

November, 08

## **CPSC certificates of compliance**

In August, President Bush signed the Consumer Product Safety Improvement Act of 2008 (CPSIA). The CPSIA expanded, among other things, testing and certificate requirements. We are repeating a letter in its entirety issued last week by our friends at Grunfeld Desiderio Liebowitz Silverman & Klestadt because of the importance of compliance with CPSIA, which is effective IMMEDIATELY.

### **CPSC ISSUES GUIDANCE ON CERTIFICATES OF COMPLIANCE**

**By: David J. Evan, Esq.**

The Consumer Product Safety Commission (“CPSC”) today issued a final rule, effective immediately, clarifying the requirement for compliance certificates (see note 1). In this notice the CPSC states that it expects every company “to make best efforts to comply promptly with the new general certificate requirements” but also acknowledges that there are many aspects of the new requirement which still must be clarified. Therefore, the requirements have been “streamlined” as noted below. The CPSC further states that “importers should be aware that after this initial period of adjustment, failure to abide by the certificate requirement will subject shipments to refusal of admission into the country and potential destruction”.

1. **Only the Importer Must Issue Certificate** – The rule designates the importer as the sole entity that must issue the certificate with regard to imported products. Significantly, it appears that manufacturers and private labelers will not be subject to this requirement until further notice.
2. **Availability** – The certificate, in hard copy or electronic form, must be available to the CPSC no later than the time when the product or shipment is available for inspection in the U.S. The CPSC states that an electronic certificate that can be reasonably accessed by the CPSC as well as distributors and retailers satisfies the requirement of “furnishing” the certificate to these entities (See note 2).

<sup>1</sup> The CPSC now refers to General Conformity Certifications as “certificates of compliance”.

<sup>2</sup> The CPSC cites a unique identifier that can be accessed via a world wide web URL or other electronic means, provided the URL, etc. are available to the CPSC immediately when the shipment is available for inspection in the U.S.

- a. The certificate must be in English and created prior to arrival into U.S. domestic commerce
- b. An electronic certificate must have a means to verify the date of its creation or last modification.

3. **For Domestically Produced Products** - Only the domestic manufacturer must issue the certificate.

4. **Revised Content of Certificate**: The rule now requires only the following information to be on the certificate:
- a. Identification of the product covered by the certificate;
  - b. Citation to each CPSC regulation to which the product is being certified;
  - c. Identification of the importer (or domestic manufacturer, as applicable) certifying compliance (including name of company, full mailing address, and phone number).
  - d. Contact information for individual maintaining the test results, including the person's name, email address, full mailing address, and phone number.
  - e. Date (at least month and year) and place (including city 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 country or administrative region) where the product was tested for compliance with the cited regulation.
  - g. Identification of any third-party lab on whose testing the certification depends, including name, full mailing address and phone number.

**Based on this new rule, it now appears that the name of the manufacturer is no longer required on the certificate.**

5. **Responsible Party** – The certifying entity (i.e., the importer or domestic manufacturer) remains legally responsible for the accuracy and completeness of the required certificate information and its availability in a timely fashion.

6. **Recordkeeping** - CPSC recommends that each issuer maintain test records supporting the certification for at least three years

The CPSC will consider at some later date whether this rule needs to be revised based on actual experience. Please contact us for additional details regarding these requirements.

**Importer Security Filing (“10+2”) update**

Customs is expected this week to publish the final rule in the Federal Register. We will then know when it will start and how to implement it. When effective, the filing must be made at least 24 hours prior to loading in the foreign port. The bonding requirement still has not been resolved, other than a bond will be required and penalties may be assessed up to the value of the cargo. We will keep you apprised of developments. For more information on the ISF, please see our Jan & Apr 08 Import Updates. Meanwhile, rest assured we will be ready to make this filing on your behalf when the requirement is implemented

**Clean Truck Fee collection – Postponed**

PortCheck, the not-for-profit company created by the West Coast Marine Terminal Operator Agreement (WCMTOA) to collect the Clean Truck Fee (CTF) for the Port of Los Angeles and Port of Long Beach, was scheduled to begin collection on November 17, 2008. The collection of the \$35-per-TEU container tax has been delayed. Please see the attached article from *American Shipper Magazine* for more information.

**Transportation Worker Identification Credential (TWIC)**

December 1 is the implementation date for the federal government's Transportation Worker Identification Credential (TWIC) program in Charleston, Savannah and Jacksonville. Truckers pulling containers from these ports must have a valid TWIC. The compliance date for all ports is at

[http://www.tsa.gov/what\\_we\\_do/layers/twic/twic\\_faqs.shtm#required\\_twic\\_date](http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#required_twic_date)

**Electronic filing of Lacey Act certification for ALL products using plants**

(From our friends at Sandler Travis)

CBP is developing an electronic system that can collect all Lacey Act data. Mandatory filing of this certification will begin April 1, 2009, or as soon thereafter as the electronic system is available. USDA will meanwhile make available a paper declaration for voluntary submission, but we recommend you do not file one. While we do not expect enforcement actions for failing to complete the paper declaration, any person who submits a form containing false information can be prosecuted. Upon completion of the CBP electronic system in the Spring, USDA intends to begin enforcement of the declaration requirements. The proposed phase-in schedule for products .

Beginning April 1, 2009, (or as soon thereafter as an electronic system to collect the required declarations is available), the USDA will enforce the declaration requirement for HTSUS chapters 44 (wood and articles thereof) and 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.).

Beginning July 1, 2009 (approximate), the USDA will enforce the declaration requirement for the above chapters as well as chapters 47 (wood pulp), 48 (paper and articles thereof), 92 (musical instruments) and 94 (furniture).

After September 2009 there will be phased-in enforcement for additional chapters, including (but not limited to) 12 (oil seeds, miscellaneous grains, seeds, fruits, plants, etc.), 13 (gums, lacs, resins, vegetable saps, extracts, etc.), 14 (vegetable plaiting materials and products not elsewhere specified or included), 45 (cork and articles thereof), 46 (basket ware and wickerwork), 66 (umbrellas, walking sticks, riding crops), 82 (tools), 93 (guns), 95 (toys, games and sporting equipment), 96 (brooms, pencils and buttons) and 97 (works of art). A specific phase-in schedule for these chapters will be announced later.

The USDA is accepting public comments on its implementation of the declaration requirement, including the above enforcement schedule, by Dec. 8. In addition, the USDA will host a public meeting on these issues Oct. 14 in Washington, D.C. Additional meetings are likely to be held this winter near key port locations and will be announced at a later date. We urge importers of affected products to consider filing comments.

### **Global Online Enrollment System (GOES) now in Atlanta**

GOES allows registered users to enter their own applications for U.S. Customs and Border Protection (CBP) Trusted Traveler Programs, and approved members to

edit their information as needed. GOES is now available in Atlanta as well as Houston, Dulles, and JFK. Their web address is

<https://goes-app.cbp.dhs.gov/>

Please contact us for ANY assistance:

Lee Hardeman	<a href="mailto:LeeH@LHCB.com">LeeH@LHCB.com</a>	Direct: 404-477-3452
Sandy Cato	<a href="mailto:SandyC@LHCB.com">SandyC@LHCB.com</a>	Direct: 404-377-3454