

William M. Hannay
Schiff Hardin LLP
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Consumer Product Safety Act
Statutes, rules and guidance regarding
PRODUCT CERTIFICATION AND LABELING
For Architectural Glazing Materials

INTRODUCTION

As all SGCC Licensees know, the CPSC regulations applicable to architectural glazing materials are set forth in 16 C.F.R. § 1201 *et seq.* One of the provisions of those regulations (Sec. 1201.5) sets forth a general requirement for certification and labeling as follows:

(a) Manufacturers and private labelers of glazing materials covered by this part 1201 shall comply with the requirements of section 14 CPSA (15 U.S.C. 2063) and regulations issued under section 14.

16 C.F.R. § 1202 defines the terms “manufacture” and “manufacturer” as follows:

(15) Manufacture means to manufacture, produce or assemble.

(16) Manufacturer means any person who manufactures, fabricates or imports a glazing material or architectural product listed in Sec. 1201.1(a) that incorporates glazing material.

For many years, Section 14 of the Act has required that a certificate of compliance accompany a product subject to the Act. As explained in the Certified Products Directory (e.g., at page 26 of the July 1, 2009 edition), the CPSC issued an Advisory Opinion dated April 12, 1984, permitting a label on the material or product to be substituted for the required certificate. The information on the label must include the name of the manufacturer and the date and place of manufacture. The SGCC number designates the name of the licensee and location of the manufacturing plant; however, it does not designate the date of manufacture.

Section 102(a) of the Consumer Product Safety Improvement Act of 2008 (Public Law 110-314) amended Section 14 of the CPS Act in certain ways. Those changes flow through into 16 C.F.R. 1201 *et seq.* via the reference to Section 14 in 16 C.F.R. 1201.5(a). This memorandum quotes the new statutory text as well as the regulations issued by the CPSC in November 2008 with respect to certificates of compliance (16 CFR 1110) and more informal guidance issued by the Commission (such as FAQs, *i.e.*, Frequently Asked Questions).

TEXT OF NEW SEC. 14. [15 U.S.C. § 2063]

(a)(1) GENERAL CONFORMITY CERTIFICATION.--Except as provided in paragraphs (2) and (3), every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which--

(A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product.

[NOTE: Effective Date.—Not part of the Consumer Product Safety Act.—The preceding amendment made by Sec. 102(a)(1)(A) of the Consumer Product Safety Improvement Act of 2008 shall take effect 90 days after enactment of the Act.] {Date of enactment was August 14, 2008} [UPDATE: Date of implementation was stayed by the CPSC for one year after 2/9/09. See 74 F.R. 6396. “This stay will remain in effect until February 10, 2010, at which time the Commission will vote to terminate the stay.”]

[16 C.F.R. § 1110.7 describes who must certify and provide a certificate. CPSC has issued an informal summary which states that the importer is “the sole entity that must issue the certificate required by section 14(a) in the case of an imported product. * * * The Commission is also designating the domestic manufacturer as the sole entity that must issue the certificate required by section 14(a) in the case of a domestically produced product.”]

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(g) REQUIREMENTS FOR CERTIFICATES.--

(1) IDENTIFICATION OF ISSUER AND CONFORMITY ASSESSMENT BODY.--Every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results.

[NOTE: CPSC has issued the following answers to FAQs:

Q. Must the certifier sign the certificate?

A. No. Issuing the certificate satisfies the new law. It does not have to be signed by the issuer.

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Q. Where must these certificates be filed?

A. A certificate does not have to be filed with the government. As noted above, the certificate must "accompany" the product shipment, and be "furnished" to distributors and retailers, and be furnished to CPSC upon request.]

(2) ENGLISH LANGUAGE.--Every certificate required under this section shall be legible and all content required by this section shall be in the English language. A certificate may also contain the same content in any other language.

(3) AVAILABILITY OF CERTIFICATES.--Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission.

[NOTE: 16 C.F.R. § 1110.13 addresses the issue of "availability" of electronic certificates as follows:

(a) CPSA section 14(g)(3) requires that the certificates required by section 14(a) "accompany" each product or product shipment and be "furnished" to each distributor and retailer of the product in question.

(1) An electronic certificate satisfies the "accompany" requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.

(2) An electronic certificate satisfies the "furnish" requirement if the distributor(s) and retailer(s) of the product are provided a reasonable means to access the certificate.

(b) An electronic certificate shall have a means to verify the date of its creation or last modification."

[NOTE: CPSC has issued the following answers to FAQs:

Q. Can electronic certificates be used to meet the requirements of Section 102 rather than paper?

A. The Commission has issued a rule specifically allowing use of an electronic certificate provided the Commission has reasonable access to it, it contains all of the information required by section 102 of the CPSIA, and it complies with the other requirements of the rule. The rule is available on the CPSC World Wide Web site at <http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf>

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Q. Must each shipment be "accompanied" by a certificate?

A. * * * Under the rule issued by the Commission an electronic certificate is "accompanying" a shipment if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and available with the shipment.* * *]

(4) ELECTRONIC FILING OF CERTIFICATES FOR IMPORTED PRODUCTS.--In consultation with the Commissioner of Customs, the Commission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of Customs.

[NOTE: CPSC issued the following answer to FAQs:

Q. Must each shipment be "accompanied" by a certificate?

A. * * * Certificates can also be transmitted electronically to a broker with other customs entry documents before a shipment arrives so long as they are available to the Commission or Customs and Border Protection staff if the product or shipment is inspected.]

[NOTE: The CPSC Staff has informally issued a sample of a certificate of compliance relating to the new regulatory requirements. See <http://www.cpsc.gov/ABOUT/Cpsia/faq/elecfaq.pdf>.]

SAMPLE GENERAL CERTIFICATION OF CONFORMITY

CERTIFICATION OF COMPLIANCE

1. Identification of the product covered by this certificate
2. Citation to each CPSC product safety regulation to which this product is being certified
3. Identification of the U.S. importer or domestic manufacturer certifying compliance of the product
4. Contact information for the individual maintaining records of test results
5. Date and place where this product was manufactured
6. Date and place where this product was tested for compliance with the regulation(s) cited above
7. Identification of any third-party laboratory on whose testing the certificate depends

For further information on the new rules, SGCC Licensees should contact the SGCC Administrator John Kent (staff@amscert.com) or the SGCC Legal Counsel Bill Hannay (whannay@schiffhardin.com).

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* Note: This memorandum is provided for informational purposes only. It does not constitute and should not be used or interpreted as or relied upon as legal advice from the SGCC or its legal counsel Schiff Hardin LLP.