

## **SUMMARY OF NEW CPSC CERTIFICATION RULES**

Since the U.S. Consumer Product Safety Commission (“CPSC”) first published its safety standard for architectural glass, 16 CFR 1201, it has required paper certificates of compliance, prepared by the manufacturer of that safety glazing material, either to accompany that glass through the chain of distribution until installed or to be furnished directly to the glass distributor or retailer. Alternatively, the CPSC has permitted this certificate of compliance to take the form of a permanent or non-permanent label on the glass. See CPSC Advisory Opinion, 49 *Fed. Reg.* 15256 (Apr. 18, 1984).

This CPSC-mandated certificate is the manufacturer’s self-certification that the glass, based upon a reasonable testing program, complies with the applicable safety glazing standards of 16 CFR 1201, either Category I or Category II. The certificate must identify the manufacturer, the place of manufacture, the date of manufacture (month and year), and the standard with which it complies – in this case, 16 CFR 1201, Cat. I or II. See 16 CFR § 1201.5 and 15 U.S.C. 2063(a). This information may be coded.

On November 18, 2008, in response to the recently enacted Consumer Product Safety Improvement Act of 2008 (October 14, 2008), the CPSC published in the *Federal Register*, 73 *Fed. Reg.* 68328 (Nov. 18, 2008), a material change in its certification requirements. Effective immediately, it adds a new Part 1110 to Title 16 of the Code of Federal Regulations, authorizing (but not requiring) manufacturers of consumer products subject to a CPSC safety standard, such as architectural glazing materials, to eliminate the hard-copy paper certificates accompanying the product or furnished the distributor/retailer and to replace them with an electronic form of certification. It defines “electronic certificate” as “a set of information available in, and accessible by, electronic means that sets forth the information required by [section 2063 of] the Consumer Product Safety Act.” The new certification, whether in paper or electronic form, must contain not only the same information as the current paper certificate, but also the domestic manufacturer’s (or importer’s, in the case of foreign glass) mailing address and telephone number.

The new certificate also may have to contain the “contact information” for the person “responsible for maintaining records of test results.” 15 U.S.C. § 2063(g)(1). This latter potential additional content requirement, stemming from the 2008 Consumer Product Safety Improvement Act amendments, may be applicable only to children’s products. (Those products require third-party testing to back up their certifications.) The new statutory language and the new implementing regulations of the CPSC are not clear on this point.

The new CPSC regulations also require that the certificate of compliance accompany the product and be furnished to the product distributor or dealer. In addition, it must be made available to the CPSC, upon request, prior to first retail sale. When using

## SUMMARY OF NEW CPSC CERTIFICATION RULES

Page 2 of 3

an electronic certification, the manufacturer must provide the distributor or retailer a reasonable means to access the electronic certificate. The electronic certificate is deemed to “accompany” the product if it has a “unique identifier” accessible via a w.w.w. URL “or other electronic means,” is created in advance of shipment, and is available to the CPSC.

The CPSC, in issuing the new certification requirements, does not acknowledge it has expanded the information that must appear on the certificates to include for the first time the mailing address and telephone number of the safety glazing manufacturer. Nor does it seem to take into account the impact of the additional required information on the continued use of labels in lieu of paper certificates.

The CPSC’s certification requirements apply only to safety glazing materials to be installed in defined hazardous locations remaining under the jurisdiction of the CPSC – specifically, in all doors and in shower/tub enclosures. Whether, because of federal preemption principles, the CPSC certification requirements effectively negate or take precedence over contrary or conflicting state and local building code requirements for certification and labeling is subject to dispute. See CPSC Advisory Opinion No. 281, letter from Acting General Counsel Margaret Freeston, dated March 23, 1981, to Kim Mann, at page 6, reserving judgment on this issue.

A blessing and a curse, the new regulations will require tempered and laminated glass fabricators to make adjustments in their certifications for “safety glass” that may be installed in doors or shower/tub enclosures. Those relying upon the permanent “bug” or label as their certifications of compliance will either have to find a way to modify it to include their mailing addresses and telephone numbers or continue to use their “old” labels, but, for CPSC certification purposes, also provide their customers access to the full certification (complete with manufacturer address and telephone number) on their websites through a unique identifier. This identifier could, for example, be communicated by including, on the paperwork accompanying the glass shipment or accepting the order, the written direction, also by way of example, to “see [www.arch.com/cpsccertificate](http://www.arch.com/cpsccertificate) for glass certification.” The more difficult challenge will be for the fabricator to show on its website “date of manufacture,” one of the required pieces of certification information, when that customer or building code official clicks on that unique identifier on the website to access the certification.

While the CPSC certification requirements went into effect on November 18, 2008, the CPSC in the beginning will be looking only for a good faith effort by products manufacturers to comply:

While the Commission expects every company to make best efforts to comply promptly with the new general certificate requirements, the Commission’s resource limitations under the continuing resolution [of Congress] will force it to focus more on a product’s compliance with our safety rules. The certificate is evidence of compliance and therefore it is appropriate to concentrate initially more on the substantive requirements underlying the certificate than on the certificate or the

## SUMMARY OF NEW CPSC CERTIFICATION RULES

Page 3 of 3

form of the certificate itself.

The new regulations will undoubtedly raise many questions and practical concerns for glass fabricators. Aspects of the new requirements remain unclear, such as adding contact information for those responsible for maintaining testing records. This whole topic will be discussed at GlassWeek and, for those members of the Glazing Industry Code Committee, also at GICC's Board meeting on January 15, 2009 in Orlando.

A handwritten signature in black ink, appearing to read 'Kim Mann', with a stylized flourish at the end.

Kim Mann

GANA General Counsel