

Product Safety

If you have questions or would like additional information on the material covered in this Alert, please contact one of the authors:

Stephen P. Murphy

Partner, Washington, D.C.
+1 202 414 9272
smurphy@reedsmith.com

Antony B. Klapper

Partner, Washington, D.C.
+1 202 414 9302
aklapper@reedsmith.com

Mark A. Brand

Partner, Chicago
+1 312 207 2438
mbrand@reedsmith.com

Barry J. Thompson

Partner, Los Angeles
+1 213 457 8042
bthompson@reedsmith.com

...or the Reed Smith lawyer
with whom you regularly work.

Consumer Product Safety Commission Issues New Clarifying Regulation on General Conformity Certificate Requirement of the CPSIA

Yesterday, Nov. 11, 2008, the Consumer Product Safety Commission ("CPSC") posted a new regulation, approved by a 2-0 vote, narrowing the category of companies that need to issue general conformity certificates. This requirement goes into effect Nov. 12, 2008 (today) under the terms of the Consumer Product Safety Improvement Act ("CPSIA"). See www.CPSC.gov/about/cpsia/cpsia.html. Prior to this regulation, the obligation to issue general conformity certificates applied to importers, manufacturers and/or private labelers. Under the new regulation, which the CPSC explicitly recognized as a stop-gap measure to resolve confusion, the obligation to issue general certificates is *now limited to the "importer" of foreign sourced consumer goods and to the "manufacturer" (or packager in the case of products subject to the Poison Prevention Packaging Act) of domestically produced consumer products*. Notably, companies that have confidentiality agreements with foreign vendors have no requirement to disclose the names of those foreign vendors in the general conformity certificate.

The new regulation goes further in recommending that companies issuing general conformity certificates utilize at least a three-year retention period for certificates. Of particular note is the fact that the prefatory language of the regulation acknowledges the sentiment expressed recently by the Chair of the CPSC that the Commission lacks current-year funding to engage in enforcement activity specifically targeted at the general conformity certificate requirement. Finally, the new regulation makes it clear that general conformity certificates can electronically "accompany" and be electronically "furnished" (to distributors and retailers) for consumer products subject to the CPSIA. It does, however, specify that the unique identifier information and the website URL must "be on the product or accompanying the product or shipment." This last item appears to disqualify mere posting of general conformity certificates on company websites without having website access information on the product (e.g., a shipping box) or accompanying the product (e.g., the bill of lading).

To its credit, the CPSC Staff has been dealing with an extraordinarily complicated new statute without additional funding or staffing. This has led to inevitable delays in administrative guidance, but not in any lack of effort by Commission Staff. Accordingly, many issues arising under the CPSIA will be resolved over the course of the next few months. During this period, the CPSC is expecting companies subject to the CPSIA to exercise best efforts to promptly comply the new general conformity certificate requirements.

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