



October 31, 2014

Todd A. Stevenson
Secretary, Consumer Product Safety Commission
Office of the Secretary
Consumer Product Safety Commission, Room 820
4330 East West Highway
Bethesda, MD 20814

Re: Proposed Amendments to 16 CFR Part 1110 (1110 Rule) (Docket Number CPSC-2013-0017)

Dear Secretary Stevenson:

The Retail Industry Leaders Association (RILA) and the National Retail Federation (NRF) respectfully submit the following supplemental comments regarding the proposed amendment to the regulations governing certificates of compliance (CoCs) at 16 CFR Part 1110. 78 Fed. Reg. 28080 (May 13, 2013) and 79 Fed. Reg. 15241 (July 3, 2014). These comments incorporate by reference the prior comments previously submitted by our respective trade associations¹ and the joint RILA-NRF oral testimony and follow-up written statement made in connection with the CPSC's September 18th Public Workshop.²

Our members are fully supportive of the CPSC's mission of product safety and consumer protection. They also support the agency's efforts to develop a risk assessment methodology for targeting non-compliant products, which will help prevent unsafe and non-compliant products from entering the U.S. and being sold to U.S. consumers. We appreciate the opportunity to provide our additional perspective on this important proposed rule change and to provide some clarification regarding questions raised during the September 18th Public Workshop.

These supplemental comments cover four topics: 1) the potential costs incurred by importers and retailers related to implementation of the proposed electronic filing of certificates of conformity as part of Customs entry documentation; 2) the critical need for the CPSC to limit any new required data fields to only those elements clearly necessary to enhance the CPSC's import risk assessment methodology; 3) the importance of ongoing CPSC-stakeholder engagement and the development of a pilot program to test the implementation of any proposed/re-proposed rule prior to finalization; and 4) the amount of

¹ NRF Final Comments to CPSC Proposed Section 1110 Rule – 07/29/13, CPSC-2013-0017-0035; and Comments of the Retail Industry Leaders Association on the CPSC Proposed Part 1110 Rules – 07/30/13, CPSC-2013-0017-0039.

² Oral Testimony of Jonathan Gold, Vice President, Supply Chain and Customs Policy, National Retail Federation and Kathleen McGuigan, Senior Vice President, Legal and Regulatory Affairs, Retail Industry Leaders Association before the CPSC Workshop on Proposed 16 CFR Part 1110 Electronic Filing of Certificates of Compliance, September 18, 2014. CPSC-2013-0017-0064.

time that will be needed for the CPSC, Customs and Border Protection (CBP) and the importing community to implement the proposed new electronic CoC filing requirements.

1. Potential Implementation Costs

During the workshop, Chairman Kaye asked several questions relating to the anticipated costs of implementing Executive Order 13659 and how those implementation costs relate to the costs of implementing CPSC's proposal for new electronic certificate requirements for imported products. This is a complicated issue and we appreciate the opportunity to clarify the various ways in which retailers would incur costs associated with the overall regulatory framework being proposed.

In order to provide a comprehensive answer to these questions, it may be helpful to provide some background information regarding importers' current electronic Customs entry filings and the impact of implementation of Executive Order 13659. As we indicated in our oral testimony at the Public Workshop, the vast majority of our members currently file a large percentage (95%) of their Customs entry information electronically. Several members file all of their Customs entries electronically. The Customs entry electronic filing is comprised of specific data fields designated and required by CBP for the entry of merchandise into the United States. Importers that are currently filing entry information electronically have already built and incurred the costs related to these electronic filings to CBP's Automated Commercial Environment (ACE).

The new "One-Window" framework of the Executive Order in and of itself does not add any additional costs for importers. What will add costs and expense for importers is any new requirements by agencies for additional data fields as part of that agency's Partner Government Agency (PGA) Messaging Set or new PDF document filing requirements to be added to the current electronic filings as part of the "One Window" framework. In this context, there are three separate areas where costs will be incurred.

First, there will be additional costs related to software development and information technology (IT) systems work required for importers to transmit and for the CBP and CPSC to receive new CPSC PGA Messaging Set data fields. The current technology platform for filing Customs entry information electronically through ACE serves as the base IT platform upon which all additional requirements will be added. New PGA Messaging Sets and PDF filing requirements will be layered onto the current existing platform for electronic filing of Customs entries. The cost of adding additional data fields to current electronic filings is incremental. There will be costs associated with each additional data field required as part of a new CPSC PGA Messaging Set. The incremental costs for each data field would be multiplied by the number of data fields required and the annual total number of products on Customs entries requiring CPSC certification. The greater the number of additional data fields required as part of a new CPSC PGA Messaging Set, the greater the costs incurred by the importing community.

Second, certificates of conformity for consumer products are now generally maintained by importers or other supply chain partners or vendors, on their behalf. These certificates and the information they contain are not in data fields capable of being transmitted electronically. In order to meet any new requirement for CPSC PGA Messaging Set data fields, importers and their third-party supply chain partners will incur additional costs related to software and IT systems work required to create new

electronic certificates and systems that can create, store and transmit the certificate data fields electronically.

As we noted in our Public Workshop oral testimony and written statement, for the vast majority of our members, the IT systems that maintain their product testing data and certificates are separate and distinct from the IT systems that they use for Customs entry purposes. The third and probably most significant cost component of complying with a new requirement for electronic filing of certificates at entry will be the need to construct a “bridge” between existing product quality assurance and product safety and testing information systems and companies’ Customs entry IT systems. In most circumstances, the only way this type of bridge can be accomplished is through reprogramming the individual legacy product assurance and quality control systems and Customs entry systems such that the quality control data system automatically populates the company’s Customs entry system with accurate certificate data fields for each individual Customs entry. Only in this way can the new required CPSC certificate data fields be automatically transferred from company’s quality control testing systems through the company’s Customs entry system to CBP and CPSC.

However, the costs associated with converting current certificate information into data fields; developing IT systems to create, store and transmit the data fields; and creating a bridge between internal product safety and Customs entry systems to allow smooth transmission of data fields on a per-entry basis will be unique for each retailer because each company has different systems in place. Our internal member survey shows that the estimated costs for these initial implementation actions will average \$300,000 per company, and range from a low estimate of \$50,000 to a high estimate of \$2-3M. These cost estimates will also be affected to an unknown degree by the number and type of data fields the CPSC may require should it move forward with electronic filing requirements. The initial set up cost estimates do not include cost estimates for training, upkeep or ongoing system maintenance.

2. Data Fields for Risk Assessment

As we noted in our previous comments and during the Public Workshop, we fully believe in the CPSC’s use of risk-based targeting. However, it is critical for the agency to work with key stakeholders, including industry, to evaluate what data elements are truly needed to enhance the agency’s current risk-based targeting process. This type of industry engagement worked extremely well for CBP as they developed their Importer Security Filing (ISF) program, better known as “10 +2”. The CPSC must evaluate the data it is currently able to receive through ACE/ International Trade Data System (ITDS) and determine whether additional information is truly needed to enhance its risk based targeting efforts. The CPSC must justify the need for any additional information that is not already collected by either CBP or CPSC as critical to the CPSC’s efforts to enhance its RAM and import surveillance system and demonstrate that such requirements will improve the compliance and safety of imported consumer products.

A number of the data elements that CPSC is generally proposing to require under the new 1110 Rule are already available to it via the Customs entry data (CBP Form 7501), which the CPSC already has or will have access via ACE/ITDS. CPSC should not seek to duplicate any data that the agency is already able to receive. CPSC already has or will have access to the following information from the Customs entry:

- Description of merchandise – This entry information provides the type of product including the U.S. Harmonized Tariff System Code number and the number of units in the shipment. Current CoC element #1 duplicates this information;
- Importer of Record and Ultimate Consignee – The information provided here includes the address information and is duplicative of CoC element #3 and roughly duplicates CoC element #4;
- County of origin – This Customs entry data element provides the country where the product was manufactured. CoC element #5 duplicates this information; and
- Manufacturer ID – This data element typically provides the identification of the manufacturer of the product and provides additional information to meet CoC element #5.

Duplicating the existing information provided via the CBP Entry Summary as part of any proposed electronic filing of CoCs would be extremely burdensome for importers, especially when coupled with the proposed rule’s new requirements for additional data fields to be added to the CoC. While RILA and NRF have already provided comments regarding the burdens and concerns associated with the inclusion of these new information requirements for CoCs generally, the extension of those requirements to new data fields greatly increases those concerns. This is especially the case where the information would be of minimal value to the CPSC’s import risk targeting efforts. The following proposed additional CoC requirements are representative examples of some of the areas of where the burden of providing the new proposed data field information would result in little or no enhancement to CPSC’s import risk-based targeting efforts:

- “Scope” of products covered by the CoC—This information can be extremely difficult to ascertain, especially when there are multiple runs of a product at various times. Even where the information can be ascertained, it is unclear how importers would input this type of data into a data field given the nature of the data itself. Additionally, it is doubtful whether this type of information would be useful to the CPSC in its import targeting efforts such that it would justify the resources required to include it as a required data field for any electronic filing of CoCs.
- Listing of all applicable standards (including some product “bans”)—Most products are subject to multiple standards and bans, meaning the time and effort associated with inputting this information would be considerable. Additionally, the proposed rule’s new requirements to include information where testing is not required (e.g., “this candle product is not a banned metal-core wick candle”) and where some CPSC mandatory standards may be subsumed by others would add considerably to this burden. The burden would be increased by the technical issues with turning this proposed requirement into a data field. The added value of inputting this information to the CPSC’s import targeting efforts is questionable and would not justify the burdens for retailers and other importers to input the information for each and every electronic certificate.
- Information on all certified components upon which the CoC is based—This can require retrieval of information and certificates for dozens of components and sub-components

from many different companies and likely would be incompatible or extremely difficult to enter into a data field. The usefulness of this information to the CPSC, especially in light of the corresponding burden, is tenuous and unlikely to be compelling enough to warrant its inclusion as a data field.

- Name and physical address of the manufacturer (factory) of the product—Not only can this information be highly sensitive business confidential information, but its manual entry into a data field format would prove extremely difficult on a per certificate basis for retailers and other importers. Relatedly, the information likely is too granular to be useful enough to the agency on a frequent enough basis to justify the corresponding burden associated with its entry into data fields for every electronic certificate.
- The proposed new “attestation” by the certifier—This would be technically difficult to facilitate in a new “data field” entry system for CoCs and may be impossible to obtain if the importer is not the certifier. In addition, so long as such an attestation is made elsewhere, there is no corresponding benefit to the agency duplicating the requirement as a data field as part of any proposed electronic filing of CoCs.

The Commission already receives or will be able to receive in data field format several CoC elements. To the extent that the CPSC determines that it requires additional information to enhance its risk assessment methodology, the CPSC must work closely with all stakeholders to ensure that the agency is able to identify the data elements that will directly and significantly enhance the agency’s ability to identify high-risk imports and prevent violative products from entering the U.S. stream of commerce. In doing so, the agency must be mindful of the cost and burden for itself and the industry and must avoid asking for duplicate or unnecessary information.

Additionally, several panel participants at the Public Workshop testified that they have multiple shipments – up to several thousand - of identical products a year. In this situation, the importer would provide identical CoC data fields with each shipment. As importers incur additional operational burdens and costs for each transmission of individual data fields, the CPSC should not require multiple filings of identical data fields where no new information that would be of value to the CPSC’s risk-based targeting process would be provided. One recommended solution is for the CPSC to adopt a process that would allow importers to file blanket certificates, which would be good for a year and would cover all shipments of identical products covered under the certificate.

3. Stakeholder Engagement and Need for a Pilot Program Before Finalization of Final Rule

It is important that the path for moving forward for implementation of any new CPSC electronic certificate requirements target only high risk consumer products and not impede or obstruct the flow of legitimate trade. In order to ensure that this goal is met, commenters to the proposed rule have almost universally recommended that the CPSC establish a formal or informal mechanism for stakeholder engagement on this and other issues relating to the importation of consumer products under the agency’s jurisdiction. One suggested mechanism is that the CPSC work with CBP to establish a subgroup under the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) to

deal with product safety Customs entry-related issues. If the CPSC moves forward with the proposed electronic CoC filing requirement, we suggest that a new rule be re-proposed taking into consideration all of the comments filed on this issue.

We further suggest that any new proposed electronic filing requirement be implemented initially on a pilot basis to better understand the many technical and other issues at play and that the CPSC move forward to a final rule only after analyzing the results of the pilot program and incorporating identified necessary changes into the final rule. Use of pilot programs allow both federal agencies and the regulated community to experiment and test technologies and business processes to determine if requirements are appropriate to meet government's need for information to enhance its risk assessment methodology while not unduly burdening industry. As demonstrated by the testimony during the Public Workshop, other government agencies and the companies they regulate have mutually benefitted from this type of approach. However, as was observed during the recent Workshop, "a pilot program that simply requires the filing of pdf certificates" is not likely to draw participants nor to highlight the issues surrounding the electronic filing of CoC data fields.

During the workshop, Chairman Kaye indicated the CPSC might initiate a pilot program if it chooses to move in the direction of requiring electronic certificates for imported products. We find it encouraging that a pilot program is being seriously contemplated as a component of the agency's engagement process. We recommend that the agency work with the regulated community in establishing electronic CoC filing requirements and developing and implementing a pilot program. Ensuring that electronic CoC filing requirements are useful and minimally burdensome will encourage broad industry participation in a pilot program. As was observed during the recent Workshop, "a pilot program that simply requires the filing of pdf certificates" is not likely to draw participants nor to highlight the issues surrounding the electronic filing of CoC data fields. Should the agency initiate a pilot program, we recommend that the pilot program requirements be parallel to existing Customs entry requirements and that the Customs entries of pilot program participants continue to be processed under current entry requirements for the duration of the pilot. In this manner the proposed new CPSC electronic filing process can be tested without holding up the flow of trade.

4. Time Needed for Implementation

Not all retailers and importers will have the resources and personnel to be able to develop and implement the necessary IT systems and business processes changes in a relatively quick manner to allow them to participate in a pilot program. Even for larger more sophisticated companies this will be difficult. The agency will need to set a realistic and reasonable effective date for any new electronic certificate filing requirement. An informal poll of our members indicated most would need between one to two years in order to develop, test, and implement an internal IT system that would enable electronic filing of certificates of compliance as part of a Customs entry. Therefore, we recommend any re-proposed or final rule containing electronic filing requirements have at least an 18 month effective date from final adoption by the Commission.

Conclusion

RILA and NRF members appreciate the Commission's dedication and efforts to improve the safety of consumer products. We further support the CPSC's goals of developing effective risk targeting for imported products and implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA). All of our comments, including these supplemental comments, our joint testimony at the Public Workshop and the prior written comments of our respective associations are intended to inform the Commission about the serious challenges and burdens that would be imposed by the proposed rule and to assist the Commission in coming to a more reasonable solution to meet its product safety goals.

Please do not hesitate to contact us if you have any questions regarding these comments.

Sincerely,



Kathleen F. McGuigan
Senior VP Legal & Regulatory Affairs
Retail Industry Leaders Association



Jonathan Gold
VP Customs and Supply Chain
National Retail Federation