

Products Liability

November 12, 2008

Roadmap to Certifying Consumer Products under the Consumer Product Safety Improvement Act of 2008

By [Joseph W. Walker](#)

Consumer products manufactured for distribution in the United States after November 11, 2008 must be certified in accordance with the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). If you are an importer or domestic manufacturer of consumer goods, are you prepared to issue the appropriate certification? If not, did you know your imports may be refused admission and potentially destroyed? Further, did you know that failure to furnish a certificate is unlawful and could result in severe civil penalties or, in rare cases, criminal prosecution? Do I have your attention?

Generally, the certification is a declaration by the importer or domestic manufacturer that its products comply with all consumer product safety rules – and other similar rules, bans, standards, and regulations – administered by the Consumer Product Safety Commission ("CPSC") under the Consumer Product Safety Act ("CPSA"). While issuing a certification is simple in theory, the requirements set forth in the CPSIA can prove frustrating and overwhelming. The following is a roadmap to assure proper certification compliance following the enactment of the CPSIA.

1. Understand when certification is required.

Generally, all consumer products that are regulated by the CPSC, or a similar rule, ban, standard, or regulation enforced by the CPSC, require certification. The list of "regulated products" is lengthy and far reaching. The CPSC publishes a list of regulated products on its website at <http://www.cpsc.gov/businfo/reg.html>.

More specifically, Section 102(a)(1)(A) of the CPSIA amends section 14(a) of the CPSA¹ to read:

[E]very manufacturer of a product which is subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which –

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¹ 15 U.S.C. § 2063(a).



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Continued

(A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product.

Prior to passage of the CPSIA, certification was generally only required for consumer products subject to standards promulgated by the Commission under the CPSA. The new language broadens the scope of the CPSA to include products subject to the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Refrigerator Safety Act, the Children's Gasoline Burn Prevention Act, and the Virginia Graeme Baker Pool and Spa Safety Act, among others.

Accordingly, if you import or manufacture consumer products that are subject to one of the aforementioned regulations, you need to either (a) revisit your certification program to ensure it complies with the changes adopted pursuant to the CPSIA or (b) create a certification program that complies with the CPSIA.

2. Understand who must provide the certification.

On November 10, 2008, the CPSC issued a rule limiting the number of parties that must provide certification. For goods manufactured outside the United States, "only the importer must certify" in accordance with CPSA § 14(a).² For goods manufactured in the United States, "only the manufacturer must certify" in accordance with CPSA § 14(a).³

3. Understand what must be included in the certification.

Generally, to comply with the CPSA and CPSIA, an importer or domestic manufacturer needs to provide a conformity certificate certifying that each product "complies with all...standards...applicable to the product" and that the certification is "based on a test of each product or upon a reasonable testing program."⁴ The certificate shall also "specify each such...standard...applicable to the product."⁵

The CPSIA also adopted new, more stringent reporting requirements that did not exist under the old CPSA. These new requirements are located in the CPSIA at Section 102(b) and in the CPSA at § 14(g). Additionally, on November 10, 2008, the CPSC adopted rules specifying the required information (16 C.F.R. § 1110.11). Accordingly, to conform, all certificates must be published in English and shall specifically include the following information:

- Identification of the product covered by the certificate
- Citation to the CPSC product safety regulation or statutory requirement with which the product conforms
- The full contact information for the importer or domestic manufacturer issuing the certificate
- The date and place of manufacture
- The full contact information for any third party conformity assessment body
- The date and place where product was tested

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² 16 C.F.R. § 1110.7(a).

³ 16 C.F.R. § 1110.7(b).

⁴ Consumer Product Safety Improvement Act of 2008 at Section 102(a)(1)(A).

⁵ Consumer Product Safety Improvement Act of 2008 at Section 102(a)(1)(A).



Client Advisory

Continued

- Full contact information for the individual responsible for maintaining records of test results

4. Understand how the certification may be distributed.

The CPSIA requires that every “certificate...shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product.”⁶

In some instances, the CPSC has adopted a specific rule requiring that a certificate be attached to the product in the form of a label. This is true for bicycle helmets (16 C.F.R. § 1203) and walk-behind power lawnmowers (16 C.F.R. § 1205). For most products, however, the CPSC adopted a rule that permits electronic certificates as opposed to burdensome paper certificates or labels. Accordingly, a certificate satisfies the “accompany” and “furnished” requirements if it:

[Is] identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipments itself is available for inspection.⁷

Moreover, the distributor(s) and retailer(s) must be “provided a reasonable means to access the certificate”⁸ and the “electronic certificate shall have a means to verify the date of its creation or last modification.”⁹

Thus, importers and domestic manufacturers should make certificates available online and should direct retailers to view the certificates on its invoices, packaging, or by other means.

The certificates do not need to be filed with the government and do not need to be signed by the issuer. Issuing the certificate in accordance with the aforementioned guidelines is all that’s required. For products that are imported, the certificate must be available to the Commission “as soon as the product or shipment itself is available for inspection in the United States.”¹⁰ For domestic products, the certificate must be available to the Commission “prior to introduction of the product or shipment in question into domestic commerce.”¹¹

Once again, importers and domestic manufacturers can comply with these requirements if the certificates are published online prior to shipment.

5. Understand the consequences for failure to certify.

It is unlawful to import or distribute consumer products without the necessary certification required under § 14(a).¹² Violators are subject to civil penalties of up to \$5,000 for each such violation¹³ and criminal penalties for knowing and willful violations.¹⁴ Additionally, equitable relief is available to the CPSC or the

⁶ Consumer Product Safety Improvement Act of 2008 at Section 102(b) (emphasis added). The certificate shall also be made available to the CPSC upon request.

⁷ 16 C.F.R. § 1110.13(a)(1).

⁸ 16 C.F.R. § 1110.13(a)(2).

⁹ 16 C.F.R. § 1110.13(b).

¹⁰ 16 C.F.R. § 1110.7(c)(1).

¹¹ 16 C.F.R. § 1110.7(c)(2).

¹² 15 U.S.C. § 2068(a)(6).

¹³ 15 U.S.C. § 2069(a)(1).

¹⁴ 15 U.S.C. § 2070(a).

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Attorney General in United States district courts, including seizure of goods and distribution restraints.¹⁵

6. Understand the industry trends.

While the new reporting requirements may not cover all products under the CPSC's jurisdiction (i.e., unregulated products that adhere to voluntary safety standards), there are two things to consider moving forward: (1) retailers are probably expecting compliance certificates from each of its suppliers and (2) the trend – as evidenced by passage of the CPSIA – is toward conformity declarations by *all* suppliers of products under the jurisdiction of the CPSC. Accordingly, importers and domestic manufacturers may want to consider adopting the CPSIA's new directives voluntarily, so long as it's not cost prohibitive.

To ensure compliance with the Consumer Product Safety Improvement Act of 2008, please contact Frost Brown Todd LLC's team of [product liability specialists](#).

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¹⁵ 15 U.S.C. § 2071.