

Second U.S.-Sino Safety Summit

Importer Responsibilities



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Outline of Session

- Basic Responsibility
- Safety Consciousness
- Specifications
- Mandatory and Voluntary Certification
- Testing
- Market Surveillance
- Reporting
- Corrective Action

Basic Responsibility

- Under the Consumer Product Safety Act, the term “manufacturer” is defined to include any person who imports a consumer product.
- **Importers**, no less than foreign producers, are **directly responsible** for the safety of products they bring into the United States.

Safety Consciousness

- Do your homework – know exactly which standards apply to the product you plan to import
 - Mandatory standards are the bare minimum
 - Consensus standards will help avoid trouble
- Learn the safety issues *before* you import, not after
 - Mine the information from CPSC website
 - Sign up to receive notice of CPSC recalls
 - Talk to experts in the field

Communicating Specifications

- Make sure the manufacturer you buy from knows *exactly* which standards need to be met for your purposes
- Itemize the mandatory standards that apply
- Specify consensus standards and other safety requirements
- If you think the manufacturer knows your expectations for safety without your specific input, you are in for a rude awakening

Mandatory Certification

- Section 14 of the Consumer Product Safety Act requires certification of some imported consumer products
- Under this law, which dates from 1972, the term “certification” has a different meaning than it does in recent international usage
- Certification under section 14 is more like a “supplier’s declaration of conformity”

Who Must Certify?

- Section 14 applies to “every manufacturer” of a product that is subject to a CPSA standard [it does not apply to bans or to standards/bans under other Acts implemented by CPSC]
- The term “manufacturer” includes each U.S. importer of a product as well as the original manufacturer (unless exempted by CPSC rule)
- Section 14 also applies to a private labeler if the product bears a private label

What Is Certified?

- Section 14 requires the issuance of a certificate
- Must certify that the product conforms to all applicable consumer product safety standards
- Must *specify any standard* that is applicable
- Must *accompany the product* or otherwise be given to any distributor or retailer of the product
- Must state the name of the issuer and include the *date and place of manufacture*

Basis for Certification

- Each certificate must be based on a test of each product *or a reasonable testing program*
- The Commission may prescribe reasonable testing programs for products requiring certification
- Any test or testing program may be conducted by a qualified, independent third party, but the Commission cannot require third-party testing

Failure to Certify Imports

- Section 17 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 by section 14

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 has reason to know it is false or misleading in any material respect
- Knowing violations of section 19 are subject to civil penalties; knowing and willful violations are subject to criminal penalties

Which CPSC Standards Currently Require Certification?

- Section 1201 architectural glazing
- Section 1202 matchbooks
- Section 1203 bicycle helmets
- Section 1205 walk-behind power lawn mowers
- Section 1210 cigarette lighters
- Section 1212 multipurpose lighters
- Section 1213 bunk beds
- others

Certification Under Other Statutes

- The new Standard for the Flammability (Open Flame) of Mattress Sets contains its own certification requirement [§ 1633.12(a)(6)]
- Advance Notice of Proposed Rulemaking for Fireworks discusses the possibility of adding a certification requirement

Expansion of Mandatory Certification Is Likely

- Bills pending in the Senate would make certification requirements applicable to other products, particularly toys (S. 1833)
- Commissioner Nord has proposed a package of legislative changes called the Product Recall, Information and Safety Modernization Act, called “*PRISM*,” which would expand certification requirements, and Commissioner Moore has expressly concurred on this point

Other Certification Requirements

- Third-party certification may be required by others for imported products
- For example, some States require certification of electrical products by recognized organizations like UL, CSA, ETL
- Retailers may require certification for certain products they sell

Voluntary Third-Party Certification

- Certification by an independent third party is meaningful in many settings
- CPSC takes certification into account in sampling products for testing (e.g., AFSL-tested fireworks are generally sampled less frequently)
- Failure to comply with consensus standards can create problems in product liability suits
- Consumers recognize and reward safer products

Testing of Imported Products

- Importers should make sure that products meet all CPSC standards at a minimum
- To avoid problems, samples should be tested randomly, early and often
- The cost of testing is a tiny fraction of the costs associated with recalls and violations

Market Surveillance

- Make sure you have a system for keeping track of consumer complaints involving products you import
- Pay attention to information from the CPSC Clearinghouse and reports from retailers
- Early identification of problems can avoid bigger problems

Reporting

- Importers must report to the CPSC immediately if they learn that one of their products does not comply with a mandatory standard or ban under the Consumer Product Safety Act
- Failure to comply with a mandatory standard or ban under other laws administered by the CPSC may constitute a reportable defect
- Failure to meet consensus standards may make a product defective and require a report to CPSC

Reporting Do's and Don't's

- *Don't* assume that an incident without injury means there's no problem
- *Do* evaluate product failures to determine what could have occurred in worst case
- *Don't* wait to finish exhaustive investigation before telling CPSC
- *Don't* assume that the problem will go away by itself

Corrective Action

- Not every safety issue requires a recall, but it is important to learn from mistakes and prevent the same problems from happening again

Questions?

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