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Our File: 2700-01

November 14, 2008

MEMORANDUM

To: Clients and Friends of the Firm

From: John M. Peterson, Neville Peterson LLP
Maria E. Celis, Neville Peterson LLP

Re: Consumer Product Safety Improvement Act of 2008:
CPSC Regulation Concerning Importer Issuance of
Certificates of Compliance.

On August 14, 2008, Congress passed the Consumer Products Safety Improvement Act ("CPSIA"), which amends the Consumer Product Safety Act (CPSA) and requires, inter alia, that General Conformity Certification be provided with respect to **every product** subject to a "consumer product safety rule under this Act or similar, rule, ban, standard, or regulation under any Act or similar rule, ban, standard, or regulation under any other Act enforced by (the Consumer Products Safety) Commission and which is imported for consumption or warehousing or distributed in commerce." *Consumer Products Safety Improvement Act of 2008*, Pub. L. 110-314 (2008), § 102(a); Consumer Products Safety Act (15 U.S.C. 2063(a)), § 14(a), as amended.

The requirement for certification respecting imported goods is effective **November 12, 2008**.

CPSIA requires issuance of General Conformity Certificates for a wide range of imported consumer goods, including, but not limited to: apparel products subject to the Flammable Fabrics Act; goods subject to specific CPSC standards; and goods subject to CPSC "bans" which have not been incorporated in formal regulations (e.g., the CPSC policy prohibiting sale of infants' garments featuring drawstrings).

To address questions and concerns posed by the international trade community, the CPSC has published an interim final rule concerning *Certificates of Compliance with Rules under the Consumer Product Safety Act and Similar Rules, Bans, Standards and Regulations under any other Act Enforced by the Consumer Product Safety Commission*.

This Memorandum transmits [Exhibit A]¹ and explains the new regulation.

CPSC's New Certification Regulation

The CPSC has adopted 16 C.F.R. Part 1110 to provide guidance on certificates of compliance for all merchandise regulated by the CPSC.

A. Parties Who May/Must Issue Certificates

First, the new regulation “limits the entities required to provide certificates in accordance with 14(a) of the Consumer Product Safety Act, as amended (CPSA), 15 U.S.C. § 2063(a), **to importers and U.S. domestic manufacturers.**” See 16 C.F.R. § 1110.1 (a).

The regulation designates the “**importer as the sole entity that must issue the certificate required by section 14(a) in the case of an imported product.**” The importer will generally be the importer of record, as indicated on Customs entry documents². It also designates the “**manufacturer as the sole entity that must issue the certificate required by section 14(a) in the case of a domestically manufactured product.**”

B. Form and Content of General Conformity Certificates

Part 1110 specifies the content, form, and availability requirements of the General Conformity Certificates that must be issued. It not discuss the type or frequency of testing necessary to satisfy certification requirements, nor does it address advance filing of electronic certificates with the Commission and/or Customs. 16 C.F.R. § 1110.1(b), as amended.

¹ As of this writing, the regulation has not been published in the *Federal Register*.

² In some cases, air courier companies or Customhouse brokers may act as the titular importer of record of imported goods. It does not seem likely, however, that such entities would have the knowledge needed to issue a General Conformity Certificate for a product. The rule does not address these situations, which are likely to affect smaller value shipments (under \$2000) carried by air courier companies, and which are generally cleared under the courier's manifest. We recommend that, in these situations, the certificates be created by the United States purchaser of the merchandise.

1. Electronic Certificates

The regulations authorize the use of “electronic certificates”, which are defined as a “set of information available in, and accessible by, electronic means that sets forth the information required by CPSA §§ 14(a) and 14(g) and that meets the availability requirements of CPSA 14(g)(3). § 1110.3(a), as amended. While a **certificate in hard copy or electronic form** meets the requirements of part 1110 and §14 of the CPSA, nothing relieves “the importer or domestic manufacturer from the underlying statutory requirements concerning the supporting testing and/or bases to support certification and issuance of certificates.” 16 C.F.R. § 1110.5.

2. Who Must Certify

“Except as otherwise provided in a specific standard,” **only the importer**, for goods manufactured outside of the United States, may certify, in accordance with section 14(a) “that the [imported] product or shipment in question complies with all applicable CPSA rules and all similar rules, bans, standards, and regulations applicable to the product or shipment under any other Act enforced by the Commission.” 16 C.F.R. § 1110.7(a).

For domestic products, **only the manufacturer** must certify in accordance with section 14(a) “that the product or shipment in question complies with all applicable CPSA rules and all similar rules, bans, standards, and regulations applicable to the product or shipment under any other Act enforced by the Commission.” § 1110.7(b).

The certificates must be made available to the CPSC: (a) for imports - as soon as the product or shipment itself is available for inspection in the United States; and (b) for domestic products - prior to the introduction of the product or shipment into domestic commerce. 16 C.F.R. § 1110.7©.

3. Content and Form of the Certificate

The information on the certificate on a hard copy or electronic certificate must be in English and may also be provided in another language. 16 C.F.R. § 1110.9. A certificate must contain the following information:

- (a) Identification of the product covered by the certificate;
- (b) Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified. Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.

- (c) Identification of the importer or domestic manufacturer certifying compliance of the product, including the importer or domestic manufacturer's name, full mailing address, and telephone number.
- (d) Contact information for the individual maintaining records of test results, including the custodian's name, e-mail address, full mailing address, and telephone number. (CPSC suggests that each issuer maintain test records supporting the certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 C.F.R. 1508.10 for full-size baby cribs.)
- (e) Date (month and year at a minimum) and place (including city, state, and country, or administrative region) where the product was manufactured. If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.
- (f) Date and place (including city and state, country or administrative region) where the product was tested for compliance with regulation(s) cited above in subsection (b).
- (g) Identification of any third-party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.

16 C.F.R § 1110.11.

4. "Accompany" and "Furnish" Requirements

CPSIA §14(g)(3) requires that the certificates **"accompany"** each product or product shipment, and be **"furnished"** to each distributor and retailer.

Hard copy certificates may be used; however, many companies have noted that it would be difficult to tailor certificates to individual shipments, especially where goods are being consigned, in limited quantities, to large numbers of customers or retailers. To address this situation, the new rule permits the use of electronic certificates of conformity.

An electronic certificate identified by a unique identifier and accessed via the Internet satisfies the "accompany" requirement, "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 Customs authorities as soon as the product or shipment is available for inspection.” 16 C.F.R. § 1110.13(a)(1). An electronic certificate satisfies the “furnish” requirement if the distributor(s) and retailer(s) of the product have access to such a certificate. *Id.*, § 1110.13(a)(2). An electronic certificate must verify the date of its creation or last modification. *Id.*, § 1110.13(b).

5. Legal Responsibility

While “any entity or entities may maintain an electronic certificate platform and may enter the requisite data,” the entities required to issue the certificate, namely the importers and manufacturers, remain legally responsible for the accuracy and completeness of the information on the certificate and its availability in a timely fashion. § 1110.15.

Future Updates to the Rules

The CPSC recognizes that it will need to modify and expand this rule, and intends to publish a “Frequently Asked Questions” (FAQ”) document concerning same. Given the need to meet the statutory deadline, however, the Commission has published the attached regulation as a final rule.

After an initial phase-in period, imported goods for which required certificates of conformity are not provided will be subject to exclusion from entry. It is important to note, however, that no delayed effective date for certification is provided; certificates must be presented for goods entered or introduced into commerce on and after November 12, 2008.

If you have any questions regarding this new rule, or any specific issues, please do not hesitate to call us. Best regards.