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CONSUMER PRODUCT SAFETY LAW

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

CPSC Issues Final Rule Clarifying Certification Issues

[Kerrie L. Campbell](#)

Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) imposes new requirements for (a) General Conformity Certification and (b) Third-Party Testing and Certification of Children's Products. The new general certification requirement for all consumer products subject to any rule, standard, ban, or regulation under any Act enforced by the Consumer Product Safety Commission (CPSC) became effective on November 12, 2008. The third-party testing and certification requirements for children's products are phased in on a rolling schedule. For example, third-party certificates attesting to compliance with new lead paint limits for children's products are required as of December 22, 2008.

In response to mass confusion and the overwhelming number of requests for guidance and clarification from companies subject to the CPSIA, the CPSC issued a Final Rule that clarifies three major certification issues:

(1) Who should supply the certificate?

The Final Rule limits the number of parties who must submit conformity certificates. For imported products, only the importer needs to issue the conformity certificate. For products manufactured in the U.S., only the domestic manufacturer needs to issue the certificate. Private labelers do not need to issue certificates and do not need to be listed as parties on the certification.

(2) How should the certificate be filed?

The Final Rule confirms the acceptability of electronic certificates. This is an important clarification that apparently

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supersedes the CPSC staff's previously stated view that paper certificates were required. The Rule states that electronic means can be used to meet the certification requirement and that conformity certifications can accompany the product and be furnished to distributors and retailers by a variety of electronic means. Electronic certificates can be posted on a Web site for inspection or included with other electronic documents accompanying shipments through Customs, so long as the certificates can be produced immediately for inspection.

(3) How will the CPSC enforce the general certification requirement?

The Final Rule notes that the CPSC will initially focus on compliance with safety rules rather than on the certificate itself. According to the Commission's November 12 press release, "the Commission recognizes that every company is expected to make its best efforts to comply promptly with the new certificate requirements." Companies struggling to figure out the appropriate form and content of the certificates may take some small comfort in the Commission's announcement that "the agency intends initially to focus more on compliance with the safety rules underlying the certificate, rather than on the certificate or form of the certificate itself."

The CPSC's press release and Final Rule can be accessed by clicking on the link below.

[CPSC Clarifies Certification Requirements: Agency Staff to Focus on Compliance with Safety Rules](#)

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



Kerrie L. Campbell Ms. Campbell specializes in consumer product safety counseling and represents major manufacturers and retailers in investigation, enforcement and penalty proceedings before the U.S. Consumer Product Safety Commission (CPSC) and in matters referred to the U.S. Department of Justice. Ms. Campbell routinely counsels clients regarding compliance with the reporting requirements under the Consumer Product Safety Act, Flammable Fabrics Act and other statutes regulated by the CPSC. She advises clients on product recalls, corrective actions, responses to agency inquiries and Freedom of Information Act (FOIA) requests. Ms. Campbell is a member of the Advisory Board for BNA's Product Safety and Liability

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