

General Conformity Certification

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What Is Certification?

- Certification generally means vouching that a *product complies* with a certain requirement, such as a government standard
- May or may not involve any test laboratory
- May or may not involve a label or mark on the product

Two Varieties of Product Safety Certification Under CPSC Law

- General Conformity Certification
 - Section 14(a)(1)
 - Akin to a “supplier’s declaration of conformity”
 - This is the focus of this presentation
- Certification of Children’s Products based on Third Part Testing
 - Section 14(a)(2)
 - Many of the same requirements apply
 - This is the focus of the first presentation this afternoon

What Products Must Be Certified?

- Under prior law, certification was generally required only for *consumer products* subject to *standards* promulgated by the Commission under the *Consumer Product Safety Act*
- The 2008 Act expands the general certification requirement to *all* products *subject to* CPSA bans as well as standards, or to any “*similar rule, ban, standard, or regulation under any other Act* enforced by the Commission.”

“Subject to”

- Which products are *subject to* a standard or ban is generally spelled out in the regulation
 - Example: Part 1303/Lead Paint Ban
- A product that is *exempt* under a standard is not subject to it, and would not require certification to it
 - Example: crayons not subject to the small parts ban
- A product may be subject to a standard but exempt only from testing: still must be certified

What Standards, Bans, Rules, Etc., Are “Similar” to Consumer Product Safety Rules?

- FHSA bans and requirements adopted by the Commission, *not bans defined solely by statute (banned hazardous substance by definition)*
- FHSA labeling rules adopted by the Commission
- FFA standards
- PPPA “special packaging” standards
- RSA standard for refrigerators
- Voluntary standards are not covered unless they are made into a mandatory standard, ban, etc.

Some Future “Similar” Rules

- New lead content limits when phased in
- New standards for durable infant and toddler products when adopted or upgraded by the Commission
- Portions of the ASTM Toy Standard when made mandatory or strengthened by the Commission
- Phthalate bans (permanent and temporary) when effective
- ATV standards when effective (but not the 3-wheel ban)
- Drain covers when required by Pool and Spa Safety Act
- Requirements for portable gasoline containers

Who Must Certify?

- “*Every* manufacturer” of a product that is subject to a consumer product safety rule or similar rule, ban, standard or regulation *and* which is “*imported* for consumption or warehousing” *or* “*distributed* in commerce”
- The term “manufacturer” includes importers as well as foreign and domestic manufacturers
- Test labs cannot issue section 14 certifications
- If the product bears a private label, the private labeler must also issue a certificate

Multiple Certifications

- When a product is imported, the foreign manufacturer and the importer ***both*** must certify unless the Commission, by rule, exempts one or the other of the responsibility
- When a product bears a private label, the manufacturer and the private labeler ***both*** must certify unless the Commission, by rule, relieves one or the other of the responsibility
- The Commission ***has already*** pinpointed responsibility for many of the CPSA standards

Are *All* Imports Covered?

- Certification is required for products that are subject to a standard, ban, etc., and are “imported for consumption or warehousing”
- This *may not* include certain products that are *imported for testing, for trade shows* or for re-export, etc.
- The certification requirement would apply, however, if any of these products is later sold for consumption in the United States

What Testing Is Required As a Basis for Certification?

- Certification must be based on “a test of each product or upon a reasonable testing program”
- The Commission may *prescribe* a reasonable testing program and may require that testing be done by an *independent third party*
- For children’s products, Congress set a schedule under which *all* certification must eventually be based on third-party testing

Reasonable Testing Program

- Provide reasonable assurance that the product meets all requirements of the standard
- Type and frequency of tests are up to the issuer of the certificate
 - Not necessary to use the exact test procedure prescribed by the regulations
 - May be advantageous to use stricter test
 - Should be stringent enough to detect variations that would cause a product to fail

Who Should Test?

- In most CPSA standards, the Commission has said that an importer can certify based on tests conducted by the foreign manufacturer, provided that:
 - A copy of the test records is in English and kept in the US
 - The importer is a resident of the US or has a resident agent
 - Generally, Commission has required test records to be maintained for a period of three years from the date of certification

Content of Certificates

- Certificates must specify, in English:
 - the manufacturer or private labeler issuing the certificate and any third party on whose testing the certificate depends, by name, address and phone number
 - the date and place where the product was manufactured and date and place of testing
 - contact information for person maintaining test records
 - each applicable standard, ban, etc.
 - May include other info or same info in other languages

Sample Certificate

1. Identification of the product covered by this certificate:
2. Citation to each CPSC product safety regulation to which this product is being certified:
3. Identification of the foreign manufacturer certifying compliance of the product:
4. Identification of the U.S. importer certifying compliance of the product:
5. Identification of the private labeler certifying compliance of the product (if any):
6. Contact information for the individual maintaining records of test results:
7. Date and place where this product was manufactured:
8. Date and place where this product was tested for compliance with the regulation(s) cited above:
9. Identification of any third-party laboratory on whose testing the certificate depends:

Availability of Certificates

- Certificates must “*accompany*” each product or shipment of products covered by the same certificate
- A copy of the certificate must be “*furnished* to each distributor or retailer of the product” (no requirement to provide to ultimate consumer)
 - Not necessarily a paper copy
- A copy of the certificate must be made available to the Commission and Customs *upon request*

Form of Certificates

- The Commission has prescribed the form of the certificate for several CPSA standards
- For example, the certificate must take the form of an *on-product label* under Part 1203 (Bicycle Helmets) and Part 1205 (Walk-Behind Power Lawnmowers)
- Where the form is not prescribed, the certificate could be in the form of a label on the product, an attachment on the shipping container, a separate document, or included in another document such as an invoice, bill, statement, or bill of lading
- Must include all the required information

When Is General Conformity Certification Required?

- The amendments to section 14(a)(1) become effective on November 12, 2008
- Certification will be required for products that are subject to an existing standard, ban, etc., and are manufactured on or after November 12, 2008
- For future standards, bans, etc., certification will generally be required for products which are manufactured on or after the effective date

Handling of Certificates at the Ports

- There is currently *no requirement to file* a certificate with CBP or any government agency as part of the entry process or otherwise
- Release of the shipment does not depend on presentation of the certificate in every case
- In future, the Commission, after consultation with CBP, may *by rule* provide for *electronic filing* of certificates up to 24 hours before arrival

Failure to Certify Imports

- Section 17(a)(2) of the Consumer Product Safety Act states that a product offered for importation “*shall be refused admission*” if it is not accompanied by a certificate required under section 14 or if it is accompanied by a false certificate (and the manufacturer has reason to know it is false or misleading in any material respect)

Refusal of Admission

- Under section 17(e) as amended, products refused admission *must be destroyed* unless the Secretary of Treasury permits export
- All expenses of destruction (including salaries, travel, per diem, etc) shall be paid by the owner or consignee
- If expenses of destruction are not paid, they become a lien against future imports by the same owner or consignee.

Certification Violations

- CPSA Section 19(a)(6) makes it unlawful for any person either:
 - to *fail to furnish* a certificate required by section 14; or
 - to *issue a false certificate* if the issuer in exercise of due care has reason to know it is false or misleading in any material respect
- Knowing violations of section 19 are subject to civil penalties; knowing and willful violations could lead to imprisonment

Certification vs. Compliance

- Certification *does not exempt* any product from the requirement to comply with an applicable rule, standard, ban or regulation
- However, under section 19(b), a retailer or distributor who sells or offers for sale a nonconforming product *may have a defense* if it holds a certificate issued in accordance with section 14 (unless it knows that such product does not conform)

Reporting

- Manufacturers (including importers), distributors and retailers must report to the CPSC *immediately* if they learn that one of their products fails to comply with an applicable consumer product safety rule or “any other rule, regulation, standard, or ban” under the CPSA or any other Act enforced by the Commission
- The expanded reporting requirement is effective 60 days after enactment = October 13, 2008

Thank You

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