages of \$5,000.
 - An ISF filing could have penalties totaling \$10,000.

- > Other options for CBP include:
 - Do Not Load message (DNL)
 - Withholding permission to unlade at U.S. port of arrival
 - Delay in issuing permission to unlade at U.S. port of arrival
 - Issue of seizure notice
 - Withholding Customs release (goods move to G.O.)
 - 1595(a), Section (B)

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Mitigation Guidelines *

- > Where law enforcement goals are clearly compromised (e.g., smuggling attempts), importers can expect no mitigation.
- > In cases of successive filings of ISF data to perfect or correct transmission, only the filing closest to the allowed filing timeframe will be considered.
- > CBP will take into consideration how and from whom the ISF importer obtained data and ability to verify (reasonable care).
- > Mitigation amounts:
 - For 1st violation, CBP may cancel for payment of \$1,000-\$2,000.
 - For 2nd and subsequent violations, CBP may cancel for payment of not less than \$2,500.

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Mitigation Factors *

- > Evidence of progress in implementing ISF during the flexible enforcement period.
- > Small number of ISF violations versus the overall number of filings.
- > C-TPAT Tier 2 and Tier 3 importers will receive consideration of up to an *additional* 50% mitigation for violations.
- > Importer has demonstrated remedial actions were taken to address future violations.
- > Inaccurate filings due to circumstances beyond importer's control (*e.g.*, carrier diversion).
- > Receiving incorrect information from another party in the supply chain.

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Aggravation Factors *

- > Lack of cooperation with CBP.
- > Evidence of smuggling or introduce shipments contrary to law associated with the shipment.
- > Multiple errors on the ISF (“sloppy filing”).
- > Rising error rate in transmission of data.

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Bonding Requirements

- > ISF filings must be secured by a bond (generally continuous bonds).
- > ISF importer must possess a bond or designate an agent to file under the agent's bond.
- > The following types of bonds have been amended to cover the new ISF requirements:
 - Basic Importation and Entry Bond § 113.62
 - Basic Custodial Bond § 113.63
 - International Carrier Bond § 113.64
 - FTZ Operator Bond § 113.73
- > CBP also created new bond type “Importer Security Filing Bond” (Appendix D, part 113).
- > *Bond requirement is waived for first 12 months.*



Next Steps.....

- > Mitigation guidelines expected to be published on July 16th or 17th in the CBP Bulletin.
- > SME brochure.
- > Finish review of comments with respect to economic analysis and legal by August.
- > Conduct further outreach starting in August.
- > Additional CEO letters will be sent.
- > Further review of progress report formats and content.
- > Final Rule expected in the Fall of 2009.

CBP Outreach Process

- > CBP Roundtables
 - Includes NAMs, Client Reps, Advance Targeting Units, NTCC, CSI, C-TPAT SCSS.
- > Importer and Filer Symposiums
 - Includes importers, customs brokers, logistics providers and software vendors.
- > Carrier Roundtables – including overseas.
- > CBP Website will update on a regular basis to include FAQs, File Formats, News Releases, etc. (www.cbp.gov)
- > Questions can be submitted to [Security Filing General@cbp.dhs.gov](mailto:Security_Filing_General@cbp.dhs.gov) mailbox.



Lacey Act Update



Karen Lobdell

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July 8, 2009

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Lacey Act Update

- > Lacey Act updated in the Farm Bill
- > Unlawful to import, export, transport, sell....any plant (with some limited exceptions) taken or traded in violation of the laws of a U.S. State, or most foreign laws.
- > Lacey Act amendment became effective May 22, 2008
- > Import Declaration required as of December 15, 2008



Lacey Act Update

- > Phase II began May 1, 2009 and runs through September 30, 2009.
- > CBP has modified ACS to collect data in the declaration electronically.
- > Federal Register Notice published on February 3, 2009 clarifies only formal consumption entries are subject to declaration.
- > Informal entries, personal importations, T&E entries, carnets, FTZ and warehouse entries do NOT require a declaration.
- > Declaration will only be enforced for product being imported, not sundries accompanying product (tags, labels, manuals, warranty cards).

Current Phase-In Schedule

PHASE I Present – March 2009	PHASE II April 1, 2009 – September 30, 2009	PHASE III October 1, 2009 – March 31, 2010	PHASE IV April 1, 2010 – September 30, 2010
<p>PPQ Plant Import Declaration Form will be available on web site, and accepted after December 15, 2008.</p> <p>Domestic and International Outreach.</p>	<p>HTS Chapters:</p> <p><u>Ch. 44 Headings (wood and articles of wood).</u></p> <p>4401 – (Fuel wood) 4403 – (Wood in the rough) 4404 – (Hoopwood; poles, piles, stakes) 4406 – (Railway or tramway sleepers) 4407 – (Wood sawn or chipped lengthwise) 4408 – (Sheets for veneering) 4409 – (Wood continuously shaped) 4417 – (Tools, tool handles, broom handles) 4418 – (Builders' joinery and carpentry of wood)</p> <p><i>The enforcement date on this Phase was actually pushed back to May 1, 2009.</i></p>	<p>HTS Chapters:</p> <p><u>Ch. 44 Headings (wood & articles of wood)</u></p> <p>4401- (Wood charcoal) 4405 – (Wood wool; excelsior) 4410 – (Particle board) 4411 – (Fiberboard of wood) 4412 – (Plywood, veneered panels) 4413 – (Densified wood) 4414 – (Wooden frames) 4415- (Packing cases, boxes, crates, drums) 4416 – (Casks, barrels, vats, tubs) 4419 – (Tableware & kitchenware of wood) 4420 – (Wood marquetry, caskets, statuettes).</p> <p><u>Ch. 47 Headings (Wood Pulp)</u></p> <p>4701 – (Mechanical wood pulp) 4702 – (Chemical wood pulp, dissolving) 4703 – (Chemical wood pulp, sulfate) 4704 – (Chemical wood pulp, sulfite) 4705 – (Combination mechanical and chemical)</p> <p><i>Plus Phase I.....</i></p>	<p>HTS Chapters</p> <p><u>Ch. 44 Headings (wood & articles of wood)</u> 4421 – (Articles of wood, nesoi)</p> <p><u>Ch. 48 Headings (paper & articles of)</u> 4801 – (Newsprint) 4802 – (Uncoated writing paper) 4803 – (Toilet/facial tissue stock) 4804 – (Uncoated craft paper) 4805 – (Other uncoated paper/board) 4806 – (Vegetable, parchment, etc) 4807- (Composite paper & board) 4808 – (Corrugated paper & board) 4809 – (Carbon paper) 4810 – (Coated paper & board) 4811 – (Paper coated, etc, other than 4803, 4809, or 4810).</p> <p><u>Ch. 94 Headings (Furniture, etc)</u> 940169 – (Seats w/wooden frames) 940330 – (Wooden office furniture) 940340 – (Wooden kitchen furniture) 940350 – (Wooden bedroom furniture) 940360 – (Other wooden furniture) 94039070 – (Wooden furniture parts)</p> <p><i>Plus Phases II & III.....</i></p>

Declaration requirements are effective as of 12/15/2008. All declarations submitted must be accurate; false statements may be referred for enforcement. Failure to submit a declaration will not be prosecuted, and customs clearance will not be denied for lack of declaration until after phase-in dates above.

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Exemptions

- > There are limited exemptions to the Act:
 1. “Common cultivars”, except trees, and “common food crops” (including roots, seeds, part, or products thereof);
 2. Scientific specimens of plant genetic material (including roots, seeds, part, or products thereof) that are to be used only for laboratory and field research;
 3. Plants that are to remain planted or are to be planted or replanted; or
 4. Plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

- > If the product falls under # 2 or # 3 above, a declaration must still be completed if the plants are listed in the appendix to CITES, as an endangered or threatened species under the Endangered Species Act of 1973, or pursuant to any State law.



ALR/BRASS Pilot

- > Pilot program began May 1, 2009.
- > Available to entities currently participating in ALR or BRASS.
- > Must choose to remain in or be removed from program by June 1, 2009.
- > CBP was provided (on June 1) a list of those previous BRASS/ALR participants that opted out.
- > If remaining in program:
 - Must file with APHIS an advance estimated PPQ 505 (monthly). Genus, species, value and quantity are estimated.
 - PPQ 505 must be filed on or before 15th day of month prior to reporting period.
 - Participant must file reconciliation within 15 days after end of month to provide information on actual shipments from previous month.
- > Results of the pilot will be reported to Congress.

Updates

- > USDA/APHIS accepted comments from the trade until April 6, 2009. They are currently under review.
- > Changes may be coming to the phase-in schedule based upon recent information from CBP.
 - Watch for a Federal Register Notice in July.
- > Large volume of paper declarations are being received.
- > Definitions for common cultivars and food crops are still pending – hopefully will have this month.
- > APHIS is anticipated to provide 6 months notice to those affected by any changes.
- > Next multi-agency meeting is July 14th.

Resources

- > Additional information and forms can be found on the USDA/APHIS website at http://www.aphis.usda.gov/plant_health/lacey_act/
- > A genus/species look-up tool can be found on APHIS website at <http://plants.usda.gov/classification.html>.
- > Germplasm Resources Information Network (GRIN) is a more effective lookup tool to determine correct plant genus and species. www.ars-grin.gov/cgi-bin/npgs/html/index.pl.





ENFORCEMENT

> **Civil Penalties**

- Penalties of up to \$10,000 may be imposed.
- Size depends on nature, circumstances, extent and gravity of the prohibited act.

> **Criminal Penalties**

- Misdemeanor, including fine of not more than \$100,000 for individuals or \$200,000 for organizations, or imprisoned not more than one year, or both (for each violation).
- Felony, including fine of not more than \$250,000/\$500,000, or twice the amount of the gross gain/loss, or imprisoned not more than 5 years, or both (for each violation).
- Forfeiture (product may be seized).



CPSIA

- > Consumer Product Safety Improvement Act of 2008 (CPSIA) was passed on August 14, 2008.
- > Features of the legislation:
 - Children’s Product Safety
 - CPSC Reform
 - Administrative Improvements
 - Enhanced Enforcement Authority
 - Specific Import-Export Provisions
 - Miscellaneous Provisions and Amendments

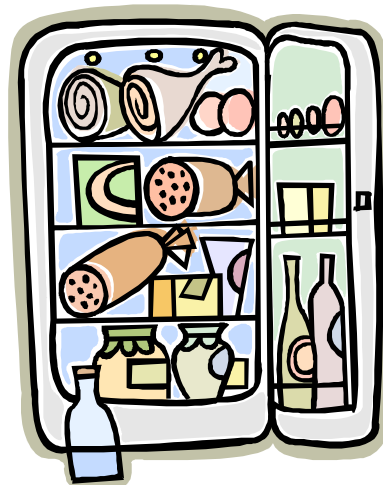


CPSC Jurisdictional Authority

- > The CPSC has jurisdiction over the following laws/Acts:
 - Consumer Product Safety Act (CPSA)
 - Poison Prevention Packaging Act (PPPA)
 - Federal Hazardous Substances Act (FHSA)
 - Flammable Fabrics Act (FFA)
 - Refrigerator Safety Act (RSA)
 - Children’s Gasoline Burn Prevention Act
 - Virginia Graeme Baker Pool and Spa Safety Act

Products Regulated by CPSC

- > Products Subject to Regulation under CPSIA
 - All products subject to CPSA bans or standards.
 - All products subject to a rule, ban, standard or regulation under any other Act enforced by CPSC.



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“Consumer Product”

- > Article or component of an article which is customarily produced or distributed for sale to or for the personal use, consumption, or enjoyment of consumers in a residential, school, recreational or other environment.
- > NOT a product intended for commercial or industrial use, unless it is sold to or used by consumers more than on an occasional basis.



Everything Old is New Again.....

- > Many of these standards, bans and regulations existed prior to the CPSIA becoming law.
- > Importers and manufacturers were required to comply prior to CPSIA.
- > *However*, issuing a certificate of conformity is a new requirement for most.
- > Third party testing is also a new component.
- > Some requirements have become more stringent.



Certificates of Conformity

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Certification

- > Two varieties of certification exist under CPSC Law:
 1. General Conformity Certification
 2. Certification of Children's Products based on Third Party Testing.

- > General certification is required on all products subject to CPSC bans, as well as standards, or to any similar rule, ban, standard or regulation under any other Act enforced by the CPSC.

- > All children's products must eventually be based on 3rd party testing.

- > Products manufactured on or after November 12, 2008 are subject to certification requirements.



Reasonable Testing Program

- > Must provide reasonable assurance product meets all requirements of the standard.
- > Type and frequency of tests are up to issuer of certificate
 - Not necessary to use exact test procedure prescribed by regulations
 - May be advantageous to use stricter test
 - Should be stringent enough to detect variations that would cause a product to fail.
- > Test records should be kept for a period of three years from date of certification.



Content of Certificates

1. Identification of the product covered by the certificate.
2. Citation to each CPSC product safety regulation(s) to which the product is being certified.
3. Identification of importer or domestic manufacturer, as applicable, certifying compliance of the product (including name, full mailing address and telephone number).
4. Contact information for the individual maintaining records of test results (including name, e-mail address, mailing address and telephone number).
5. Date (month and year at a minimum) and place (city and country or administrative region) where this product was manufactured.
6. Date and place (city and country or administrative region) where this product was tested for compliance with the regulation(s) cited above.
7. Identification of any third-party laboratory on whose testing the certificate depends (including name, mailing address and telephone number).



Presentation of Certificates

- > Certificates must accompany each product subject to the requirements.
- > Certificates must be provided to each distributor or retailer of the products.
- > The certificate must be available to the CPSC no later than the time when the product or shipment is available for inspection in the U.S. (imported products) or before the product or shipment is introduced into domestic commerce (U.S. manufactured products).
- > No requirement to file certificates with CPSC or CBP.



Format of Certificates

- > Must contain described data elements.
- > Must be in English (plus another language, if necessary).
- > Electronic certifications acceptable.
 - Deemed to “accompany” product if can be accessed by a unique identifier (World Wide Web URL or other electronic means).
 - Must be created prior to product’s arrival into U.S. domestic commerce.
 - Must be method for CPSC to verify certificate’s date of creation or last modification.
- > Can be transmitted electronically to a broker with other entry documents on imported shipments.

Stay of Enforcement



- > One year stay of enforcement until Feb.10, 2010 provides relief from the certificate requirements for products manufactured on or after Nov. 12, 2008.
- > This applies to testing as well as certification – *however*, you still have to comply with the standards.
- > **The stay does not apply to:**
 - Lead paint, full-size and non-full size cribs, pacifiers, small parts, metal components of children’s metal jewelry, and various sections of the FFA, Pool & Spa Act, and ATVs.

Children's Product Safety



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Scope

- > Children's products containing lead
- > Phthalates prohibition
- > Mandatory third party testing
- > Tracking labels
- > Label requirements for advertising games/toys
- > Mandatory toy safety standards
- > Durable nursery products



“Children’s Product”

- > Consumer product designed or intended primarily for children 12 years of age or younger.
 - Statement by manufacturer about intended use, including labeling.
 - Packaging representation, display, promotion or advertising.
 - Commonly recognized by consumers as being intended for a child.
 - Age Determination Guidelines issued by CPSC.



Lead Limits

- > Limits on lead content in children's products phased in over 3 years.
 - February 10, 2009, 600 ppm maximum *
 - August 14, 2009, 300 ppm maximum*
 - August 14, 2011, 100 ppm maximum
- > Lead in paint/surface coatings for consumer use reduced from 600 ppm to 90 ppm maximum as of August 14, 2009.

** Stay of enforcement for testing and certification until 2/10/2010.*



What is included?

- > Paint used on toys and other articles intended for use by children that bear paint.
 - Including painted buttons, buckles, zippers, snaps, grommets, ornaments, or inks that coat fiber (e.g., thermoset printing inks).
- > Furniture for consumer use that bears paint.
- > Paint for consumer use.
- > Children's products with lead content.

Lead Ban Exemptions

- > The following exemptions are currently under review:
 - Certain inaccessible parts
 - Proposed interpretive rule published 1/15/09.
 - Certain electronic devices if it is not technologically feasible for them to comply
 - Interim Final Rule published 2/10/09.
 - Specific products/materials that do not result in the absorption of lead in the human body (exclusions)
 - Examples: wood, natural fibers, precious gemstones, some semiprecious gemstones, surgical steel, some precious metals.
 - Final Rule published 3/11/09.

- > Stay of enforcement for lead content in certain parts of youth motorized recreational vehicles (e.g., battery terminals) until 5/1/2011.

- > Stay of enforcement for lead content for component parts of bicycles, jogger strollers and bicycle trailer for children until 4/20/2011.



ASTM F963-07 Standards

- > ASTM F963-07 became a mandatory standard on February 10, 2009.*
- > Places additional limits on the amount of lead (and other heavy metals) based on soluble portion of that material.
- > Other heavy metals include antimony, arsenic, barium, cadmium, chromium, mercury and selenium.
- > Toys manufactured after February 10, 2009 will have to meet these requirements.
- > ASTM F963-08 revisions were issued (Feb. 17, 2009) and have been reviewed by CPSC.
- > CPSC has accepted the revisions and they became mandatory on May 17, 2009 (exception for toy chests).

*** Stay of enforcement until 2/10/2010.**



Phthalates Prohibition

- > Effective February 10, 2009, DEHP, DBP, and BBP have been permanently prohibited by Congress in concentrations of more than 0.1% in “children’s toys” and “child care articles.”
- > Three additional phthalates, DINP, DIDP, and DnOP have been prohibited pending further study.



Phthalates Definitions

- > *Children's Toy* – consumer product designed or intended by manufacturer for a child 12 years or younger for use by the child *when the child plays*.
- > *Child Care Article* – consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.



Phthalates Prohibition

- > Additional guidance issued by CPSC on February 23, 2009 in Federal Register.
- > Enforcement efforts focus on those products most likely to cause harm in children.
- > This includes bath toys and other small, plastic toys (especially those made of polyvinyl chloride) that are intended for young children and can be put in the mouth.
- > In addition, CPSC staff will sample teethingers, rattles and pacifiers .



Retroactive Application to Inventory

- > CPSC Issued Memorandum on September 12, 2008.
- > Children's products containing lead above the set limit (600 ppm) prescribed by the CPSIA cannot be sold from inventory or be on store shelves after February 10, 2009.
- > Effective August 14, 2009, lead limit *in paint* will be reduced from 600 ppm to 90 ppm. Any product in inventory or on store shelves on or after August 14, 2009 must comply with the revised lead limit.
- > Phthalates bans also apply retroactively to inventory based on NY U.S. District Court ruling (Feb. '09).

Third Party Testing Timetable

	Accreditation Procedure Published	3rd Party Testing Required
Lead Paint (600 ppm) <i>Drops to 90 ppm</i>	September 22, 2008	December 21, 2008 <i>August 14, 2009</i>
Cribs and Pacifiers	October 22, 2008	January 20, 2009
Small Parts	November 17, 2008	February 15, 2009
Metal Jewelry	December 22, 2008	March 23, 2009
Baby bouncers, walkers, jumpers	March 2009	June 2009 <i>Now Feb. 20, 2010</i>
Lead Content (300 ppm) <i>Currently 600 ppm max.</i>	May 2009	August 14, 2009 <i>Now Feb. 10, 2010</i>
ASTM F963-07 (Toy Safety) – including phthalates	June 2009	September 2009 <i>Now Feb. 10, 2010</i>



Further Clarifications

- > During stay of enforcement, penalties will not be imposed against anyone for making, importing, distributing or selling:
 - A children's product made of certain natural materials (e.g., wood, cotton, wool);
 - Ordinary children's books printed after 1985; or
 - Dyed or undyed textiles and non-metallic thread and trim used in children's apparel and other fabric products (e.g., baby blankets).



Durable Infant or Toddler Products

- > First phase of rulemaking required by August 14, 2009 on mandatory safety standards.
- > Range of products covered has been expanded.
- > No longer just applicable to products used in the home.
- > Must issue rulemaking by August 14, 2009 to provide consumer registration system to assist with recalls.
 - Notice of Proposed Rulemaking issued 6/29/09; comment period closes September 14, 2009.



Tracking Labels

- > Effective August 14, 2009 for products manufactured on or after that date – primary use is to assist with recalls.
- > Ultimate purchaser must be able to ascertain the manufacturer, private labeler, location and date of production of the product and cohort information (including batch number, run number or other identifying characteristic).
- > Marks/labels must be permanent.
- > Stay of enforcement was voted down.
- > Guidelines to be published by CPSC in the future.



Labeling Requirement for Toy/Game Advertisements

- > Effective February 10, 2009
- > 180 day grace period until August 9, 2009 (for printed materials printed prior to 2/10/09).
- > Also applicable to internet web sites.
- > Must reflect applicable cautionary statements consistent with FHSA (section 24(a)) requirements.
- > Toys and games intended for use by children 3 to 6 years of age.
- > Choking hazards, small balls, balloons, marbles, etc.



CPSC Enhanced Enforcement Authority

- > Initial period of adjustment
- > After adjustment period . . .
 - Refusal of admission if product not accompanied by certificate or accompanied by a false certificate.
 - Expected destruction of products refused admission, unless Secretary of Treasury permits export.
 - Civil penalties up to \$100,000 for each knowing violation of the CPSA, FHSA and FFA.
 - Related series of knowing violations subject to maximum civil penalties of \$15 million.
 - Criminal penalties of potential imprisonment of not more than 5 years for knowing and willful violations and potential fines.
 - Criminal penalties to include asset forfeiture.

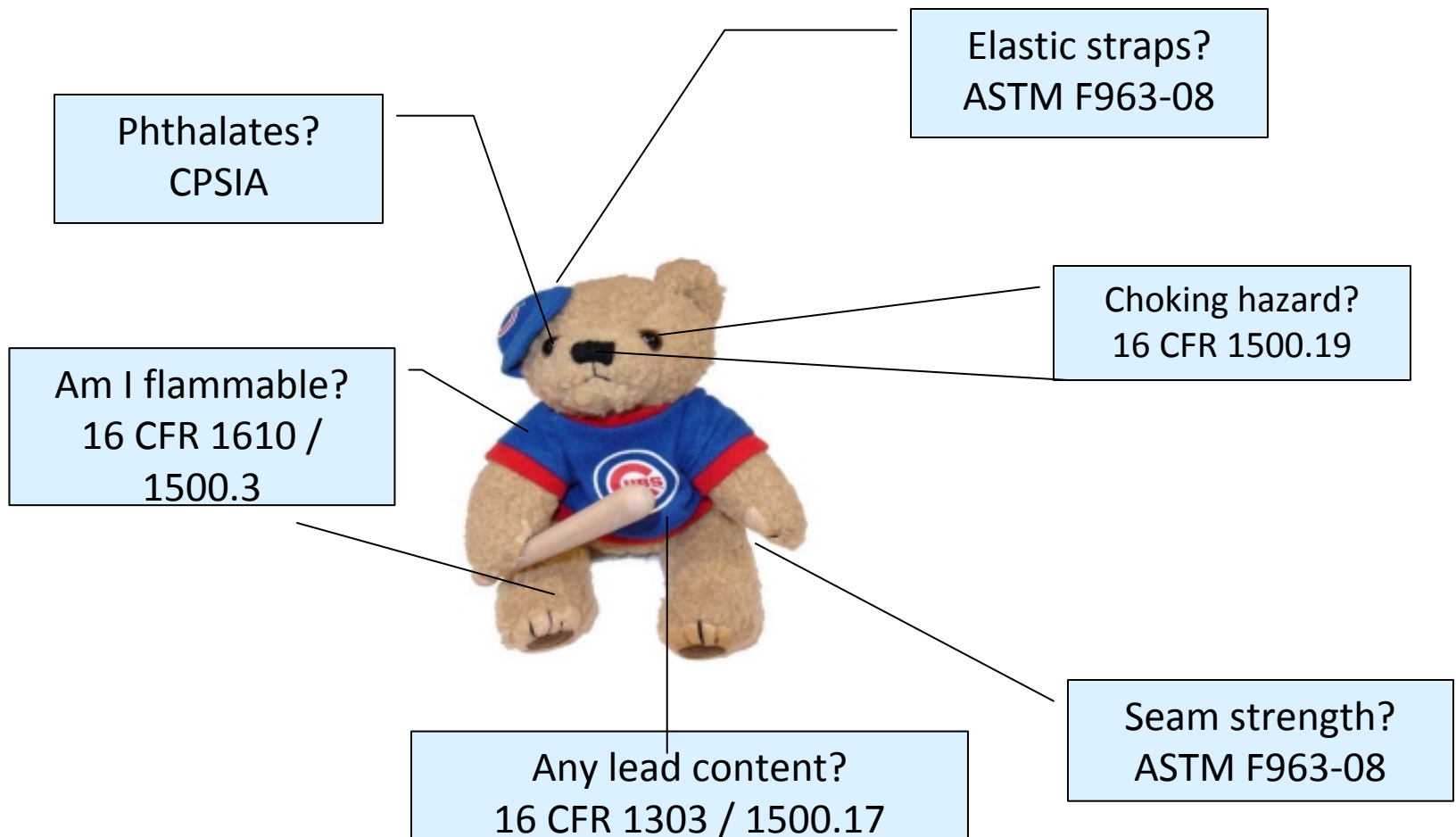
Recent Actions

- > Nine companies penalized for violating lead paint ban.
 - Cardinal Distributing Co. Inc., of Baltimore, Md., \$100,000
 - Dollar General Corp., of Goodlettsville, Tenn., \$100,000
 - Family Dollar Stores Inc., of Matthews, N.C., \$75,000
 - Hobby Lobby Stores Inc., of Oklahoma City, Okla., \$50,000
 - First Learning Company Ltd., of Hong Kong, \$50,000
 - Michaels Stores Inc., of Irving, Texas, \$45,000
 - A&A Global Industries Inc., of Cockeysville, Md., \$40,000
 - Raymond Geddes & Co, of Baltimore, Md., \$40,000
 - Downeast Concepts Inc., of Yarmouth, Maine, \$30,000

- > OKK Trading Fined \$665,000 for violating lead paint ban and other child safety rules.

- > Mattel, Fisher-Price to Pay \$2.3 Million Civil Penalty for Violating Federal Lead Paint Ban. *Penalty is highest ever for CPSC regulated product violations*

Is Mr. Cubby-Bear Compliant?



<http://www.cpsc.gov/about/cpsia/cpsia.html>

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