



Oral Testimony of

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Before the U.S. Consumer Product Safety Commission

Workshop on Proposed 16 CFR Part 1110 Electronic Filing of Certificates of Compliance

September 18, 2014

(Jonathan Gold): Good morning. My name is Jonathan Gold and I'm the Vice President, Supply Chain and Customs Policy for the National Retail Federation. NRF is the world's largest retail trade association, representing all formats of retail from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy.

(Kathleen McGuigan) Good morning. My name is Kathleen McGuigan, Senior Vice President for Legal and Regulatory Affairs for the Retail Industry Leaders Association. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service providers – which together account for more than \$1.5 trillion in annual sales. Together RILA and NRF members sell the majority of consumer products sold in the United States. Our members also directly import a sizeable and growing percentage of those products.

(Kathleen McGuigan): We want to thank the Commission and CPSC staff for holding this important Workshop and for reconsidering the initial proposal to amend the 1110 Rule in the interim. We share the CPSC's goal of ensuring the safety of all consumer products sold to U.S. consumers. Today, we hope to engage in a constructive discussion of the retail industry's concerns and suggestions and we also hope the agency will be able to provide a few clarifications regarding the proposed rule. We offer our comments from the perspective of our member companies, who have a track record of consistently demonstrating that product safety is of the utmost importance to our industry.

Our presentation will cover four areas. We will highlight some of our concerns with the proposed rule; discuss the current and expected future import processes; detail retailers' current certification and recordkeeping practices and the cost burden of the proposed electronic filing; and provide the CPSC with specific recommendations for moving forward.

I. Concerns with Proposed Rule

(Jonathan Gold) While we wholeheartedly support the CPSC’s mission of product safety, we do not believe the proposed rule will efficiently and effectively enhance the agency’s risk targeting efforts. We anticipate the proposed rule will impose significant burdens and cause confusion among both the trade and relevant federal agencies with regard to the rule’s integration into the increasingly complex and evolving U.S. import regulatory system.

The proposed rule is unclear as to the exact issues or problems the agency is trying to correct, the objectives that it is trying to achieve, and the specific means by which it would achieve them. Given the potentially wide-ranging impact of the proposal on the CPSC, CBP and industry at large, retailers believe there is insufficient justification for a complete rewrite of the existing, “on-demand” certification system that has generally worked well for the past six years.

(Kathleen McGuigan) Retailers have very strong concerns about the operability of the proposed new certification rule, especially the proposal to mandate affirmative filing of certificates with CBP as a condition of entry for consumer products subject to one or more mandatory CPSC standards. Given the difficulty with which federal agencies have struggled with implementing recent congressional mandates regarding imports, retailers are understandably concerned about whether the CPSC, CBP or the import system overall can handle and achieve demonstrable safety advances from the receipt and processing of potentially millions of product certificates and/or data fields annually.

(Jonathan Gold) In addition, it is unclear whether CPSC possesses or is likely to possess the resources and personnel necessary to develop and implement the complex IT systems that would be required. If the approach contemplated by the proposal is reliant or contingent upon congressional authority to implement import user fees or other new funding sources, then the agency should refrain from moving forward unless and until those new resources are approved and received. I also want to note that while the notice for this Workshop indicated that the CPSC’s Risk Assessment Methodology and proposed import user fee are not to be part of today’s discussion, we believe the CPSC must engage with stakeholders to discuss these issues in the context of the objectives of the proposed rule and means to achieve those objectives. These are all interrelated and need to be discussed as such.

II. Current and Future Import Processes and the Impact of the CPSC’s Proposed Electronic Filing.

(Kathleen McGuigan) Retailers’ business models rely upon efficient and predictable global supply chains. Electronic filing of import documentation is more efficient and cost effective than filing paper customs entries, which is why CBP and companies are moving toward a paperless environment. For the majority of our members, over 95 percent of their import entry documents are filed electronically through Customs and Border Protection’s Automated Commercial Environment or “ACE” system. For a few members, 100 percent of their customs entries are paperless entries.

The timely clearance of cargo is critical for retailers and other importers in order to meet their just-in-time inventory strategies. Air cargo customs entries can be filed once wheels are up at the point of origin and truck and rail cargo entries can be filed shortly before crossing the border. For ocean cargo, importers can file customs entries up to five days prior to arrival in the port. As a result, CBP is often able to process the entry and clear the shipment in advance of arrival of the goods at the port. Retailers and other importers have made significant investments in developing IT systems to support these electronic filings and have worked closely with CBP to ensure that the process is as streamlined as possible. If the CPSC moves forward with its proposal, it should work within the existing framework and timelines for filing entry-related information and not develop inconsistent and potentially incompatible requirements.

(Jonathan Gold) This position is fully supported by the E.O. 13659, which was issued by President Obama earlier this year, which we strongly support. The Executive Order establishes a “Single Window at the Border” and requires that all entry- and export-related documentation, including documentation required by the CPSC be filed through the International Trade Data System (ITDS). The Single Window will allow agencies to target high risk merchandise through the collection of key data elements and improve enforcement of safety regulations at the ports while facilitating the timely entry and clearance of legitimate trade. It is critical that the CPSC take a leadership role in the execution of Executive Order 13659.

In order to do so, the CPSC must first answer several important questions. First, does the proposed rule align with the risk management objectives of the Executive Order? As currently drafted, we do not believe that it does so in an efficient and effective manner. The proposed rule could require the filing of the certificates of conformity initially in PDF format and then ultimately through the filing of electronic data fields through the use of the ACE PGA messaging sets. This would require importers to file or input information, such as the name of the importer and manufacturer, which is already available to the CPSC as part of the current customs entry filings. The CPSC is currently working with other agencies as part of the Border Interagency Executive Committee (BIEC), which is charged with implementation of the Executive Order. We encourage the CPSC to work with the BIEC’s Subcommittee on Risk Management to ensure that its Risk Assessment Methodology is aligned with the risk principles to be established by the Subcommittee. The CPSC will then be able to determine what data, if any, it needs from certificates of conformity to enhance its RAM.

(Kathleen McGuigan) The Commission also needs to detail specifically how its proposal will work with and be integrated into the “Single Window”. How will the electronic filing of certificates be accomplished? The retail industry strongly opposes a requirement to electronically file PDF certificates as an interim step prior to moving to the direct filing of data elements. As Jon previously discussed, we believe that the CPSC should strategically target and importers should only be required to file the specific information that is necessary for the CPSC’s Risk Assessment Methodology. We also do not believe the CPSC can make effective use of potentially millions of PDF certificates, presumably submitted via CBP’s Document Imaging System. These documents are not searchable efficiently and

therefore cannot effectively be used to meaningfully enhance risk-based targeting. In addition, moving to an “interim” method of filing a certificate and then eventually moving to a second method of electronic filing of data elements at a later time would double the burden and costs associated with these new requirements on both the agency and the importing community. Because the proposed requirement for PDF certificates would place a significant burden on retailers with little benefit to the agency, the CPSC should not move forward in that direction.

(Jonathan Gold) If the electronic filing of CPSC certificates is to go forward via a “data elements” filing process, then only those data elements that are truly necessary to enhance risk assessment and product safety should be required, and only after the agency has ruled out other, less burdensome ways to obtain that information. It is critical that the agency work closely with the trade on the development and implementation of the final rule. Such a partnership, of which this workshop is only the first step, will help CPSC better understand the complex global supply chain that retailers and other importers deal with on a daily basis.

III. Retailers’ Current Certification Processes and Recordkeeping Practices and Cost Burden of Proposed Electronic Filing Requirement

(Kathleen McGuigan) We will now describe retailers’ current certification processes and recordkeeping practices and the cost burden of the proposed electronic filing requirement. A survey of our joint membership has revealed that retailers use a variety of methods to issue and maintain certificates of conformity for imported products. Let me provide two examples. The vast majority of retailers use third-party testing labs to conduct product safety testing of children’s and general use products. The retailer or the third-party lab on behalf of the retailer will issue a certificate of conformity based upon a passing test report. In one scenario, the lab notifies the foreign supplier of the passing test results and maintain copies of the test reports and certificates of conformity in the lab’s IT systems. The foreign supplier includes the test report number on the contract and invoice, which in turn becomes part of the support documentation for the entry for one or more shipments. Under this scenario, the certificate of conformity is not tied to a specific customs entry. Instead, upon demand the importer can produce the certificate of conformity by referencing the test report number on the invoice and retrieving it from the lab’s IT system. .

A few importers require that a copy of the COC (in paper or PDF format) be part of the customs entry support documentation. The CPSC has access to copies of COCs that are part of paper entries. However, as we discussed earlier, the vast majority of our members file customs entries electronically and therefore file only the required data fields. If CBP or CPSC has a question about a paperless entry, the importer provides additional documentation, including COCs upon request.

Retailers also use multiple methods to maintain COCs. Over 50 percent of our members maintain COCs on an internal IT system. Between 30-40 percent of our members use third-party service providers (such as testing labs) to store and maintain COCs on their behalf and a small percentage maintain paper copies of COCs. It is critical to note, however, that the COCs are being maintained in paper or PDF formats and

not in data fields that could be transmitted electronically. Additionally, for the majority of our members, their COC storage systems are separate and distinct from their customs entry IT systems. Most critically, only two members out of our total combined membership indicated that their COC storage systems currently have the capacity to interface with and transfer information into their import entry IT systems.

(Jonathan Gold) The burden and cost of developing and implementing new IT Systems to transform specific components of COCs into data fields and to tie those data fields to import entry systems will be substantial. To understand the magnitude of the burden, we believe it would be helpful to provide the CPSC with information regarding the volume of retail imports. In a joint survey of our members, companies' total annual import FOB value ranges from \$300,000 to over \$10B per year. The number of customs entries filed annually range from 1,500 to 270,000. Over 60 percent of our members file consolidated entries – where one customs entry covers multiple shipments. The number of entry lines or individual products listed on an entry range from 1 line to over 1000 lines. The percentage of total imports subject to CPSC's requirements ranges from a low of 10 percent to a high of 90 percent. Our members issue an average of 10,000 certificates of compliance annually in connection with imported merchandise. The overwhelming majority of our members currently do not have a process in place to connect or attach certificates to individual customs entries. New processes will need to be developed to comply with any at-entry filing requirement.

The survey also revealed that the costs estimates for initial implementation of the proposed electronic filing will average over \$300,000 per company, and range from a low estimate of \$50,000 to a high estimate of \$2-3M. These estimates only include the initial internal IT, training and salary costs and do not include costs for annual maintenance and compliance or any additional charges from customs brokers, express carriers or other costs borne by importers' global supply chain partners. Using the average of \$300,000 per company, the combined total cost of initial implementation for the entire retail industry will be staggering. Not all retailers and importers have the same level of resources to invest in new technologies and systems. With the diversity of importers' practices for issuing and retaining COCs and the significant financial burden incurred by industry to implementing the proposal, it is critical that the CPSC work closely with the regulated community to develop a final rule that achieves the CPSC's product safety goals with minimally burdensome requirements and a reasonable timeline for implementation.

IV. Suggestions for Moving Forward

(Kathleen McGuigan) We would now like to spend our remaining time talking about our recommendations to the CPSC on how to move forward. We have three specific recommendations.

Recommendation #1 (Kathleen McGuigan) – The CPSC should suspend the current rulemaking process and re-propose a new rule only after it has actively engaged with stakeholders and relevant government agencies.

The proposed 1110 Rule has generated significant interest and concern among stakeholders. In light of the numerous issues that still need to be addressed and the devastating impact that a poorly crafted rule could have on our industry and the agency, we recommend that the CPSC not move forward to a final rule based on the initial proposal. Instead, the CPSC should take this opportunity to essentially take a “time out” to collaboratively engage with stakeholders and CBP. This time will allow the CPSC to become more informed about the complexities of global trade and international supply chains, coordinate risk management strategies with the BIEC, and understand the system requirements and limitations of ACE PGA messaging set data. If after significant coordination with other government agencies and external stakeholders, the CPSC determines that additional data is required to enhance its Risk Assessment Methodology, the CPSC should then re-propose the rule and seek comments on the new proposal.

As part of this process, many trade associations, including RILA and NRF, have strongly and repeatedly urged the CPSC to establish a stakeholder engagement group, of whatever title or nature, whereby discussions like this can be undertaken regularly and without unnecessarily constrictive limits. Many federal agencies, including CBP, engage with stakeholder groups before undertaking bold new proposals and mandates such as those set forth in the proposed rule. We understand that the Commission has concerns that a CPSC-Stakeholder Working Group could trigger potential administrative burdens under the Federal Advisory Committee Act. One potential solution could be to set up a CPSC subcommittee under the current CBP Customs Oversight and Advisory Committee (COAC), which could address these kinds of entry-related issues. COAC has been able to do this with other agencies in coordination with CBP.

Recommendation #2 (Jonathan Gold) – The CPSC should follow the CBP’s example regarding the use of pilot programs and phased-in timelines when implementing new entry–related requirements.

We fully support the concept of risk-based targeting and think CPSC can use key data elements to achieve this. However, the agency needs to first determine what data elements it really needs to make a risk-based determination. While risk-based targeting of imports is somewhat new to the agency, through its partnership with CBP, CPSC has an excellent opportunity to learn from CBP’s example. The CPSC only needs to look at how CBP developed both its 24 Hour Rule and its Importer Security Filing (ISF) programs, to find good examples of robust risk-based targeting systems that were developed in partnership with the trade. CBP partnered with the trade from the outset by providing “strawman” proposals for public comments before and NPRM was issued. The agency then closely collaborated through the entire process, providing for pilot programs before a final rule was published with a long phase-in for enforcement. CBP also conducted extensive outreach and education with the importing community even after the final rule was published. Throughout the entire process, CBP took care to ensure that legitimate trade was not stopped at the ports. We believe this is a good model for CPSC to follow.

Recommendation #3 (Jonathan Gold) – Our third recommendation is that the CPSC should establish a strong public-private product safety partnership program with industry.

Our collective members strongly support the different public-private partnership programs which have been developed, including the Customs-Trade Partnership Against Terrorism (C-TPAT), the Importer Self-Assessment – Product Safety (ISA-PS), the Centers for Excellence and Expertise (CEEs) and CBP’s new Trusted Trader Program. Under these programs, importers take on additional responsibilities and annual reporting obligations in return for being accorded a variety of benefits, including expedited clearance, fewer detentions and inspections and consideration of participation in partnership programs as a mitigating factor in CBP penalty actions. Under ISA-PS, a company allows CPSC and CBP to review and vet its product safety and import compliance programs as well as provide substantial reporting to the agency.

While we don’t believe the COC’s should be required to be filed as a condition of entry, we would recommend that ISA-PS participants should be exempt if this is in fact required by the final rule. These importers should be allowed to continue with the current “on-demand” system. Exempting ISA-PS members would allow the CPSC to focus its limited resources on high risk importers, provide a significant benefit to importers, and spur an increase in participation the ISA-PS program

Conclusion

(Kathleen McGuigan) We thank the CPSC for the opportunity to participate in today’s workshop and to provide the views of the retail industry on the proposed rule. As we noted at the beginning of our presentation, our members import a substantial percentage of the consumer products sold to US consumers and as a result will be significantly impacted by the CPSC’s actions on this issue. While our members fully support the mission, goals and programs of the agency, we believe the initial proposal to amend the 1110 Rule needs to be reworked in order to achieve the stated goal of improving product safety.

(Jonathan Gold) Our members welcome and appreciate the opportunity to continue working with the Commission on developing a rule that will not only improve CPSC’s risk based targeting, but will do so in a manner that will not unduly burden the trade or the Commission. With dwindling resources for all, it is important that this initiative be conducted through a full partnership that will benefit everyone involved.

Thank you. We are happy to answer any questions you may have.