



United States

Consumer Product Safety Commission

Draft Final Rule to Revise 16 C.F.R. part 1110, Certificates of Compliance and to Implement eFiling

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Disclaimer: This presentation was prepared by CPSC Staff and may not necessarily reflect the views of the Commission.

Agenda



- Overview of the Final Rule and eFiling
- Statutory Requirements for Certificates
- Rulemaking Background
- eFiling Related Projects
- Final Rule Changes
- Staff's Recommended Draft Final Rule
- Final Regulatory Flexibility Analysis (FRFA)
- Paperwork Reduction Act (PRA) Burden Estimate
- Staff Recommendation

Overview of the Final Rule



The purpose of the Final Rule is to:

- Revise the agency's regulation for Certificates of Compliance
 - Revises part 1110 for all regulated products, imported and domestically manufactured
 - Aligns CPSC's current certificate rule with other CPSC rules on testing and certification
 - Requires private labelers to certify privately labeled domestic products, unless the manufacturer certifies the product
 - Adds attestation requirement for all certificates; adds testing exclusions where applicable
- Implements, for imported CPSC-regulated products and substances, electronic filing of certificates (eFiling) with U.S Customs and Border Protection (CBP)
 - Allows CPSC to use certificate data to assess health and safety risks upon importation into the United States
 - Improve agency's targeting and examination efforts

eFiling Background Information

eFiling will require importers of regulated consumer products to electronically file (eFile) certificate data elements with CBP, via a Partner Government Agency (PGA) Message Set, which is CBP's established solution to collect PGA-specific data at import.



**eFiling –
CPSC’s Modern
Approach
for Filing
Certificate Data**

 Data stored electronically in the secure CPSC Product Registry

 Multiple options for electronically filing a PGA Message Set before a shipment arrives

 Streamlined and more efficient processes for trade

 Easier compliance with CPSC’s certification requirements

Key Benefits



Benefits to Trade

- Reduced hold times for compliant products
- Fewer examinations
- Reduced costs to the importer
- Reduction in risk score
- Enhanced certificate data management process



Benefits to CPSC

- Improved focus and targeting of higher risk products
- Reduced inspection delays
- Enhanced agency resource allocation
- Maximized examination efficiency
- Keep noncompliant products out of consumer's hands

Statutory Requirements for Certificates



Section 14 of the CPSA

- Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPISA) amended section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), to require certificates of compliance for all regulated products.
- Manufacturers (including importers) and private labelers must issue certificates for all consumer products subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other law enforced by the Commission, that are imported for consumption or warehousing or distributed in commerce. 15 U.S.C. 2063(a)(1).
 - The CPSA defines the term “manufacturer” as “any person who manufactures or imports a consumer product.” 15 U.S.C. 2052(a)(11).

Statutory Requirements for Certificates

Section 14 of the CPSA



- Certificates for children's products (Children's Product Certificates or CPCs) must be based on testing performed by a third-party conformity assessment body whose accreditation to perform such testing has been accepted by the Commission. 15 U.S.C. 2063(a)(2).
- Certificates for non-children's products (General Certificates of Conformity or GCCs) must be based on a test of each product or a reasonable testing program. 15 U.S.C. 2063(a)(1)(A).

Statutory Requirements for Certificates

Section 14 of the CPSA



- Certificates must specify each rule, ban, standard, or regulation applicable to the product. 15 U.S.C. 2063(a)(1)(B).
- For consumer products with more than one manufacturer or more than one private labeler, CPSC may, by rule, designate one or more of such manufacturers or private labelers (as the case may be) as the persons who shall issue the required certificate, and may exempt all other manufacturers of such product or all other private labelers of such product from the requirement to issue a certificate. 15 U.S.C. 2063(a)(4).

Statutory Requirements for Certificates



Section 14 of the CPSA

- The CPSA contains requirements for the form, content, and availability of certificates. 15 U.S.C. 2063(g).
- At a minimum, each certificate must identify the:
 - Manufacturer (including importer) or private labeler issuing the certificate;
 - Third party conformity assessment body on whose testing the certificate depends;
 - Date and place of manufacture; and
 - Date and place where the product was tested.
- A certificate must also contain:
 - Each party's name, full mailing address, and telephone number; and
 - Contact information for the individual responsible for maintaining records of test results.

Statutory Requirements for Certificates

Section 14 of the CPSA



- Every certificate must be legible, and all contents must be in English; contents can also be in another language. 15 U.S.C. 2063(g)(2).
- Certificates must accompany the applicable product or shipment of products covered by the certificate. 15 U.S.C. 2063(g)(3).
- A copy of the certificate must be furnished to each distributor or retailer of the product. 15 U.S.C. 2063(g)(3).

Statutory Requirements for Certificates

Section 14 of the CPSA

- Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of the certificate to the Commission and to CBP. 15 U.S.C. 2063(g)(3) and (g)(4).
- In consultation with the Commissioner of Customs, CPSC may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. 15 U.S.C. 2063(g)(4).



Statutory Requirements for Certificates



The Commission has general authority to implement the certificate requirement pursuant to section 3 of the CPSIA, which provides that “the Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.” Notes to 15 U.S.C. 2051 (citing Pub. L. 110–314, § 3, Aug. 14, 2008, 122 Stat. 3017).

Testing and Certification Rulemaking



2008 – 16 CFR Part 1110, Certificates of Compliance

- Immediately effective final rule published after receiving thousands of inquiries regarding the expanded certificate requirement. 73 FR 68328 (Nov. 18, 2008).

2011 – 16 CFR parts 1107 and 1109

- 1107 - Children's Product Testing, 76 FR 69482 (November 8, 2011)
- 1109 – Component Part Rule, 76 FR 69546 (November 8, 2011)
 - Specifically allows an importer, or any other finished product certifier, to rely on another party's testing or certification if they exercise “due care.”

2013 – NPR to Revise 16 CFR Part 1110 78 FR 28080 (May 13, 2013)

- Proposed new definitions to align with parts 1107 and 1109; Proposed to require eFiling
- Over 500 comments from more than 70 commenters

2013 – 2023 – CPSC eFiling Related Projects

2023 – SNPR to Revise 16 CFR Part 1110 88 FR 85760 (Dec. 8, 2023)

2023 Supplemental Notice of Proposed Rulemaking (SNPR)



- Published SNPR on December 8, 2023 (88 FR 85760)
- Modified the 2013 NPR based on comments, lessons learned, and pilot participant feedback
 - Alpha Pilot, Certificate Study, and Beta Pilot informed modifications
- Proposed to broaden the definition of “importer” to include any party that could be an importer under CBP’s definition of importer:
 - Means the importer of record; consignee; or owner, purchaser, or party that has financial interest in the consumer product being offered for import and effectively caused the consumer product to be imported into the United States.
- Clarified certificate requirements for all regulated products and substances
 - Modified and added several new terms and definitions

Comments on the SNPR



- Effective Date
- Definitions
 - Importer
 - Finished Product/Component Part
- Who Must Certify Finished Products
 - Domestic Products – Private Labeler vs. Manufacturer
 - Imported Products – Importer vs. Manufacturer
- Disclaimer Message Sets
- De Minimis and Mail Shipments
- Entries from Foreign Trade Zones
- Costs of the rule – RFA and PRA Analyses

eFiling Related Projects



2016
CBP implemented their **Automated Commercial Environment (ACE)** and developed the **PGA Message Set**

2016-2017
CPSC's full implementation of **RAM 2.0**

2016-2017
CPSC conducted the **eFiling Alpha Pilot** with 8 importers and their trade partners

2017-2018
CPSC conducted a **Certificate Study** to evaluate correlation between certificates and compliance

2020
Commission approves staff's **Plan to Create an eFiling Program** for imported consumer products

2023-2024
CPSC conducted the **eFiling Beta Pilot** with 37 importers and their trade partners

2024
CPSC expands the **eFiling Beta Pilot**, also known as the eFiling voluntary stage

Primary Changes in Draft Final Rule in Response to Public Comments



- Extended the effective date and created two timelines based on method of importation
- Modified definitions and added terms to clarify and address confusion
- Clarified certificate requirements to include attestations, content, legal responsibility, and recordkeeping requirements
- Specified Disclaimer Message Set as optional

Staff Recommended Draft Final Rule



Effective Dates

- **12-Month Effective Date – Domestic and Imported Products**
 - **Domestic Products** – Certificate changes address privately labeled products, inclusion of an attestation, and listing of applicable testing exclusion.
 - **Imported Products** – Same as domestic products plus eFiling requirement.
 - Staff surveyed Beta Pilot importers and brokers to gauge their preparation time and software development needs.
 - The 12-month timeline aligns with comments received in response to the SNPR.
- **24-Month Effective Date – Products Entered from an FTZ**
 - Currently, FTZ importers can only attach the latest certificate associated with an article/supplier combination, rather than specific certificates at the inventory level.
 - Commenters state that eFiling will require FTZ importers to make significant changes to current software.
 - CPSC staff intends to work with trade and CBP in the coming months to discuss software solution(s) and a single window concept inclusive of FTZs that best allows for CPSC Message Set compliance.

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Definitions



- Revised the definition of “importer”
 - Clarified the importer for purposes of this rule is the Importer of Record (IOR) as defined in CBP's statute (19 U.S.C. 1484(a)(2)(B)), who may be an owner, purchaser, or authorized customs broker.
 - (1) When an IOR is a customs broker, the broker may identify the owner, purchaser, or consignee that authorized the broker to file an entry as part of the certificate data filed in the PGA Message Set.
 - (2) For mail and *de minimis* shipments without an IOR, the importer is a party eligible to make entry for the consumer products pursuant to CBP statutes and regulations, who may be the owner, purchaser, consignee, or authorized customs broker.

Staff Recommended Draft Final Rule



Definitions

- Modified key definitions based on public comments
 - **Owner or purchaser** – clarified the definition for purposes of this rule to mean a party who has a financial interest in imported finished products, including the actual owner of the merchandise.
 - **Consignee** – clarified the definition for purposes of this rule to mean a party who takes custody or delivery of imported finished products for which CPSC certificate data are required.
 - **Component part certificate** – clarified that component part certificates are voluntary and should not be eFiled.
 - **Finished product** – removed the phrase “replacement part” and described the three criteria for a product to be a finished product: (1) subject to a CPSC regulation, (2) imported for consumption or warehousing, or distributed in commerce, and (3) packaged, sold, or held for sale to, or for use by, consumers.

Staff Recommended Draft Final Rule

Certificate Requirements



- Products Required to be Certified
 - A certificate is required when the product is: (1) is a finished product; (2) is subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission; and (3), is imported for consumption or warehousing, or are distributed in commerce.
 - Clarifies the requirement to certify attaches to finished products and not to component parts.
- Who Must Certify Finished Products
 - CPSA requires the manufacturer (defined as any person who manufactures or imports a consumer product) or private labeler must test and certify products.
 - **Domestic Products** – Manufacturer must certify, except that for products that are privately labeled, the private labeler must certify or ensure that a manufacturer certifies the product.
 - **Imported Products** - "importer" as defined in the rule must certify.

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Certificate Requirements (cont.)



- Certificate Content
 - The importer/finished product certifier remains responsible for the information provided to CPSC, for both full and reference message sets
 - Addition of the terms “finished product certificate” and “finished product certifier” in place of “certificate” and “certifier”
 - Addition of attestation to the certificate
- Testing Exclusions
 - Requires certifiers to list all claimed testing exclusions
 - Products subject to a rule must either identify the test lab, or if not tested, list the testing exclusion relied upon
 - The Product Registry lists all available exclusions for each rule

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Certificate Requirements (cont.)



- **Certificate Availability**
 - **Imported Products** - Certificate must be eFiled in ACE at the time of entry, except for products imported by mail, which must be placed into the Product Registry
 - **Domestic Products** - The certificate must be issued on or before the product is distributed in commerce and made available immediately upon request by CBP or CPSC
- **Legal Responsibility for Finished Product Certifiers**
 - Trade partners may enter data in the Product Registry or certify on the importer's behalf but the importer is required to certify the product, pursuant to part 1109, and maintains legal responsibility for the certificate, including its validity, accuracy, completeness, and availability
- **Recordkeeping Requirements**
 - Maintains existing testing and certification recordkeeping requirements; 5-year record retention period for GCCs

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Final Regulatory Flexibility Analysis



- Conclusion – eFiling does not impose significant costs to a substantial number of small firms
 - Total cost is likely less than 1% of the revenue for a small firm
- More than 270,000 small businesses are likely to be impacted by eFiling final rule
 - Approximately 260,000 certificates are projected to be produced by small firms
- Small firms are likely to be impacted by:
 - Extended recordkeeping of GCCs, the hourly burden, and out-of-pocket costs from eFiling
- First year cost of the Rule to Small Importers: \$272.18M (\$1,104 per firm)
- Annualized cost of the Rule to Small Importers: \$16.54M (\$67 per firm)
- OIRA designated this rule to be “major” based on the first-year cost estimate.

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Paperwork Reduction Act

- Establishes new collection of information for non-children's product certificates
- Expands existing collection of information for Third Party Testing of Children's Products (OMB Control No. 3041-0159)
- Net annual burden from the Final Rule (excluding statutory burden):
 - Suppliers of non-children's products: 147,638 hours and total cost of \$5.25M.
 - Suppliers of children's products: 209,759 hours and total cost of \$7.46M.



Staff Recommendations



- Publish a Final Rule revising certificate requirements in 16 CFR part 1110, including the requirement to eFile certificates for regulated, imported consumer products and substances.
- Provide a Final Rule effective date of 12 months after publication of the Final Rule for all regulated products, except for products entered for consumption or warehousing from an FTZ.
- For products entered for consumption or warehousing from an FTZ, provide an effective date of 24 months after publication of the Final Rule.



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