



Memorandum

TO: The Commission
Alberta E. Mills, Secretary

DATE: December 10, 2024

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director
DeWane Ray, Deputy Executive Director, Operations

FROM: James Joholske, Director, Office of Import Surveillance

SUBJECT: Questions for the Record from Commissioner Trumka: Draft Final Rule to Revise 16 C.F.R. part 1110, Certificates of Compliance and to Implement eFiling of Certificates for Regulated, Imported Consumer Products

This memorandum provides the U.S. Consumer Product Safety Commission (CPSC) staff's responses to written questions provided by Commissioner Richard L. Trumka Jr. in lieu of oral questioning at the December 4, 2024, Commission briefing on the above matter.¹

Question 1

Is industry effectively saying: "You caught us. We've been violating the law for 16 years by failing to maintain certificates and this new e-filing rule is going to make it harder for us to get away with it."? If so, why should the Commission give weight to that argument in setting an effective date—isn't it our job to enforce the law?

Response to Question 1

Although eFiling will make it more difficult for importers that do not currently comply with CPSC's testing and certification requirements to evade detection, staff's recommended effective date is not intended to allow non-compliant companies time to comply with the certificate requirement. An appropriate effective date is intended to provide already compliant companies, which provide certificates immediately upon request, with the necessary and sufficient amount of time to comply with new requirements, including the requirement for importers of consumer products to eFile certificate data at the time of filing entry. A detailed rationale for staff's recommended effective date is provided in section V of the draft Final Rule.

Specifically regarding eFiling, CPSC staff and the Beta Pilot participants have practical experience in the procedural and technological steps involved in eFiling certificates, which may include internal data management changes and IT development for companies. Additionally, customs brokers that file CPSC's PGA Message Set into the Customs and Border Protection (CBP) Automated Commercial

¹ These responses are those of the CPSC staff; they have not been reviewed or approved by the Commission and may not reflect the Commission's views.

Environment (ACE) must develop the necessary software, which will reportedly take an average of nine months. Based on the number of importers that will eFile, which could exceed 200,000, the recommended effective date also will facilitate orderly scaling of CPSC's processes and systems. Staff's recommended effective dates also allow additional time for CPSC to provide outreach and education to the trade on how to comply with the new certificate requirements, including eFiling.

Question 2

What part of taking an existing paper certificate and filing that information online requires 1 year, or 2 years, staff's new recommended timelines for effective dates?

Response to Question 2

A detailed explanation of staff's recommended effective dates appears in section V of the draft Final Rule. Staff's recommended effective dates are based on comments from the 2023 Supplemental Notice of Proposed Rulemaking (SNPR) and feedback from Beta Pilot participants. The draft Final Rule would newly establish a standard format for certificates, including the form and content of the data, and that certificate information be provided electronically in a specific data format and filed with a CBP entry *for each covered shipment* (rather than only upon CPSC's request). Companies therefore will need to make changes to their internal databases to ensure they can manage potentially large volumes of certificate data either in their own certificate database or using CPSC's Product Registry, and that they or their customs brokers can transmit the required data to CBP's ACE system each time a consumer product is entered for consumption or warehousing.

Question 3

Delaying this rule harms consumers. More violative children's products containing lead, for example, will enter the country and potentially poison kids. Targeting *de minimis* shipments will be harder without this rule. Has staff quantified the costs to consumers from delaying this rule (beyond the originally proposed 120 days)? And has staff assessed whether the increased cost to consumers is worth any benefits to industry from the delay?

Response to Question 3

Consistent with applicable requirements, CPSC staff's draft includes a Regulatory Flexibility Analysis (RFA) that considers the impact of the rule on small businesses and a Paperwork Reduction Act (PRA) burden assessment. Estimated benefits of the rule have not been quantified, however.