

ATV Certification and Labeling

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Certification for ATVs

- General Conformity Certification
 - CPSA Section 14(a)(1)
 - Akin to a “supplier’s declaration of conformity”
- Certification of Children’s Products based on Third Party Testing
 - CPSA Section 14(a)(2)
- Certification Requirements Unique to ATVs
 - CPSA Section 42(a)(2)

General Conformity Certification

- The 2008 Act expands the general certification requirement to *all* products *subject to* CPSA bans as well as standards, or to any “*similar rule, ban, standard, or regulation under any other Act* enforced by the Commission.”
- The ATV voluntary standard will be a “similar rule” when it becomes mandatory and effective
- What other existing or future standards and bans are ATVs “subject to”?

What Testing Is Required As a Basis for Certification?

- Certification must be based on “a test of each product or upon a reasonable testing program”
- The Commission may by rule *prescribe* a reasonable testing program and may require testing by an independent third party

Reasonable Testing Program

- Provide reasonable assurance that the product meets all requirements of the standard
- Type and frequency of tests are up to the issuer of the certificate
 - Not necessary to use the exact test procedure prescribed by the regulations or used by CPSC staff
 - May be advantageous to use stricter test
 - Should be stringent enough to detect variations that would cause a product to fail

Certification for Youth ATVs

- The 2008 Act phases in a requirement that *children's products* be certified by every manufacturer and private labeler based on testing by an independent third party accredited by the Commission.
- The term “children’s product” is defined so as to include ATVs intended for children 12 years old and younger (Y-6+, Y-10+, Y-12+)
- Transitional ATVs may also be children’s products under certain CPSC rules (*e.g.*, lead paint ban). This affects general certification only

ATV Action Plan Certification

- Section 42 (a)(2) prescribes an additional certification requirement for ATVs: Once the ATV standard takes effect (approximately mid-April 2009), an ATV subject to an action plan approved by the Commission must identify the applicable plan and certify compliance with all provisions.

Key Dates for ATV Certification

- November 12, 2008 -- All ATVs manufactured on or after this date must be certified to any applicable standard, ban, regulation, etc. (*e.g.*, the lead paint ban where applicable).
- December 21, 2008 – Youth ATVs manufactured after this date and subject to the lead paint ban must be certified based on third-party testing
- February 10, 2009 – Youth ATVs manufactured on or after this date and subject to the new lead content limits must be certified under section 14(a)(1)

More Key Certification Dates

- Mid April 2009 – Once the ATV voluntary standard takes effect as mandatory, each ATV manufactured after that date must also be certified under both section 14(a)(1) and section 42(a)(2) as well as under the standard itself
- August 14, 2009 – ATVs manufactured on or after this date and subject to the stricter limits on lead paint must be certified; youth ATVs must be certified to the stricter limits on lead content and paint based on third-party testing by an accredited laboratory
- Mid September 2009 – Youth ATVs manufactured after this point must be certified to the ATV standard based on third party testing by an accredited laboratory

Certification Labels

- Section 42(a)(2) requires an on-product label certifying compliance with the ATV action plan
- The ANSI/SVIA standard also requires a label certifying compliance with the standard
- The certificate required under section 14 may also be in the form of a label, but that is only one of various acceptable forms; the key requirement is that the certificate must “accompany” the product or shipment and be “furnished” to distributors and retailers

Tracking Labels

- Section 103 requires all “children’s products” (defined the same as for certification) to have distinguishing marks on the product that will enable the ultimate purchaser as well as the manufacturer to determine certain types of information
- The ANSI/SVIA standard requires an identification number on all ATVs

Other Labels

- The ANSI/SVIA standard requires several other labels, including:
 - General warning label
 - Age recommendation warning label
 - Passenger warning label
 - Tire pressure warning label
 - Overloading warning label

Handling of Certificates at the Ports

- There is currently *no requirement to file* a certificate with CBP or any government agency as part of the entry process or otherwise
- Release of the shipment does not depend on presentation of the certificate in every case
- In future, the Commission, after consultation with CBP, may *by rule* provide for *electronic filing* of certificates up to 24 hours before arrival

Failure to Certify Imports

- Section 17(a)(2) of the Consumer Product Safety Act states that a product offered for importation “*shall be refused admission*” if it is not accompanied by a certificate required under section 14 or if it is accompanied by a false certificate (and the manufacturer has reason to know it is false or misleading in any material respect)
- Section 42(a)(2) makes it unlawful to import an ATV unless it bears a label certifying compliance with an ATV action plan

Refusal of Admission

- Under section 17(e) as amended, products refused admission *must be destroyed* unless the Secretary of Treasury permits export
- All expenses of destruction (including salaries, travel, per diem, etc) shall be paid by the owner or consignee
- If expenses of destruction are not paid, they become a lien against future imports by the same owner or consignee.

Certification Violations

- CPSA Section 19(a)(6) makes it unlawful for any person either:
 - to *fail to furnish* a certificate required by section 14; or
 - to *issue a false certificate* if the issuer in exercise of due care has reason to know it is false or misleading in any material respect
- CPSA section 42(a)(3) makes the failure to certify to an ATV action plan a violation of section 19(a)(1)

Certification vs. Compliance

- Certification *does not exempt* any product from the requirement to comply with an applicable rule, standard, ban or regulation
- However, under section 19(b), a retailer or distributor who sells or offers for sale a nonconforming product *may have a defense* if it holds a certificate issued in accordance with section 14 (unless it knows that such product does not conform)

Thank You

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