

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1110

[CPSC Docket No. 2013–0017]

### Certificates of Compliance

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The U.S. Consumer Product Safety Commission (Commission or CPSC) is issuing a supplemental notice of proposed rulemaking (SNPR) to revise the agency's rule for Certificates of Compliance (certificates). The SNPR proposes to align the certificate rule with other CPSC rules on testing and certification, and to implement, for imported CPSC-regulated products and substances, electronic filing of certificates (eFiling) with U.S. Customs and Border Protection (CBP).

**DATES:** Submit comments by February 6, 2024.

**ADDRESSES:** Comments related to the Paperwork Reduction Act (PRA) aspects of the proposed rule should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

You may submit all other comments, identified by Docket No. CPSC–2013–0017, by any of the following methods:

**Electronic Submissions:** Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

**Mail/Hand Delivery/Courier/Confidential Written Submissions:** Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

**Instructions:** All submissions must include the agency name and docket number. CPSC may post all comments

without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website:

confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

**Docket:** For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC–2013–0017, into the “Search” box, and follow the prompts.

#### FOR FURTHER INFORMATION CONTACT:

Arthur Laciak, Project Manager, eFiling Program Specialist, Office of Import Surveillance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7516, or by email to: [alaciak@cpsc.gov](mailto:alaciak@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

The Commission proposes to revise the rule for certificates, codified at 16 CFR part 1110 (part 1110 or the 1110 rule) to clarify certificate requirements for all regulated products and substances, to align the rule with other testing rules, and to implement electronic filing of certificates for imported products with CBP (eFiling).<sup>1</sup> Only finished products or substances that are subject to a CPSC rule, ban, standard, or regulation, are required to be tested and certified, and only such finished products that are imported into the United States for consumption or warehousing would be required to eFile certificates with CBP. Section 14(g)(4) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(g)(4)) gives CPSC the authority to require eFiling, by rule.<sup>2</sup>

The Commission established part 1110 to implement sections 14(a) and (g) of the CPSA (15 U.S.C. 2063(a) and (g)), which provide requirements for the content, form, and availability of certificates. After passage of the Consumer Product Safety Improvement

Act of 2008 (CPSIA), which amended section 14 of the CPSA to add testing and certification requirements for CPSC-regulated consumer products and substances, the Commission sought to bring clarity and reduce burden to stakeholders through part 1110, by, among other things, limiting the parties required to issue certificates and allowing electronic certificates (available through email or a worldwide web link) to “accompany” product shipments instead of paper certificates. 73 FR 68328 (Nov. 18, 2008).

After gaining experience with certificates in 2013, the Commission issued a notice of proposed rulemaking (NPR) to revise part 1110 to align with rules for testing children's products under 16 CFR part 1107 (part 1107 or the 1107 rule) and component part testing under 16 CFR part 1109 (part 1109 or the 1109 rule), and to require eFiling of certificates for imported consumer products with CBP at the time of filing the CBP entry, or the time of filing the entry and entry summary, if both are filed together. 15 U.S.C. 2063(g)(4); 78 FR 28080 (May 13, 2013) (2013 NPR).<sup>3</sup> As described in section II.D of this preamble, since 2013 the Commission has undertaken a series of projects to support an eFiling program. Building on the 2013 NPR, this SNPR proposes to amend part 1110 to, among other things: revise terminology to integrate concepts introduced in the 1107 and 1109 rules; broaden the definition of “importer” to address commenters' concerns about the product certifier having control over and knowledge of the goods; allow private labelers to test and certify products; and implement eFiling for imported, CPSC-regulated consumer products and substances.

#### I. Statutory Authority

Section 102 of the CPSIA amended section 14(a) of the CPSA to require that manufacturers (including importers) and private labelers 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. 2052(a)(11) and

<sup>1</sup> This SNPR includes information and analysis from the Staff Briefing Package: Supplemental Notice of Proposed Rulemaking to Revise 16 CFR part 1110 for Certificates of Compliance to Implement eFiling, dated November 8, 2023 (Staff's SNPR Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/Ballot-Package-Draft-SNPR-to-Revise-16-CFR-part-1110-Certificates-of-Compliance.pdf?VersionId=3DjpxMqgXJNQ0yeFRgKzfsRj2GgKenqD>.

<sup>2</sup> On November 15, 2023, the Commission voted (4–0) to publish this supplemental notice of proposed rulemaking.

<sup>3</sup> “Entry” for CBP purposes is a declaration of goods arriving in the United States, whereas an “entry summary” contains additional documentation necessary for CBP to assess duties, collect statistics, and determine whether other requirements of law have been met. See 19 CFR 141.0a(a) and (b). For more information on CBP's entry processes see: <https://www.cbp.gov/trade/programs-administration/entry-summary-and-post-release-processes>.

2063(a)(1). 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). Section 14(a)(1)(B) of the CPSA requires that certificates specify each rule, ban, standard, or regulation applicable to the product. 15 U.S.C. 2063(a)(1)(B).

Section 14(g) of the CPSA contains additional requirements for the form, content, and availability of certificates. 15 U.S.C. 2063(g). Section 14(g)(1) of the CPSA requires that each certificate identify the manufacturer (including importer) or private labeler issuing the certificate, as well as any third party conformity assessment body on whose testing the certificate depends. 15 U.S.C. 2063(g)(1). At a minimum, certificates must include the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. *Id.* Section 14(g)(2) of the CPSA requires that every certificate be legible and that all contents be in English; contents can additionally 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, and a copy of the certificate must be furnished to each distributor or retailer of the product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of the certificate to the Commission. 15 U.S.C. 2063(g)(3). Finally, section 14(g)(4) of the CPSA states that 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. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of such certificate to the Commission and to CBP. 15 U.S.C. 2063(g)(4).

In addition to the statutory authority to require certificates for regulated products and substances, as outlined in sections 14(a) and (g) of the CPSA, the Commission has general authority with regard to certificates 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).

## II. Background: Certificates and eFiling

### A. The 1110 Rule

As noted, the CPSIA expanded section 14 of the CPSA to require testing and certification of consumer products subject to a consumer product safety rule, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission. 15 U.S.C. 2063(a)(1). When the Commission initially issued the 1110 rule to implement this requirement, it adopted an approach that was "streamlined, at least in its initial phase." 73 FR 68328 (Nov. 18, 2008). The rule designated the importer as the sole entity responsible for issuing certificates for imported consumer products, stating that to "accompany" a product or product shipment, the certificate must be available to the Commission no later than the time when the product or shipment is available for inspection in the United States. *Id.* The rule designated domestic manufacturers as the sole entity responsible for issuing certificates for domestically manufactured products, stating that such certificates must be available to the Commission upon request before the product or shipment is introduced into domestic commerce. *Id.*

The rule provided that the requirements in section 14(g)(1) and (3) of the CPSA that a certificate "accompany" a product or product shipment, be furnished to retailers and distributors, and be provided to CPSC upon request, could be satisfied by providing the statutorily required certificate information by electronic means. The rule explained that the certificate must be reasonably accessed by information on the product or accompanying the product or shipment, for example, a unique identifier that can be accessed via a Uniform Resource Locator (URL) or other electronic means. 73 FR 68330–31. In practice, many importers and manufacturers email certificates to CPSC in PDF format, when requested. The existing 1110 rule did not implement the authority in section 14(g)(4) of the CPSA to have certificates for imported products be eFiled with CBP. 15 U.S.C. 2063(g)(4).

The 2008 rule was not expected to be permanent. Instead, the Commission explained at the time that it "expects that with time CPSIA's expanded certification requirements will become more routine and it then would consider

whether this rule needs to be revised based on actual experience." 73 FR 68328.

### B. The 2013 Notice of Proposed Rulemaking

By 2012, CPSC staff had worked to refine the Risk Assessment Methodology (RAM) required by section 222 of the CPSIA, and had begun to grapple with the rise of internet-based companies selling consumer products (eCommerce) and direct-to-consumer shipments, which made CPSC's interdiction of non-compliant products more challenging. To address those concerns, and to be able to use certificate data for targeting and enforcement of CPSC's rules at the ports, CPSC proposed in the 2013 NPR to implement eFiling of certificates with CBP for regulated, imported products, pursuant to section 14(g)(4) of the CPSA.

The 2013 NPR also sought to revise part 1110 to integrate the rule into the testing and certification regime contemplated in then-new parts 1107 and 1109. The 1107 rule sets forth requirements for children's product testing and certification, including when and how products must be tested and certified, and recordkeeping requirements. The 1109 rule sets forth conditions and requirements for component part testing and certification for both children's and non-children's products. Both rules introduced new concepts and terminology related to certificates that are not present in the 1110 rule of 2008.

CPSC received over 500 comments from more than 70 commenters, as summarized in section III of this preamble, many asserting that implementation of the proposed eFiling requirement was infeasible and unreasonable due to the lack of information technology (IT) infrastructure for CBP to accept such data. At that time, CBP had not yet completed its Automated Commercial Environment (ACE) interface nor the Partner Government Agency (PGA) Message Set, which now enable importers or their brokers to submit electronic import data. For its part, CPSC had not yet fully implemented the RAM.

Since publication of the 2013 NPR, CPSC has implemented RAM 2.0 and CBP has implemented ACE and developed the PGA Message Set.<sup>4</sup> In

<sup>4</sup> CBP created the PGA Message Set to collect from importers additional agency-related import data for partner government agencies, or PGAs, and transmit the data elements via ACE at time of entry or entry summary. CPSC created two PGA Message Sets: the Full Message Set and Reference Message

2016 and 2017, CPSC conducted an eFiling Alpha Pilot, in coordination with CBP, involving eight volunteer participants who successfully eFiled a limited set of targeting/enforcement data for regulated products. Also, in 2017, CPSC conducted a Certificate Study to assess CPSC's ability to use certificates and the information on them for risk assessment and targeting of regulated, imported consumer products. In December 2020, the Commission approved of a multi-year plan to implement an eFiling program at CPSC.<sup>5</sup> The next steps in this eFiling plan include the ongoing eFiling Beta Pilot, which is scheduled to begin accepting data in the fall of 2023, and developing this SNPR.<sup>6</sup>

### C. CPSC's Risk Assessment and Targeting Efforts for Imported Consumer Products

CPSC's RAM currently receives an electronic feed of import entry data collected by CBP. The RAM is optimized to ingest CBP's data, using algorithms to identify potentially noncompliant consumer product shipments for CPSC's inspection. However, the data ingested by RAM are collected by CBP for its enforcement and tariff purposes, which do not always align with CPSC's risk assessment purposes. CPSC's Certificate Study confirmed that CPSC can analyze certificate data focused specifically on product manufacturing and testing to improve RAM's precision in targeting and identifying high-risk shipments for examination.

Currently, CPSC's import enforcement methodology is labor-intensive and lacks an efficient means of using product-specific data to identify potentially non-compliant products. CPSC co-locates staff alongside CBP staff at ports of entry to target shipments for examination. Once identified, staff request that CBP place a shipment on hold and transport it to an examination station for CPSC inspection; an examination hold creates delay that

costs businesses and CPSC time and money. Accordingly, stakeholders and CPSC have a common interest in reducing examinations of compliant products and maximizing examinations of products that are likely to be violative. Currently, certificates are collected only after a shipment is stopped for examination; certificate data are not used to target shipments for examination. Using certificate data for more precise targeting would maximize examination efficiency for stakeholders and staff; keep hazardous, violative products out of consumer's hands; and reduce burden by not delaying compliant product and not holding up shipments at the port while waiting to receive a certificate.

Using certificate data can also improve CPSC's ability to target low-value shipments. CPSC's current targeting capabilities were designed for larger commercial shipments for which the Commission receives CBP data. CPSC's port staff are currently unable to pinpoint with a high degree of certainty potentially non-compliant and hazardous products in low-value shipments, which CBP refers to as "*de minimis* shipments," and international mail shipments, which can lead to CPSC inspections that delay release of compliant products. Specifically, using product-specific certificate information such as product description, finished product manufacturer, date of manufacture, and date and place of testing, would provide CPSC with greater insights into all imported products and substances, including *de minimis* shipments. Hundreds of thousands of *de minimis* shipments enter the United States daily; the ability to use algorithms to assess the data and identify higher-risk shipments, even those of low value that occur frequently, would enhance CPSC's ability to focus limited resources to identify and interdict higher risk shipments.

Finally, although CBP is unable to process any certificate data collected for international mail shipments subject to CPSC requirements via ACE, the SNPR proposes a modified eFiling requirement for international mail. Importers using international mail would be required to enter certificate data into the Product Registry<sup>7</sup> before the shipment arrives in the United States, so that staff can analyze this data

and target mail shipments for examination.

### D. CPSC eFiling Related Projects Since the 2013 NPR

#### 1. eFiling Alpha Pilot (2016)

After publication of the 2013 NPR, CPSC conducted a pilot to test the feasibility of eFiling certain "targeting/enforcement data elements" on a certificate by participant industry volunteers. The 2016 eFiling Alpha Pilot was a 6-month, joint initiative between CPSC, CBP, and eight volunteer importers to establish and assess the infrastructure and processes required for a successful eFiling program. Participants used a process similar to that used in the current eFiling Beta Pilot, having a choice between entering data elements in a Product Registry, and providing a reference number to the Product Registry when filing PGA Message Set data with CBP, or filing all data elements in a PGA Message Set. CPSC staff issued a report detailing the procedure and results of the eFiling Alpha Pilot, available on CPSC's website: [https://www.cpsc.gov/s3fs-public/eFiling\\_Alpha\\_Pilot\\_Evaluation\\_Report-May\\_24\\_2017.pdf?uK.UhjHabKD5yjQ.1w06tudrvnuuWlra](https://www.cpsc.gov/s3fs-public/eFiling_Alpha_Pilot_Evaluation_Report-May_24_2017.pdf?uK.UhjHabKD5yjQ.1w06tudrvnuuWlra).

#### 2. Certificate Study (2017)

Following the eFiling Alpha Pilot, from October 2017 to February 2018, CPSC staff conducted a Certificate of Compliance Study to assess any correlation between the timing and availability of a certificate, the data provided on a certificate, and the violation rate of imported finished consumer products. Staff's eFiling Certificate of Compliance Study Assessment is available on CPSC's website at: <https://www.cpsc.gov/s3fs-public/eFiling-Certificate-Study-Evaluation-Report-FINAL.pdf>.

Staff's analysis of the data collected in this study indicates that the ability to provide a certificate within 24 hours of CPSC's request is strongly associated with product compliance. The limited data set indicated that an entry is five times more likely to have a violation if a certificate is never provided to CPSC, and three times more likely if one is provided later than 24 hours after CPSC's request. Staff also identified four data elements from certificates that show potential correlations to the rate of violations. Other data elements on a certificate, such as the list of applicable citations, would allow CPSC similarly to apply algorithms to target certain products and/or rules.

Set. When using a Full Message Set, certifiers will provide all certificate data in the form of data elements. When using a Reference Message Set, certifiers will provide a reference ID to certificate data entered into CPSC's Product Registry.

<sup>5</sup> The 2020 staff briefing package to implement an eFiling program at CPSC is available at: <https://cpsc.gov/s3fs-public/CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf?BYXOLX2gJmF4NaAN1LCMmqiXRI5uaRkr>. The record of commission action is available at: <https://www.cpsc.gov/s3fs-public/RCA-CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf>.

<sup>6</sup> The Federal Register Notice announcing the Beta Pilot can found here: <https://www.regulations.gov/document/CPSC-2022-0020-0001>.

<sup>7</sup> The Product Registry is a certificate database created and maintained by CPSC. Importers can enter or upload certificate data for regulated consumer products and substances that can be referenced on an entry filing each time the product is imported without having to re-enter the relevant data elements.

### 3. eFiling Beta Pilot (Current)

On December 18, 2020, the Commission approved staff's recommended plan to implement eFiling and to conduct an eFiling Beta Pilot, in collaboration with CBP, that would collect certificate data via a PGA Message Set.<sup>8</sup> Following this, on June 10, 2022, the Commission issued a **Federal Register** Notice (87 FR 35513 (June 10, 2022))<sup>9</sup> to announce the eFiling Beta Pilot and recruit volunteers. The eFiling Beta Pilot has a product scope of approximately 300 Harmonized Tariff Schedule (HTS) codes prioritized for imports and includes all data fields on a certificate. CPSC updated the Product Registry used in the Alpha Pilot, to create a one-time data entry repository of certificate data that can be referenced in a PGA Message Set multiple times as a product is offered for importation. Additionally, staff has been meeting with a subset of nine participant volunteers to advise in IT development for the eFiling Beta Pilot. Meeting logs and related material for this work are available on <https://www.regulations.gov> on docket number CPSC–2022–0020. CPSC's website also includes information on eFiling and the eFiling Beta Pilot, available at: <https://www.cpsc.gov/eFiling>.

The purpose of the eFiling Beta Pilot is to build upon the Alpha Pilot, develop and test the infrastructure necessary to support a full-scale eFiling requirement, inform CPSC's rulemaking effort, and develop internal procedures to support enforcement. The Beta Pilot will also advance the "Single Window"<sup>10</sup> concept to facilitate electronic collection, processing,

sharing, and reviewing of trade data and documents required by CPSC during the cargo import process, and will assist CPSC in targeting imports more accurately to facilitate the flow of legitimate trade and enhance targeting of noncompliant trade.

The eFiling Beta Pilot also will assess CPSC and importer capabilities for eFiling certificate data elements via the PGA Message Set and incorporating the data elements into CPSC's RAM to risk score and interdict noncompliant products. The Beta Pilot will include more participants than the Alpha Pilot (over 30, more than in the Alpha Pilot), include more data elements (dates of manufacture and testing), and involve more varied consumer products under CPSC's jurisdiction (products classified under approximately 300 HTS codes).

### 4. Developing an eFiling System

To minimize burden, CPSC's eFiling System will allow importers to enter certificate data through two means: Full Message Set or Reference Message Set using the Product Registry.<sup>11</sup> When using the Full Message Set, the importer will submit all certificate data elements via CBP's ACE. When using the Reference Message Set, the importer will enter all certificate data elements into the Product Registry prior to filing entry with CBP, and they will submit a unique reference identifier (ID) via ACE.<sup>12</sup> Tab B of Staff's SNPR Briefing Package contains the CBP and Trade Automated Interface Requirement, which details the technical requirements to file each Message Set in ACE.

The Product Registry allows importers, or their designees, to enter the certificate data elements via a user interface, batch upload, and/or Application Programming Interface (API) upload. The user interface is a step-by-step process, where the importer submits one certificate at a time. The batch upload allows the importer to submit multiple certificates using a Comma-Separated Value (CSV) template. The API upload allows the importer to build an API connection via the Product Registry and their data systems to instantaneously enter certificates.

Additionally, the Product Registry provides multiple features to improve the importer's interaction. The importer has a business account in the Product Registry where users representing the importer can view all certificates submitted into the registry. The importer can also provide other third parties, such as a broker or test laboratory, with different levels of permission to submit certificate data on their behalf. Tab A of Staff's SNPR Briefing Package contains a detailed user guide for the Product Registry as used during the eFiling Beta Pilot.

### III. Response to Comments

In response to the 2013 notice of proposed rulemaking (2013 NPR) to revise 16 CFR part 1110, CPSC received over 500 comments from over 70 different commenters. Comment summaries include a code to identify the commenter, as shown in Table 1. Below we summarize and respond to the public comments by topic.

TABLE 1—COMMENTS KEY

2 .....	Rich Frog Industries.	40 .....	Bicycle Product Suppliers Association.
3 .....	Douglas Boysen.	41 .....	American Apparel and Footwear Association (AAFA).
4 .....	DT Swiss, Inc.	42 .....	American Promotional Events.
7 .....	The Hosiery Association.	43 .....	Tom Dixon.
8 .....	Shayla Sharp.	44 .....	UPS Supply Chain Solutions.
9 .....	GS1 US.	45 .....	Consumer Specialty Products Association.
10 .....	Wald & Co, Inc.	46 .....	Juvenile Products Manufacturers Association (JPMA).
11 .....	Frette S.R.L.	47 .....	Toy Industry Association (TIA).
12 .....	National Customs Brokers and Forwarders Association of America (NCBFAA).	48 .....	Erika Hickey.
13 .....	American Eagle Superstore.	49 .....	Handmade Toy Alliance.
14 .....	Writing Instrument Manufacturers Association.	50 .....	National Association of Manufacturers (NAM).
15 .....	US Council for International Business.	51 .....	Magicforest.
16 .....	Marisol, International.	52 .....	Terra Experience.
17 .....	National Association of Foreign Trade Zones (NAFTZ).	53 .....	Borderfree.
18 .....	FedEx.	55 .....	American Eagle Outfitters.

<sup>8</sup> See *Supra*, n.5.

<sup>9</sup> <https://www.regulations.gov/document/CPSC-2022-0020-0001>.

<sup>10</sup> ACE is CBP's system through which the U.S. government has implemented the "single window," the primary system for processing all trade-related import and export data required by government

agencies. The "single window" transitions away from paper-based procedures to provide government and industry faster, more streamlined processes.

<sup>11</sup> The eFiling system collectively refers to the PGA Message Set and Product Registry and process of filing certificate data. Certifiers (meaning

importers, manufacturers, or private labelers) are responsible for the certificate data submitted, but brokers or other designated parties can upload data and certify products on the certifier's behalf.

<sup>12</sup> Other trade parties, such as brokers and laboratories, may enter certificate data into the Product Registry on the certifier's behalf.

TABLE 1—COMMENTER KEY—Continued

19 .....	Pacific Coasts Council of Custom Brokers & Freight Forwarders Association (PCCCBFFA).	56 .....	European Union (EU).
20 .....	Express Association of America.	58 .....	Association of American Publishers, Inc.; Book Manufacturers Institute, Inc.; & Printing Industries of America.
21 .....	Lego.	59 .....	Unique Industries, Inc.
22 .....	Motorcycle Industry Council.	60 .....	B.J. Alan Company.
23 .....	Footwear Distributors & Retailers of America.	61 .....	Bestway International.
24 .....	YKK.	63 .....	Handmade Toy Alliance.
25 .....	Glazing Industry Code Committee.	64 .....	RILA & National Retail Federation (NRF).
26 .....	American Fireworks Standards Laboratory.	66 .....	Van Fleet Associates, Inc.
27 .....	Terra Experience.	67 .....	Integration Point.
28 .....	US Association of Importers of Textiles and Apparel.	71 .....	American Home Furnishings, Alliance.
29 .....	Hallmark Cards.	72 .....	NCBFAA.
30 .....	American Architectural Manufacturers Association.	74 .....	U.S. Council for International Business.
31 .....	Galaxy Fireworks.	75 .....	Toy Industry Association.
32 .....	Association of Home Appliance Manufacturers.	76 .....	Hennes & Mauritz L.P.
33 .....	The Art and Creative Materials Institute (ACMI).	77 .....	33 Trade Associations.
34 .....	Ian Brodie.	78 .....	OPEI.
35 .....	National Retail Federation.	79 .....	RILA & NRF.
36 .....	Fashion Jewelry and Accessories Trade Association.	80 .....	Bicycle Product Suppliers Association.
37 .....	Fireworks Over America.	81 .....	AAFA.
38 .....	Outdoor Power Equipment Institute (OPEI).	82 .....	UPS Supply Chain Solutions.
39 .....	Retail Industry Leaders Association (RILA).		

#### A. Section 1110.3—Definitions

*Comment 1:* A commenter (C35) stated that proposed 16 CFR 1110.3(b) causes confusion with too many certificate types.

*Response 1:* The terms and definitions described in proposed § 1110.3(b) are for the reader's clarity; neither the NPR nor SNPR create new certificate types. Indeed, most of the terms in proposed § 1110.3 are already used in section 14 of the CPSA or in another CPSC rule, such as 16 CFR parts 1107 and 1109.

*Comment 2:* A commenter (C18) was concerned about CPSC's proposed definition of "importer" in the NPR to be the "importer of record" or IOR (as defined in the Tariff Act of 1930, as amended), because the proposed definition could conflict with other CPSC rules. For example, the commenter stated that the "importer" required to certify products in 16 CFR part 1109 (the component part rule), may not be the IOR, who is the required certifier in the 2013 NPR. The commenter suggested that CPSC not make the IOR responsible for certification, because the IOR is the party making the official import declaration to CBP, not the party causing the goods to enter the country, who is the party with the most knowledge of the product. The commenter recommended that CPSC change the definition of "importer" to include a party with an ownership or beneficial interest in the imported products, so that the party with the most information about the product would be responsible for testing and certification.

Similarly, other commenters questioned who should be an

"importer" with certification responsibilities under part 1110. For example, several commenters (C12, C16, C19, C20, C32, C44, C67, C71, C82) stated that customs brokers should not fall within the definition of "importer" because they do not have sufficient knowledge of the products to ensure compliance nor are they the "beneficial party in interest." Commenter C18 stated the same argument with regard to consignees acting as importers of record, and other commenters (C7, C14, C36) asserted that private labelers should not be responsible for certifying for the same reasons.

*Response 2:* The CPSA does not define "importer."<sup>13</sup> We agree that expanding the definition of who can be an "importer" in part 1110 beyond the IOR, for the purposes of testing and certification, is beneficial to stakeholders and to CPSC's eFiling and enforcement efforts. Accordingly, the SNPR proposes to broaden the definition of "importer" in proposed § 1110.3(b) to include any party that could be an importer under CBP's definition of importer, as found under 19 CFR 101.1, as well as other parties that have a financial interest in the consumer product being offered for import and effectively caused the consumer product to be imported into the United States. Thus, the SNPR proposes that an "importer" may be 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.

Under the proposed definition of "importer," a person holding a valid customs broker's license can be an importer. Retaining customs brokers in the definition gives them the option to assume responsibility for certification on behalf of their clients if that is a service they wish to provide. Additionally, because of the expanded definition of "importer" and CPSC's need to recognize the party assuming responsibility, the SNPR requires the party certifying compliance be identified in § 1110.11(a)(5).

*Comment 3:* Two commenters (C36, C50) stated that under section 3(b) of the CPSA, CPSC does not have the authority to include common carriers in the definition of "importer."

*Response 3:* Section 3(b) of the CPSA prohibits CPSC from deeming common carriers, contract carriers, third party logistics providers, and freight forwarders to be a manufacturer (including importer), distributor, or retailer "solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder." 15 U.S.C. 2052(b). Neither the 2013 NPR or this SNPR would deem such carriers as manufacturers or importers for receiving or transporting goods. However, if a common carrier, contract carrier, third party logistics provider, or freight forwarder contracts with another party to provide services as a licensed customs broker, and in that capacity chooses to act as the IOR and attests to

<sup>13</sup> The CPSA states that the terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States." 15 U.S.C. 2052(a)(9). The CPSA also states that the term "manufacturer" means any person who manufactures or imports a consumer product." 15 U.S.C. 2052(a)(11).

the content of the certificate at the time it is eFiled, CPSC is justified in holding that carrier responsible for the information on a certificate. In that case, the carrier is not acting in the ordinary course of its business as a carrier or forwarder, but is instead acting as the IOR or a customs broker. The revised definition of “importer” in the SNPR should alleviate some concern, because an IOR is not the only party that can certify a product. However, a common carrier can remove themselves from any responsibility to certify consumer products by choosing not to act as a customs broker, choosing not to act as the IOR, or ensuring that the importer, as defined in proposed § 1110.3(b), certifies the product.

*Comment 4:* Several commenters (C17, C35, C38) remarked that the definition of private labeler is unclear. Commenter C17 stated that the terms “brand,” “trademark,” and “to carry” a brand or trademark are vague terms that may not be applied consistently. Commenter C38 requested clarification whether a private labeler must certify when the product does not contain the name or trademark of the manufacturer.

*Response 4:* Section 3(a)(12)(A) of the CPSA defines “private labeler” as the “owner of a brand or trademark on the label of a consumer product which bears a private label.” 15 U.S.C. 2052(a)(12)(A). Section 3(a)(12)(B) further explains that a consumer product bears a private label when the product (or its container) is labeled with the brand of a person other than a manufacturer, the person with whose brand the product (or container) is labeled has caused the product to be so labeled, and the brand of a manufacturer does not appear on the label. 15 U.S.C. 2052(a)(12)(B). Consistent with the statute, the term “private labeler” is generally understood to refer to products manufactured by one company but sold under the brand name of another company. The private labeler is one of the three parties stated in section 14 of the CPSA that may certify a product. Section 1110.7(b) of the SNPR proposes that for domestically manufactured products, the private labeler must issue a certificate that meets the requirements of part 1110, unless the manufacturer issues the certificate.

#### B. Section 1110.5—Products Required To Be Certified

*Comment 5:* Several commenters (C31, C36, C48, C49, C52, C63) urged CPSC to specifically accommodate small businesses, which have fewer compliance resources. Several commenters (C31, C49) stating

specifically that the extra security, IT infrastructure, and customs broker fees associated with eFiling, will be “out of range,” “catastrophic,” or a “significant burden” on small manufacturers and businesses in general. Two commenters (C52, C63) suggested that eFiling should be optional for small importers, instead of a mandatory requirement, to assist small businesses with small volumes or those that are from countries that do not have any competitive options for third party testing. Other commenters (C49, C52, C63) stated that small businesses usually issue paper certificates and are not prepared to file electronically. One commenter (C52) proposed that the CPSC should differentiate between importers/producers of “low risk” and “high risk” toys and children’s products to avoid excessive burdens on small producers and importers.

Additionally, commenter C8 recommended that CPSC create a new set of requirements for “micro-businesses” that would be exempted from third party testing for component parts and finished products. Instead of a certificate, the commenter proposed that these “micro-businesses” could provide a supplier’s Material Safety Data Sheet (MSDS).

*Response 5:* The CPSA’s certificate requirements do not contain a small business exception. Indeed, an exception for imported products could undermine the goal of protecting consumer safety by using certificate data to target non-compliant and potentially hazardous consumer products. However, section 14(i)(4) of the CPSA does provide third party testing relief for certain rules for Small Batch Manufacturers of children’s products, which allows for testing of certain product safety standards at any third party laboratory, instead of a CPSC-accredited laboratory.<sup>14</sup> Moreover, CPSC has a Small Business Ombudsman to assist small businesses with questions related to compliance with CPSC rules.

CPSC developed a web-based application, the Product Registry, to reduce burden for importers, especially for small businesses. CPSC’s Product Registry is a web-accessible database that will not require any additional IT infrastructure for certifiers to use and has its own internal security. Firms do not need to create their own web infrastructure to host certificate data. Small businesses can enter the information into the Product Registry and use the system to maintain certificates. Firms can also enter data

using batch uploads, which are available in several formats. Additionally, firms can choose to have a third party, such as a test lab, enter data into the Product Registry on their behalf. The Product Registry is designed to be flexible to allow businesses to use the system in a manner that reduces cost and burden.

*Comment 6:* Commenters C44 and C82 suggested that the CPSC consider implementing a certificate exception for *de minimis* shipments. The commenter maintains that a *de minimis* exception would leave CPSC and CBP with a greater ability to use its resources to monitor and target product safety compliance of higher-value shipments that contain larger quantities of consumer goods.

*Response 6:* Congress did not provide a *de minimis* exception from certificate requirements. Furthermore, one of the emerging hazards since the 2013 NPR is the growth in direct-to-consumer shipments, which are often *de minimis*. These shipments may be of lower value, but the volume of such shipments is growing rapidly, and they are particularly challenging to monitor. Staff has found hazardous, non-compliant products in *de minimis* shipments. The ability to collect certificate data at entry for these lower-value shipments, and to assess these shipments for targeting purposes, will enhance CPSC’s ability to enforce our rules, bans, standards, and regulations, and to protect consumer safety.

Regarding compliance burden, CBP has standardized the means of collecting additional data elements for PGAs using entry type 86 (ET86) for lower-value shipments. A broker may now use ET86 for *de minimis* shipments to append the CPSC PGA Message Set.

*Comment 7:* Commenter C53 argues that, as an IOR for returned goods, they are unable to test and certify such goods. The commenter urges CPSC to “consider products exported by U.S. retailers and then returned (reimported) to that retailer as ‘Goods Returned’ and exempt from the certificate requirement,” regardless of entry type.

*Response 7:* Section 14 of the CPSA does not provide an exemption from the certificate requirements for returned goods. As with the existing 1110 rule and consistent with the statute, under the proposed rule certificates are required for finished products that are imported for consumption or warehousing and subject to a consumer product safety rule.

<sup>14</sup> See <https://www.cpsc.gov/Business--Manufacturing/Small-Business-Resources/Small-Batch-Manufacturers-and-Third-Party->

*C. Section 1110.7—Who Must Certify Finished Products*

*Comment 8:* Several commenters (C14, C36, C39) opposed the proposed changes to § 1110.7 in the 2013 NPR, which expanded who could be a certifier for both imported and domestic products and required private labelers to certify products that are privately labeled, unless another party certifies the product. Commenters encouraged CPSC to retain the existing language in current 16 CFR 1110.7, which they believe clearly identifies the party responsible for issuing the certificate. Commenter C36 stated that CPSC should recognize that either the importer, domestic manufacturer, or private labeler may certify, as provided in section 14 of the CPSA.

*Response 8:* Upon consideration of the comments, the SNPR simplifies the 2013 NPR proposal in § 1110.7 for imported consumer products. CPSC has more information on imported consumer products than the agency had in 2013, because CPSC now receives a data feed from CBP that, while focused on trade enforcement and tariff collection rather than safety, identifies the relevant firms for each shipment. Moreover, with the additional certificate data collected via a PGA Message Set, CPSC can enforce the certificate requirement against an importer or a private labeler, even if neither firm is the entity submitting the required certificate data.

The SNPR proposes a revision to the definition of “importer,” allowing any party that can be the importer of record under proposed § 1110.3 to certify. Currently, CPSC expects the IOR to issue a certificate; however, in some cases the IOR is not the party with a beneficial ownership in the goods that causes importation of the consumer product, which makes enforcement challenging. The proposed expansion of the “importer” definition both responds to comments and should assist CPSC in identifying responsible parties.

For domestically manufactured products, the SNPR retains the 2013 NPR’s proposal that privately labeled products be certified by the private labeler, unless the manufacturer issued the certificate. CPSC proposed this requirement because products that are privately labeled do not display the manufacturer’s name or contact information. Such products are typically designed and produced according to the specifications and requirements of the brand owner. Firms that do not want to be responsible for issuing a certificate as a private labeler for domestically manufactured products need only

ensure that the name of the manufacturer appears on the product. 15 U.S.C. 2052(a)(12).

*Comment 9:* Commenters (C36, C45, C47, C50, C71) suggested that any party in the supply chain should be allowed to certify, including brand owners/private labelers and foreign manufacturers. Other commenters (C15, C74) stated that foreign manufacturers of direct-to-consumer products should be required to certify, but certification by brand owners/private labelers should be optional. One commenter (C35) was unclear if the brand owner/private labeler or foreign manufacturer should certify under proposed § 1110.7(a) for imported direct-to-consumer products. Another commenter (C14) stated that responsibility for certifying should be placed on importers because foreign manufacturers might not comply.

*Response 9:* As stated in response to comment 2, the SNPR broadens the definition of “importer” in part 1110 to include any firm that could be an importer under CBP’s definition in 19 CFR 101.1. Therefore, any entity that falls within this definition would be allowed to provide certificate data for imported consumer products. For direct-to-consumer imports not involving a broker, the party with financial interest in the product being offered for import and who effectively caused the consumer product to be imported into the United States, which could be the foreign manufacturer or the seller who sold the product on an online marketplace, would be considered the importer and the party responsible for certifying. Regarding foreign manufacturers that supply products for U.S. distribution, they are subject to the requirements of the CPSA and CPSC has the authority to refuse admission for noncompliant products under section 17(a) of the CPSA. 15 U.S.C. 2066(a).

*Comment 10:* A commenter (C16) claimed that requiring brokers to be responsible for certification duplicates work being done by the importer, because the importer is already responsible for producing the certificates. The commenter argued that the proposal in the NPR would increase brokerage costs to importers, damage the importers’ ability to be profitable, dilute the information chain, and increase the risk of mistaken reporting. Another commenter (C20) stated that holding brokers responsible for certification will result in increased requests by brokers for powers of attorney, which in turn will require greater CBP staffing, and ultimately, increased costs to the consumer. Another commenter (C44) asserted that CPSC’s cost estimates for filing certificates are too low because

they do not account for a necessary increase in broker’s fees to offset the extra labor associated with becoming familiar with the products being imported and applicable requirements. The commenter also stated that requiring certificate information to be filed at the time of entry will slow the filing and delay delivery and increase warehouse costs. The commenter suggested reducing the burden of the proposed rule by paring down the required information to only that necessary for effective targeting and allowing the upload of the required information by PDF to cut down on the amount of data entry.

*Response 10:* As previously noted, the proposed definition of “importer” in this SNPR has been expanded to include firms that could be an importer under CBP’s definition. Consequently, customs brokers are not the only entity that can certify. They can, however, assume that responsibility as a service provided to clients if they choose. Moreover, the Product Registry will allow importers to store certificate data for repeated imports of the same product, which will lessen the burden of preparing certificates.

Because entry filing most often occurs in advance of a shipment’s arrival, adding a PGA Message Set with entry or entry summary will not impede the movement of a shipment, so warehousing costs and delivery times should not be impacted. Finally, CBP will not accept large amounts of data in PDF format, because it is difficult to store and search or manipulate. Since 2013, CBP and CPSC have built and demonstrated the necessary infrastructure to receive entry data and associated PGA Message Set data, which has been successfully tested and will be further developed through the Beta Pilot, making PDF submission outmoded.

*Comment 11:* A commenter (C39) stated that if the Commission changes who is responsible for issuing certificates from a domestic manufacturer to a private labeler, private labelers such as retailers who are removed from the manufacturing process would be required to establish compliance programs to exercise due diligence over domestic manufacturers. The commenter stated that such programs will impose new burdens on the supply chain, increase end-use consumer prices, and have a potential negative impact on interstate commerce, costs for which are not accounted for in the proposed rule. The commenter also asserted that the Commission should not change the requirement of who must issue a certificate from the manufacturer



to the private labeler for domestically produced products, because CPSC has not identified a rational basis for the change. Another commenter (C14) asserted that often the importer or private labeler does not know the actual manufacturer. Commenter (C49) stated that burden will increase for small manufacturers, because the same material will be tested by multiple private labelers. Similarly, commenter (C4) stated that burden will increase for their firm, because the commenter does not know whether their end customer will use their manufactured products for children's products.

*Response 11:* Private labelers who do not want to test and certify can contract with their manufacturers to ensure that the products they are responsible for introducing into commerce are compliant with all applicable consumer product safety rules and meet testing and certification requirements. For enforcement purposes, the NPR proposed to require either the domestic manufacturer or the private labeler to issue the certificate, because no other party would have the necessary knowledge of the product to be able to certify. This SNPR retains the language in proposed § 1110.7(b) of the 2013 NPR.

*Comment 12:* Commenters (C44, C82) noted that the United States Postal Service (USPS) does not act as the IOR for mail shipments and cannot be held responsible for issuing certificate information. Due to that, the commenters asked how the proposed rule will govern mail operations and what party would issue the certificate.

*Response 12:* While the SNPR's proposed definition of importer in § 1110.3(b) does not include the USPS, the definition does include several parties who could be considered the importer. Section 1110.13(a)(1) of the SNPR would require certificates for international mail shipments to be entered in the Product Registry before the product arrives in the United States. Under the proposed definition of "importer," either the U.S.-based firm receiving the shipment or the foreign firm that sent the shipment could be considered the importer. Staff recommends that only one of those firms enter certificate data into the Product Registry and attest to the accuracy of the information, preferably the U.S.-based firm so that the certifier can be more easily contacted.

*Comment 13:* Several commenters (C33, C38, C45, C52, C74) urged that recertification not be required for each batch of a product if there has not been a material change to the product. The commenters also suggested that if the

certificate scope is allowed to cover several years of production, then the burden on the manufacturer will be greatly reduced.

*Response 13:* For regulated children's products, certifiers are required to follow testing and certification requirements as described in 16 CFR parts 1107 and 1110. Part 1107 requires three types of testing for children's products: initial certification testing; periodic testing; and material change testing. Children's product certificates must be updated after periodic and material change testing, because when new testing is conducted, the information on the certificate, namely the testing date, will have changed. This SNPR does not change any of these requirements.

Non-children's products are required to meet part 1110, meaning that each product must be compliant based on a test of each product or a reasonable testing program, and must remain compliant. CPSC recommends, but does not require, that non-children's products also be periodically tested (most companies do so yearly) and re-tested when there is a material change in the products' design or manufacture that could affect compliance. Again, the SNPR does not propose to change these requirements.

#### *D. Section 1110.9—Certificate Language and Format*

*Comment 14:* Many commenters (C7, C10, C11, C13, C17, C31, C35, C36, C39, C41, C42, C43, C45, C46, C47, C50, C56, C60) opposed proposed revisions to § 1110.09(c) in the 2013 NPR, which provided that an electronic certificate must be accessible "without password protection, to the Commission, CBP, distributors, and retailers." Several commenters stated that preventing password protection for delivery of certificates to distributors and retailers would constitute a disclosure of proprietary information, which would be in violation of section 6(a) of the CPSA, 15 U.S.C. 2055(a). Other commenters similarly expressed concern that the lack of password protection would allow fraudulent companies to falsify certificates and competitors to access commercial secrets.

*Response 14:* In light of the comments received, the SNPR does not propose to prohibit password protection but rather leaves this issue for resolution between certifiers and their retailers and distributors. To date, in the absence of a prohibition on password protection, no retailer or distributor has complained to the Commission that they do not have access to certificate data.

#### *E. Section 1110.11—Certificate Content*

*Comment 15:* Several commenters (C39, C64, C78) stated that the proposed certificate data elements to be collected at import are "unclear," "unobtainable," and "unnecessary" and question the utility of the data elements in enhancing CPSC's risk assessment. These commenters further stated that CPSC should work with stakeholders to identify necessary data elements to limit industry's burden. Commenters (C64, C78) expressed that CPSC should not collect duplicative information already provided on CBP entry forms.

*Response 15:* Section 14(g) of the CPSA sets forth the minimum requirements for certificates and provides CPSC with the authority to add more requirements through rulemaking. As described in section II.D.2 of this preamble, CPSC previously conducted a Certificate Study in 2017 and found that several data elements indicate a higher risk of a noncompliant, hazardous product. Staff advises that the data elements proposed in the SNPR are necessary to match the certificate to the product being examined and to enhance CPSC's risk assessment, and are not duplicative of information already provided on CBP entry forms. If CPSC required eFiling of only a subset of the data elements for a certificate, importers would have the burden to maintain two sets of certificate data.

*Comment 16:* One commenter (C78) expressed that the proposed required description of the product is duplicative of the information provided by the HTS code and the quantity of units.

*Response 16:* HTS codes are typically very broad and will contain multiple products under one code. For example, 9403.20.0017 contains "Toddler beds, bassinets, cradles, play yards and other enclosures for confining children" made of metal. The code alone does not necessarily indicate which product a certificate would reference. Instead, the SNPR proposes that the certifier provide at least one specified unique identifier, as well as a sufficient description, to match the finished products to the certificate.

*Comment 17:* Commenter C9 suggested that CPSC allow the use of other product identifiers, such as a GS1 Global Trade Item Number (GTIN), to be used as an identifier of products covered by a certificate. The commenter stated that the use of this bar code system with the electronic certificate will allow industry to use the same information currently on their products and minimize the cost of compliance.

*Response 17:* A GTIN provides useful information for product identification.



Accordingly, the SNPR proposes to allow it as one of up to five product identifiers on a certificate: GTIN, model number, serial number, Stock Keeping Unit (SKU), or Universal Product Code (UPC). CPSC is developing capabilities to retrieve the required certificate data from the Global Data Synchronization Network (GDSN).

*Comment 18:* Several commenters (C24, C45, C46, C47, C50) expressed confusion regarding the date of initial certification and requested clarification as to how it differs from other dates, including the date of manufacture. A few commenters believe this data element is unnecessary.

*Response 18:* After considering the comments and enforcement efforts, the SNPR does not propose to include a separate date of initial certification. Analysis of certificates demonstrates that the date of manufacture and the date of testing, required by section 14(g) of the CPSA, and the date of entry, are sufficient to meet the statutory requirements as well as for CPSC's risk assessment.

*Comment 19:* Several commenters (C38, C45, C47, C51, C78, C80) opposed the 2013 NPR's proposal to require an indication of the scope of products covered by the certificate, claiming it to be difficult to determine.

*Response 19:* After considering the comments and gaining additional experience through the development of eFiling, CPSC does not include in the SNPR a new data element for the scope of products covered by the certificate. Instead, CPSC will rely on the product description and other identifiers on the certificate, along with CBP's entry data, to match a finished product to the certificate.

*Comment 20:* Several commenters (C38, C46, C49, C78) questioned the value of including a list of all applicable consumer product safety rules for CPSC's targeting efforts and does not believe that inclusion of this information is warranted. Another commenter (C47) stated that listing the consumer product safety rules is redundant, because the test reports already include this list.

*Response 20:* Section 14(a)(1)(B) of the CPSA requires that each rule, ban, standard, or regulation applicable to the product be specified on the certificate. Staff advises that the list of all applicable rules is a critical data element for CPSC's risk assessment and targeting efforts. Although the list also is on test reports, test report data elements are not filed in a PGA Message Set, so that information is not in an electronic format for CPSC's use within the RAM. CPSC maintains a list of rules

that require testing and certification on the agency's website, and the list will also be maintained in the Product Registry. Standardizing this information in the Product Registry and for the Full PGA Message Set will allow CPSC to target shipments using the rules listed on a certificate. For example, CPSC can compare the list of rules with the product information and identification of the testing laboratory to validate that the product was tested to the expected rules and that the named laboratory is accredited to conduct such tests. Accordingly, the SNPR retains the requirement to provide the list of rules for which a product is subject.

*Comment 21:* One commenter (C78) stated that requesting the certifying party's name, mailing address, email, address, and telephone number is redundant, because the IOR is already provided in the Customs entry documents.

*Response 21:* Section 14(g)(1) requires that "every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate." The certifying party's name, mailing address, email address, and telephone number are necessary for CPSC to appropriately identify and contact the responsible party. Furthermore, the IOR provided on the CBP entry documents may not always be the correct certifying party under the SNPR proposal. In some cases, the IOR is the customs broker or express carrier facilitating importation and transmission of the data, which may not be the importer for purposes of certification.

*Comment 22:* Two commenters (C21, C45) stated that it is preferable to provide generic contact information for the record custodian, rather than a specific person's contact information, because it would be unreasonable for a single person to provide coverage for every potential problem on a certificate. Another commenter (C82) stated that CPSC should not collect data that is unlikely to determine compliance, like the record custodian contact information.

*Response 22:* Section 14(g)(1) requires that the certificate contain the "contact information for the individual responsible for maintaining records of test results." Accordingly, the SNPR proposes to retain this data element. However, we agree with the commenters that generic contact information is acceptable, as long as the generic email address and telephone number is actively monitored by a knowledgeable person and the certifying firm is responsive within 24 hours of CPSC's initial contact.

*Comment 23:* Multiple commenters (C36, C37, C42, C47, C51, C76, C78) opposed including the name and address of the manufacturer, finding this data element unnecessary and duplicative, because country of origin and foreign factory information are already provided on the entry documents. Other commenters (C10, C13, C26, C43, C49) asked CPSC to remove the requirement for a street address if the street address is unavailable. Additionally, three commenters (C43, C46, C78) found this data element too burdensome for importers to manually enter, as well as too granular for CPSC's use.

*Response 23:* Section 14(g) of the CPSA requires every certificate to contain the date and place of manufacture, and to provide the full mailing address for each party, which includes a manufacturer. Additionally, section 16(c) of the CPSA, 15 U.S.C. 2065(c), requires disclosure of the identity of the manufacturer of a product by name, address, or such other identifying information as the CPSC officer or employee may request, to the extent that such information is known or can be readily determined. Accordingly, we interpret the place of manufacture to include the full address (including manufacturer name; street; city; state or province; and country or administrative region). Being able to accurately identify the manufacturer of the finished product with a street address is necessary for effective risk assessment and targeting. Indeed, in 2017 staff found in its Certificate Study that the manufacturer city is a data element that can be associated with a higher risk of a hazardous product.

If the street address is unavailable, then the certifier should provide a detailed location, consistent with the manufacturer country's mailing address standard. The address must be sufficient to describe the specific location where CPSC can send correspondence or inspect the facility. Certifiers can use different methods to provide this information. For example, if using the Product Registry, the manufacturer's name and address will be saved with a user-generated ID under the certifier's business account, so that it can be easily referenced when creating future certificates.

*Comment 24:* One commenter (C56) asked for clarification whether all suppliers must be listed on the certificate.

*Response 24:* Consistent with section 3(a)(10) of the CPSA, 15 U.S.C. 2052(a)(10), the manufacturer that must be listed on the certificate is the entity responsible for manufacturing,

producing, or assembling the finished product (or component part if issuing a component part certificate). This is clarified in proposed § 1110.11 of the SNPR.

*Comment 25:* A few commenters (C38, C45, C49, C51, C59) stated that providing the date of manufacture is redundant and burdensome, and should not be included.

*Response 25:* Section 14(g) requires every certificate to contain the date of manufacture. The 2017 Certificate Study demonstrated that date of manufacture, when compared to the date of testing, assists CPSC in determining compliance. CPSC is testing this data element in the eFiling Beta Pilot and retains this statutory date element in the SNPR.

*Comment 26:* Many commenters opposed requiring the name of the manufacturer and the place of manufacturing, including the address, because this information is considered confidential business information or a trade secret. Commenters were concerned that providing this information on the certificate may result in dealers, retailers, and competitors bypassing them and dealing directly with the manufacturer, resulting in economic injury and competitive harm. One commenter (C33) stated that trade secrets are protected by federal and state law.

*Response 26:* Section 14(g) provides the minimum data elements for certificates, which include the place and date of manufacture and “each party’s name, full mailing address, [and] telephone number.” Because this is a statutory requirement, certificates provided to CPSC must contain this information. Moreover, section 16(c) of the CPSA, 15 U.S.C. 2065(c), requires that upon request by a Commission officer or employee, every importer, retailer, or distributor of a consumer product or substance must identify the manufacturer and provide the name, address, or other identifying information. Thus, certifiers must supply manufacturer names and contact information to the Commission pursuant to sections 14 and 16 of the CPSA. CBP and CPSC will maintain business confidential data systems for eFiled certificates, which will be submitted directly to government systems with appropriate safeguards to secure the information.

*Comment 27:* One commenter (C52) opposed the requirement for providing the manufacturer address for small businesses, because the address is often a home address and the commenter is concerned for the safety of the family.

*Response 27:* Section 14(g) of the CPSA requires the place of manufacture to be provided on the certificate. Furthermore, for imported products, certificate data will be entered into a government system, which follow industry-standard data security protocols, for use by the Commission and CBP. Section 14(g) does not require certificate disclosure to the public and for any information requests, CPSC will follow the procedures set forth in 16 CFR 1015.

*Comment 28:* One commenter (C38) requested that CPSC retain the certifier’s ability to code information on a certificate as allowed on a permanent certification label for power mowers described in 16 CFR 1205.35(c). Additionally, the commenter recommended that the allowance for the addition of a website address to the certificate, which can be used by consumers or CPSC to request additional, nonproprietary information.

*Response 28:* Section 1205.35 of the power mower rule, issued in 1979, requires a reasonable testing program and a five-data point certificate label that is on the product and visible to the consumer. The information on this label is allowed to be coded. 16 CFR 1205.35(c). In 2008, however, Congress revised certificate requirements in section 14 of the CPSA for all regulated products; manufacturers of power mowers now must meet the requirements in part 1205, and also sections 14(a) and 14(g) as implemented through part 1110. The on-product certificate label requirement thus remains, but the SNPR would require an additional two-year record keeping requirement, several additional data elements for both domestic and foreign-manufactured product certificates, and an eFiled certificate for imported power mowers. Codes created by individual companies will not be allowed on eFiled certificates. The SNPR includes in proposed § 1110.11(b) the ability to add to the certificates a website address and other information (such as testing).

*Comment 29:* One commenter (C34) objected to providing contact information for CPSC-accepted laboratories on CPCs, because CPSC already has that information.

*Response 29:* The Product Registry will contain a list of CPSC-accepted third party laboratories for each regulation. If using a Full PGA Message Set, certifiers can reference the third party laboratory using a four-digit code that CPSC will maintain, along with contact information for CPSC-accepted third party laboratories. Certifiers need only provide contact information for

other testing laboratories and for domestically manufactured products.

*Comment 30:* Several commenters (C21, C32, C36, C40, C47, C50, C78) objected to the requirement for an attestation as proposed in § 1110.11 (a)(10) of the 2013 NPR and recommended removing this section from the rule. For example, commenter C21 opined that the attestation will make the certificate ‘busy’ and adds little value, because certifiers will add the language even if they do not follow the rules. This commenter further stated that certifiers in compliance with 16 CFR part 1110 understand their obligations and the gravity of providing the certificate and suggested that the Commission clearly state the certifier’s obligations in the regulation, which would provide “a tacit attestation.”

Two commenters (C32, C50) stated that the attestation requirement is not authorized by section 14(g) of the CPSA and has no legal significance, because the obligation to submit truthful information to the government is already applicable under current law. Commenter (C40) noted that the “capacity for human error on a certificate is not trivial” and suggested that CPSC clarify that the individual is not liable for attesting to the accuracy of the certificate. This commenter suggested withdrawing this requirement and adding a statement that firms which demonstrate the existence of a compliance plan “administered in accordance with 16 CFR parts 1107 and 1109 will not be found to have reason to know that a certificate is false or misleading.”

*Response 30:* Section 14(g) sets forth the *minimum* data elements for the certificate; CPSC has authority to add data elements through rulemaking. An attestation helps to ensure the responsibility of the certifying party to know what they are certifying on behalf of the firm, and the firm’s liability for a false certification. In addition, to specifically acknowledge the “capacity of human error,” the SNPR’s attestation language states that “the information in this certificate is true and accurate to the best of my knowledge, information, and belief.”

Regarding burden, any certifier using the Product Registry will have only one click to accept the attestation and will have the option for bulk attestation. Any certifier using the Full Message Set will only have one additional field for the attestation. CPSC is testing this attestation in the eFiling Beta Pilot.

*F. Section 1110.13—Certificate Availability*

*Comment 31:* Commenters (C12, C20, C23, C26, C28, C36, C42, C46, C47, C49, C55, C64, C71, C74, C81) suggested that CPSC should retain the current “on-demand” certification system. Commenter (C2) states that retaining the ability to satisfy the certificate requirement by presenting certificates upon request or in a password protected website is preferable to the proposed changes. Other commenters (C3, C81) stated that CPSC’s proposal to require electronic filing of certificates of compliance for regulated imported consumer products with CBP at the time of filing the entry or entry summary contravenes the CPSIA, which calls for GCCs to be submitted “upon request,” suggesting that GCCs need not be submitted with each shipment.

*Response 31:* Section 14(g)(3) of the CPSA establishes several requirements regarding the availability of certificates, which must: “accompany the applicable product or shipment of products covered by the same certificate”; be furnished to each distributor or retailer of the product; and be furnished to the Commission upon request. Additionally, section 14(g)(4) specifically provides that the Commission can, by rule, require eFiling of certificates for imported consumer products.

Certificates that are collected on an ad hoc basis, either as a hard-copy or a PDF copy via email, are not in a data-usable format that can be processed into CPSC’s RAM and risk scored. To implement section 14(g)(4) of the CPSA, proposed § 1110.13 of the SNPR requires the eFiling of all certificates for regulated imported finished products, including CPCs and GCCs, at the time of filing entry or entry summary, if both entry and entry summary are filed together. CPSC intends to use certificate data to risk score shipments and enforce its statutes and regulations. If this rule is finalized, an eFiled certificate would meet the “accompany” requirement in section 14(g)(3) of the CPSA and the requirement in proposed § 1110.13(a).

*Comment 32:* Several commenters (C7, C18, C20, C21, C47, C60, C66, C71) suggested that there should be alternate ways to submit certificate data, such as a URL, to reduce burden. Another commenter (C32) agreed with proposed § 1110.0(c)’s allowance of electronic certificates in multiple forms, suggesting that CPSC also allow a Quick Response (QR) code as an acceptable means of providing access to an electronic certificate. Additionally, several commenters (C2, C21, C71, C74) stated

that they will have to submit the same certificates more than once because of the electronic and hard copy requirements.

*Response 32:* The SNPR clarifies in § 1110.9(b) that a hard copy or an electronic certificate meets the requirements described in § 1110.13(b), to furnish a certificate to each distributor or retailer, and in § 1110.13(c) to provide a certificate for inspection upon request by CPSC or CBP.

However, the SNPR would require that for imported consumer products to meet the “accompany” requirement in section 14(g) of the CPSA, certificate data elements must be eFiled with CBP using a PGA Message Set at the time of entry or entry summary. Certifiers will have several means to provide certificate data to CPSC for regulated products, including a Product Registry with a Reference PGA Message Set, and a Full PGA Message Set. CPSC may still ask for a certificate, however, for domestically manufactured products and as otherwise allowed by the statute, to verify eFiled certificate data, or for other purposes. Certificates for domestically manufactured products can still be provided through email or a URL. A QR code would be an acceptable means of providing access to an electronic certificate, pursuant to proposed § 1110.9(c), but would not meet the requirement for an eFiled certificate as proposed in § 1110.13(a). Finally, to address burden, CPSC created a Product Registry to allow certifiers to submit certificate data once upon importation, and thereafter to use a reference PGA Message Set to identify the certificate data already entered in the Product Registry each time products covered by that certificate are imported.

*Comment 33:* A commenter (C45) stated that a requirement for a unique identifier to be “identified prominently on the finished product, shipping carton, or invoice” would potentially crowd an occupied area on product labels. Another commenter (C35) stated that an overt display of a unique identifier is unnecessary and may be duplicative.

*Response 33:* The electronic certificate data may not be easily accessible to retailers and distributors, and to CBP or CPSC upon request, if the unique identifier is not “identified prominently.” Accordingly, the SNPR proposes to maintain the requirements for prominence for certifiers that choose to use electronic forms of a certificate. We seek comment, however, on whether the prominence of an electronically available certificate on an invoice or

shipping container is still important and appropriate to address in the final rule.

*Comment 34:* Commenters (C40, C74) suggested that CPSC interpret “accompany” to mean eFiling of the certificate with CBP, or a certificate with electronic access to distributors and retailers. The commenters also stated that an additional physical certificate is not necessary.

*Response 34:* The SNPR clarifies in proposed § 1110.13(a) that an eFiled certificate (filed in ACE using a PGA Message Set) meets the “accompany” requirement. Furthermore, proposed § 1110.9(c) clarifies that because an electronic certificate meets the “furnishing” and “availability” requirements in §§ 1110.13(b) and (c), respectively, a physical copy of the certificate meets the same requirements.

*Comment 35:* Several Commenters (C10, C13, C26, C31, C37, C43) stated that the current system of allowing certifiers to furnish certificates to distributors and retailers through “grant of reasonable access” or “on demand” should be maintained, instead of requiring they be made available for each shipment. One commenter (C47) stated that if certificates are furnished to retailers, CPSC should not dictate the method for how it is done. Other commenters (C10, C42) stated that the change will be a “costly shift” from the current regulation and result in the hiring of additional staff.

*Response 35:* Section 14(g)(3) of the CPSA requires that “a copy of the certificate shall be furnished to each distributor and retailer of the product.” This differs from the requirement in the same section, stating that “every certificate . . . shall accompany the applicable product or shipment of products covered by the same certificate,” and from the eFile authority in section 14(g)(4) of the CPSA. The SNPR would require certificates for imported consumer products to be eFiled using one of two methods described in section II.D.4 of this preamble. Otherwise, the SNPR does not dictate how a certificate must be furnished to each distributor and retailer; electronic certificates for these purposes are allowed, but not required.

*Comment 36:* A commenter (C38) suggested that CPSC clarify that a domestically manufactured product is not required to be accompanied by a certificate. Another commenter (C52) recommended that small batch manufacturers be treated like domestic manufacturers in that their certificates need not be submitted to CPSC until the products enter commerce.

*Response 36:* Consistent with the existing 1110 rule, the SNPR requires

that certificates for domestically manufactured products be issued before a product is introduced into commerce, and made available to CPSC upon request, either in hard copy or through electronic means. Small batch manufacturers can receive testing relief through a program described on CPSC's website (see response to Comment 5). Unless entitled to relief through that program, small batch manufacturers must issue certificates and meet the certificate availability requirements that apply to all domestic or imported consumer products.

#### *G. Section 1110.17—Recordkeeping Requirements*

*Comment 37:* Commenter C35 stated that the NPR provides no rationale for the proposed requirement that GCCs and supporting records be maintained for five years. The commenter stated that this new requirement is confusing and will not improve product safety, because a three-year record retention already is mandated in some existing CPSC safety standards. Commenter C14, in contrast, noted that companies already keep customs entry records for five years or longer, and thus has no objection to the proposed increased retention time for GCCs.

*Response 37:* Pursuant to 28 U.S.C. 2462, the statute of limitations to litigate a civil fine, penalty, or forfeiture for a consumer product safety violation is five years. Commenter C14 is correct that customs entry records must be maintained for five years (see 19 CFR 163.4). Additionally, 16 CFR 1107.26(b) and 16 CFR 1109.5(j) have five-year record retention requirements. To be consistent with these record retention periods and the statute of limitations, the SNPR retains the proposed requirement that GCCs and supporting records be maintained for five years. We note that CBP recordkeeping requirements may differ from CPSC requirements, depending on the commodity and the circumstances of entry filing.

#### *H. Section 1110.19—Component Part Certificates*

*Comment 38:* Several commenters (C23, C35, C36, C38, C40, C47, C49, C50, C56, C71, C80) expressed confusion regarding the difference between certificates for component parts, for finished products, and for replacement parts of consumer products.

*Response 38:* Proposed § 1110.3(b) defines “component part” as a product or substance that is intended to be used in the manufacture or assembly of a finished product, and is not intended

for sale to, or use by, consumers as a finished product. The SNPR defines a “finished product” as a product or substance that is “regulated by the Commission that is imported for consumption or warehousing or is distributed in commerce.” The SNPR definition explains that parts of such products or substances, including replacement parts, that are imported for consumption or warehousing, or are distributed in commerce, and that are packaged, sold, or held for sale to, or use by, consumers, are considered finished products.

Only finished products subject to a rule must be tested and certified. Component part certificates are voluntary and are not required to accompany an imported component part, are not required to be furnished to retailers and distributors (as described in proposed § 1110.13(b)), and are not to be eFiled.

Not all replacement parts are finished products that require testing and certification. A replacement part of a consumer product that meets the definition of a finished product may be subject to part 1110, if the replacement part is subject to a rule. For example, a handlebar stem for a bicycle that is sold to consumers as a replacement part requires a certificate, because handlebar stems, either as a stand-alone product or as part of a finished bicycle, must be tested for strength in accordance with 16 CFR 1512.18(g). Additionally, parts of toys, such as doll accessories, that are sold to consumers as a separate finished product, must comply with all applicable rules, including for example lead in paint and/or lead content. If the same doll accessories were imported for manufacturing purposes and not for consumption or warehousing, and were intended to be combined with a doll for sale, then such accessories would not be a finished product required to be certified until they are part of a finished product.

*Comment 39:* Two commenters (C22, C38) objected to the requirement to certify replacement parts for products with many replaceable items, such as ATVs and walk-behind power mowers, which commenters allege will result in an increase to the overall burden that was not included in the burden estimate for the NPR. Commenter C22 stated that most replacement parts do not have serial numbers and needing to track each part will result in a tremendous logistical challenge. Additionally, the same commenter claimed that the proposed rule will expand the definition of finished products and apply it to replacement parts, which do not have their own safety standard.

*Response 39:* As explained in response to comment 38, product parts that are unregulated by CPSC and not sold to consumers, but are instead intended to be used in manufacturing a consumer product, are not required to be tested and certified. To be subject to testing and certification under section 14 of the CPSA and part 1110, a product must be a finished product, as defined in proposed § 1110.3(b), that is subject to one or more regulations.

*Comment 40:* Two commenters (C49, C52) suggested that certification requirements specifically include “retail component parts.” The commenter defines these as component parts purchased at a retail establishment, which would be primarily purchased by handmade toy makers and small businesses. The commenter suggested that certificates for “retail component parts” be voluntary.

*Response 40:* Component parts of a toy, such as doll clothing or accessories, are finished products when sold to consumers. If such finished products are subject to a regulation, section 14 of the CPSA requires that they be tested and certified. Accordingly, although the SNPR does not contain a separate definition for “retail component parts,” the definition of “finished product” in proposed section § 1110.3(b) would include these products.

#### *eFiling System and eFiling Pilots*

##### *I. CBP's IT Infrastructure*

*Comment 41:* Numerous commenters were concerned in 2013 that CBP systems then lacked the ability to accept electronic certificates in any format. For example, numerous commenters were concerned that CBP's system did not have the capacity to upload PDF/electronic files. Commenters advised that CPSC should wait and work with CBP to fully develop the International Trade Data System (ITDS), which would allow the direct submission of certificates via ACE.

*Response 41:* As described in sections II.C and II.D.4 of this preamble, CPSC and CBP have established the technology infrastructure to meet the requirements of eFiling. CPSC and CBP conducted an initial eFiling pilot, the Alpha Pilot, in 2016–17 that used the PGA Message Set to transmit certificate data to CPSC's RAM for risk assessment. CPSC and CBP are currently conducting an eFiling Beta Pilot with importers and their customs brokers, to further test eFiling certificate data.

*Comment 42:* Commenter C71 stated that CPSC should allow companies to use barcodes to upload certificate data.

*Response 42:* CBP's PGA Message Set data structure does not allow for a bar code to upload PGA data. However, the SNPR would allow use of a GTIN (in numeric format), which is typically displayed on consumer products in barcode format, as part of the data element to describe the consumer product in proposed § 1110.11(a)(1).

*Comment 43:* Several commenters (C15, C16, C20, C21, C31, C36, C40, C55, C64) stated that because CPSC does not have the infrastructure to review uploaded PDF certificates from CBP and neither agency is staffed for eFiling, the new reporting requirements will slow the entry clearance process during peak import seasons, which can result in increased local storage capacity and irregular deliveries.

*Response 43:* As described in section II.D of this preamble, certificate data would be submitted to CBP as data elements and seamlessly incorporated into CPSC's RAM for risk analysis using algorithms. If the RAM algorithm increases the risk score for a shipment based on certificate data, staff can identify the shipment for examination, and will also be able to review the certificate data for each shipment, along with entry documents.

Because CBP is now capable of accepting certificate data elements via ACE, the entry clearance process will not be slowed. In fact, CPSC expects that certifiers who provide consistent and accurate certificate data will see a reduction in their shipments' risk scores, which would lower the chance of a hold for exam. Thus, CPSC expects that eFiling will facilitate compliant trade.

*Comment 44:* Commenters (C12, C14, C20, C28, C44, C47, C64, C72, C76) stated that it is essential that CPSC's electronic certificate filing requirement reflect the complexity of the international supply chain, including different modes of transportation, and can process the large amounts of data it will receive, so as not to delay the delivery of goods. One commenter (C12) claimed that filing 24 hours prior to entry is unrealistic, because many imported products will require multiple certificates. Commenter C28 stated that the NPR's alternative option of allowing, rather than requiring eFiling, would be sufficient for effective targeting and the added benefits of requiring electronic filing of certificates will not outweigh the burden on importers.

*Response 44:* As described in section II.D of this preamble, certifiers will have multiple means of eFiling certificates that address the commenters' concerns, including using a CPSC-managed Product Registry to enter and maintain

certificate data. At entry, certifiers can reference a certificate in the Product Registry whenever the product is imported. Regardless of the mode of shipment, importers can reference a pre-existing data set when submitting a PGA Message Set. Importers can also choose to eFile all data elements each time a product is imported. Companies or brokers also can maintain their own product registries, and eFile the same data set multiple times to improve efficiency. CBP's systems can accept the certificate data, including multiple certificates for each entry line, up to 24 hours before arrival, which is the timeframe specified in section 14(g)(4) of the CPSA. CBP and CPSC have already tested this capability in the eFiling Alpha Pilot and are testing it again now in the eFiling Beta Pilot.

Finally, as stated in section II.D.2 of this preamble, CPSC found an increased risk of a product safety violation for shipments without an accompanying certificate, as well as an increased risk with certain data elements. Thus, voluntary filing of certificates is not an effective way for CPSC to enforce the certificate requirement or to identify violative products. Importers of noncompliant products are less likely to file certificates if eFiling is not required.

*Comment 45:* Several commenters (C15, C18, C20, C66) suggested that CPSC and/or CBP should notify companies regarding which HTS codes and associated shipments require certificates.

*Response 45:* Importers are responsible for knowing whether the products they import are required to be tested and certified before entering the United States. A list of all regulated products covered by the 2013 NPR and this SNPR, for both children's products<sup>15</sup> and non-children's products,<sup>16</sup> is maintained on CPSC's website. For importers using the Product Registry, this information is maintained in the software as well. For importers that want to eFile using a Full PGA Message Set, the list of regulations and associated codes is also stored on CPSC's website.<sup>17</sup>

<sup>15</sup> Children's product rules requiring testing and certification: <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Regarding-Third-Party-Testing>.

<sup>16</sup> Non-Children's product rules requiring testing and certification: <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Regarding-a-General-Certificate-of-Conformity>.

<sup>17</sup> [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cpsc.gov%2Fs3fs-public%2FBetaPilotCitationandExemptionCodesv2Cleared\\_0.xlsx%3FVersionId%3DCv6CJDAJ0u8UiigH9CNgQy1ax3b4G.b&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cpsc.gov%2Fs3fs-public%2FBetaPilotCitationandExemptionCodesv2Cleared_0.xlsx%3FVersionId%3DCv6CJDAJ0u8UiigH9CNgQy1ax3b4G.b&wdOrigin=BROWSELINK).

CBP will inform filers when a certificate may be expected with their entry based on the associated HTS code. For the Beta Pilot, CPSC created a publicly available list of HTS codes, maintained on CPSC's website (available at <https://www.cpsc.gov/eFiling>), which gives HTS codes for regulated consumer products within CPSC's jurisdiction. CBP and CPSC will use these codes to inform importers regarding the potential for having to file a certificate. CPSC has also developed CBP Customs and Trade Automated Interface Requirements (CATAIR) explaining how to file both Reference and Full PGA Message Sets that use HTS Codes associated with products that could fall within CPSC's certificate requirement. This CATAIR is available at [www.cpsc.gov/eFiling](https://www.cpsc.gov/eFiling), and is attached as Tab B to Staff's SNPR Briefing Package.

#### *J. CPSC's IT Infrastructure*

*Comment 46:* Commenter C18 recommends using the ITDS and leveraging the automated process of receiving entry and entry summary information from CBP to eliminate paper-based processes. Commenter C45 suggests having a "check box" stating that the importer has a certificate on file, as an alternative to filing the certificate.

*Response 46:* CPSC currently uses ITDS as part of the RAM to screen shipments of consumer products intended for import into the United States, including consumer products potentially in violation of health and safety laws. eFiling will continue to use ITDS to receive certificate data. And, as stated in section II.D.4 of this preamble, to streamline data collection the eFiling system will have a Product Registry database maintained by CPSC.

Data collection will be automated and streamlined, but will not rely on a "check box" option to indicate that the importer has the required certificate, because a check box, without associated data, is insufficient for CPSC's enforcement and targeting needs as described in section II.C of this preamble.

*Comment 47:* Commenters (C19) suggested that CPSC contemplate a web portal, whereby the "Responsible Party" can file the electronic certificate data elements. The Commission could then evaluate the data elements for inspection targeting purposes. Similar comments were filed by several commenters (C7, C67, C71, C72, C78, C82), all of whom recommended the ability to file certificate data for products that could be used more than

once, to minimize the burden of repeated data entry.

*Response 47:* CPSC understands that a certificate database can be an efficient way to reduce burden. Accordingly, as described in sections II.D of this preamble, CPSC developed the suggested web portal, called the Product Registry, as part of the eFiling System. As contemplated by commenters, the Product Registry allows certifiers to electronically enter the certificate data elements for each regulated product once, and then submit a reference to this dataset each time the product is imported thereafter.

#### *K. eFiling Procedures, Pilots, and Stakeholder Engagement*

*Comment 48:* Several commenters (C23, C36, C47, C64, C79, C80, C81) objected to the implementation of the 2013 NPR due to the lack of previous studies and pilots, and because the 2013 NPR allegedly did not identify problems with the current system. Several commenters (C15, C19, C77, C78, C79) suggested that CPSC withdraw the 2013 NPR until after the Commission addresses submitted comments. Commenters (C19, C46, C64, C77, C78) requested that CPSC engage with stakeholders more intensely to address various concerns related to the RAM, administrative and financial burdens, trade barriers, and streamlining the certificate process.

*Response 48:* Please see the discussion in section II.D of this preamble regarding CPSC's pilots and Certificate Study, stakeholder engagement, and how CPSC will use certificate data to target shipments containing noncompliant consumer products and substances. Section XI of Staff's SNPR Briefing Package further details CPSC staff's outreach and education activities relating to certificates and eFiling.

*Comment 49:* In 2013 a commenter (C79) recommended at least 18 months before implementation of the eFiling requirement.

*Response 49:* Based on developments since the 2013 NPR and experience in the Beta Pilot thus far, the SNPR proposes a 120-day effective date for a final rule and seeks public comment on this proposed effective date.

*Comment 50:* A few commenters (C17, C64, C74, C75, C77) referenced Executive Order 13659, Streamlining the Export/Import Process for America's Businesses, signed by President Obama on February 19, 2014, and CPSC's role in and execution of the "Single Window" for imports and exports. These commenters suggested that CPSC work with either the Border Interagency

Executive Council (BIEC) or Customs Operations Advisory Committee (COAC) to craft a rule that accommodates the needs of stakeholders.

*Response 50:* CPSC actively collaborates with CBP regarding the "Single Window" for imports and engages with the BIEC and with COAC. Throughout development of the eFiling program, CPSC has updated the BIEC and COAC at their regular meetings. CPSC also incorporates data from ITDS in its RAM for targeting and enforcement. CPSC also worked with CBP to develop the PGA Message Set, which is the means for certifiers to eFile certificate data. CPSC continues to work and consult with CBP on import surveillance issues, including the eFiling Alpha and Beta Pilots, and this rulemaking.

*Comment 51:* Several commenters (C15, C39, C41, C64, C74, C81, C82) requested CPSC consider working with the CBP Importer Self-Assessment (ISA) or Customs-Trade Partnership Against Terrorism (CTPAT) programs to carve out eFiling exceptions for importers participating in these programs, who are currently considered "trusted traders." These commenters proposed a specific exception for trusted traders from certificate filing "at-entry" and instead would have CPSC allow these traders to provide certificates "on-demand," as they do today. One commenter (C15) suggested that CPSC should not require new data elements besides those already part of the ISA.

*Response 51:* Because the requirements for CTPAT and other "trusted trader" programs do not particularly relate to potential consumer product safety hazards, and CPSC historically has found product safety violations for CTPAT members, the SNPR does not provide an exemption for members of "trusted trader" programs.

*Comment 52:* A commenter (C77) suggested that the CPSC establish a permanent stakeholder advisory group to regularize needed input into product safety issues of mutual importance.

*Response 52:* While CPSC staff agrees there could be benefits from a stakeholder advisory group, the establishment of such a group is out of scope for this rulemaking.

*Comment 53:* One commenter (C74) stated that CPSC should allow multiple products on one certificate.

*Response 53:* The SNPR proposes that certificate data identify the finished product with a sufficient description to allow staff to identify the product in question. To reduce the potential for disrupting importation of compliant products that appear on the same

certificate as a potentially non-compliant product, the SNPR proposes that each certificate contain information for only one product. If a product is materially different, meaning that it has a different product design, manufacturing process (including location), or source of component parts (including paints and materials) from another similar product, then each product should have a separate eFiled certificate. In other words, if a certifier expects that the difference in a product can affect compliance, then each product should have a separate eFiled certificate. For an explanation of what the Commission means by materially different products, see 16 CFR 1107.23.

For example, wearing apparel is typically made of the same material and ships with various styles and sizes of similar products. Accordingly, the SNPR would allow multiple models that were composite tested together, so long as there is no material change, to be included on one certificate. CPSC will consider the multiple models as one product, which should be referenced by one ID in the Product Registry or the Full Message Set. For example, multiple styles, sizes, and colors of the same shirt can be on the same certificate, referenced by one ID, because the differences in styles, sizes, and colors are not considered a material change. Also, if a product is comprised of a bundle of finished products, importers can provide one certificate that covers all products in the bundle or multiple certificates covering each individual product in the bundle.

*Comment 54:* One commenter (C26) expressed concern that units of a product may come from several different manufacturing or testing batches and, therefore, there may be several different certificates associated with the product.

*Response 54:* A product that was manufactured in different test facilities or in several different batches and tested separately would likely require a separate certificate for each batch, depending on the materials used and timing of testing, because each batch would likely have different testing information. The certifier is responsible for keeping track of manufacturing processes, product batches, and associated testing and certification, as has been the case since 2008, when the existing 1110 rule was published. CPSC's Product Registry is designed to assist certifiers in managing certificates for different products and product batches, where each certificate will be uniquely identified.

*Comment 55:* Three commenters stated that requiring the electronic filing

of certificates will not only result in burden for importers, but also increase burden for the government. One commenter (C35) predicted that the processing of millions of PDF certificates would be overly expensive and recommended that any new requirements be integrated into existing supply chain and import practices. A second commenter (C81) stated that processing times will increase and CBP will have to rely upon manual release for a huge number of entries, especially during peak season. A third commenter (C55) questioned whether CPSC and CBP will be able to handle shipments without certificates and how the information will be validated for accuracy.

*Response 55:* CBP has been collecting electronic data for other partner government agencies since 2016. The increase in data collected, in the form of data elements, will not result in increased processing times, because the data will be electronically transmitted to CPSC and initially reviewed by algorithms in the RAM. CPSC has been co-located with CBP at ports across the country since 2008 and already processes shipments lacking accompanying certificates. CBP and CPSC will incorporate data quality checks into the PGA Message Set to validate the accuracy of the certificate data.

*Comment 56:* Several commenters (C15, C20, C36, C74, C81) asked for clarity about what will happen if a certificate contains an error or is not provided at all. One commenter (C36) asked whether a violation occurs if the importer characterizes a CPC as a GCC or vice versa. Another commenter (C15) asked CPSC to articulate the impact to importers if a certificate is not submitted upon entry.

*Response 56:* Currently, before issuing a violation, CPSC staff considers whether any inaccurate information on the certificate was deliberate, or inadvertently erroneous. For example, a firm's mischaracterization of its certificate as a CPC rather than a GCC, or vice versa, is unlikely to result in a violation in the first instance if the underlying testing that supports the certificate is correctly conducted and accurate. Enforcement for noncompliant certificates includes a range of options, such as increasing an importer's risk score, which increases the risk of a hold for examination, and rejecting an entry that lacks certificate data, contains incomplete or inaccurate information, or lacks a disclaimer message if no certificate is required for a flagged HTS code.

*Comment 57:* Commenter (C17) suggested that the rule clearly state that

products admitted into and/or produced in a foreign trade zone (FTZ) are not subject to CPSC requirements, including those for certification. The commenter noted that CPSC requirements should only apply to goods entered into the United States from the FTZ for consumption via a CBP Form 7501, instead of the CBP Form 3461, because Form 7501 includes details about the products making entry, whereas Form 3461 gives only estimates of the quantity and type of products. Other commenters (C21, C67, C74) also sought clarification on when a certificate must be filed for products leaving an FTZ.

*Response 57:* The SNPR would apply to all finished goods entering the United States for consumption or warehousing, even if being imported from an FTZ, as specified in proposed §§ 1110.5 and 1110.13(a)(1). The CPSA does not exempt consumer products from testing and certification requirements based on the mode of importation. For products entering the United States from an FTZ, certificate data should be filed with CBP Form 7501, which details the products making entry.

*Comment 58:* Three commenters (C15, C17, C43) sought clarification on how the NPR will impact the first-in-first-out (FIFO) inventory management system employed in FTZs. One commenter (C15) added that for products that are multi-sourced by different manufacturers under a FIFO system, tying certificates to the physical product would be cumbersome and costly.

*Response 58:* The SNPR requires certifiers to match the correct certificate data to the correct product at the time of entry, so that the data can be used for targeting in CPSC's RAM. Furthermore, the SNPR proposes an effective date 120 days after publication of a final rule in the **Federal Register**. Therefore, FTZ users would have time to update their software after a final rule is issued. Alternatively, a certifier importing products from an FTZ could provide multiple certificates at entry that may apply to the product being imported, so that the certifier avoids the risk of having no certificate or providing an incorrect certificate.

#### Particular Consumer Products

##### L. Walk-Behind Power Mowers

*Comment 59:* Two commenters (C38, C78) claimed that the NPR contradicts the certification requirements for walk-behind power lawn mowers in 16 CFR part 1205. Commenters note that § 1205.35(a) states that the certificate shall be in the form of a durable label on the finished product and that § 1205.36(a) states that an importer can

rely in good faith on the foreign manufacturer's testing. Commenters requested that the current certificate requirements in 16 CFR part 1205 be retained, rather than the filing requirements of the NPR.

*Response 59:* As explained in response to comment 28, after the Commission issued 16 CFR part 1205 in 1979, Congress revised section 14(a)(1) of the CPSA, adding requirements for certification for all regulated consumer products. The on-product label certificate required in § 1205.35 remains, and is helpful for consumers to identify the product, certifier, and the production lot of the mower, in the case of a recall. However, the on-product certificate does not meet the statutory requirements for the form, content, and availability of certificates in sections 14(a) and (g) of the CPSA, or the Commission's rule in part 1110. For example, § 1205.35(b) does not contain all data elements required in CPSA section 14(g)(1) and proposed § 1110.11. Accordingly, the SNPR maintains the requirement that mowers subject to part 1205 must also meet the certificate requirements in part 1110, including eFiling. Importers can continue to rely on a foreign manufacturer's testing and/or certification to certify imported products pursuant to 16 CFR part 1109. Moreover, the Product Registry is designed to allow certifiers to give permissions to other trade partners to enter data or certify products on their behalf.

##### M. Textiles and Wearing Apparel

*Comment 60:* One commenter (C55), a clothing retailer, stated that creating certificates "guaranteeing" conformity with the Flammable Fabrics Act may not reflect true compliance, because vendors can alter test reports and certificates. Another commenter (C56) noted that third party testing and product certification are not required in the European Union for textile and clothing products. The commenter also adds that adult clothing manufactured in the United States is not subject to mandatory third party testing.

*Response 60:* Altering or falsifying a test report or certificate is a prohibited act under section 19(a)(6) of the CPSA, and likely a criminal act, as set forth in 18 U.S.C. 1001. Where the facts warrant, the Commission may refer criminal acts to the Department of Justice for prosecution.

Section 14(a)(1) of the CPSA requires certification for any product which is subject to a consumer product safety rule under any regulation enforced by the Commission. Therefore, clothing textiles require certification to the



applicable rules, irrespective of textile requirements in the European Union.<sup>18</sup>

*Comment 61:* Commenter (C56) requested that fabric tests based on the International Organization for Standards (ISO) standards and testing to EN597–1 (Furniture—Evaluation of Flammability of Mattresses and Upholstered Bed Bases) be considered suitable for the certification of mattresses subject to CPSC’s flammability requirements. The commenter suggested exempting silk from testing to 16 CFR part 1610, Standard for the Flammability of Clothing Textiles.

*Response 61:* Testing required to support a valid certificate under part 1110 is prescribed under the specific CPSC regulation to which the product is subject. What constitutes valid testing to support a required certificate, or qualifies as an exemption from the requirements of a regulation, is outside the scope of this rulemaking.

#### N. Architectural Glazing Materials

*Comment 62:* Two commenters (C25, C30) argued that the NPR should only apply to glazing materials and not to architectural products containing glazing materials. Commenters stated that manufacturers of the architectural products are already responsible for meeting the testing and certification requirements under 16 CFR part 1201. Additionally, these commenters asserted, the NPR would effectively amend 16 CFR 1201.5 without complying with the process requirements of the Administrative Procedure Act (APA).

*Response 62:* As noted, in 2008 Congress expanded the testing and certification requirements for regulated products in section 14 of the CPSA. The SNPR does not disrupt existing testing or certification requirements regarding who must test or certify products in 16 CFR part 1201. Section 1201.5(a) states that manufacturers and private labelers of glazing materials covered by part 1201 shall comply with the requirements of section 14 of CPSA and regulations issued under it. Like the existing part 1110, proposed § 1110.7(a) states that “[e]xcept as otherwise provided in a specific rule, ban, standard, or regulation enforced by CPSC, for a finished product manufactured outside of the United

States that must be accompanied by a certificate as set forth in § 1110.5, the importer must issue a certificate that meets the requirements of this part.” Proposed § 1110.7(b) contains a similar statement regarding domestically manufactured products. Thus, to the extent that finished products subject to part 1201 are imported for consumption or warehousing, or distributed in commerce, they should continue to follow the requirement in § 1205.5(a) regarding who should issue a certificate.

#### O. Bicycles

*Comment 63:* Two commenters (C40, C80) claimed that the bicycle industry does not have the resources to meet the certificate requirements and that there is no evidence that the additional burden would improve safety. Specifically, the commenters claimed the bicycle supply chain is not able to easily match bicycle components and accessories with particular certificates. In addition, one commenter (C40) suggested that certificates should not be required for bicycle replacement parts.

*Response 63:* Section 14(a)(1) of the CPSA requires certification for any product which is subject to a consumer product safety rule under any regulation enforced by the Commission. Certification is only required for component or replacement parts if they are sold as finished products to consumers and if they are subject to a regulation. If the component part itself is not required to be tested for compliance with any part of a regulation, as distributed in commerce, then no testing or certification is required.

#### P. Refrigerators

*Comment 64:* One commenter (C32) stated that the NPR would impose substantial administrative costs on household refrigeration manufacturers, yet few distributors or retailers request copies of certificates of conformity. The commenter also requested that 16 CFR part 1750 be included in a “cleanup list” for future legislative reform, because most modern refrigerators do not use latching mechanisms to hold the door closed.

*Response 64:* eFiling for refrigerators is justified by the considerations discussed in section II of this preamble. The request for refrigerators to be on a “cleanup list” for future legislative reform is outside the scope of this rule. However, in 2019, the Commission issued a statement of policy announcing that for household refrigerators that bear a safety certification mark indicating compliance with the Underwriters Laboratory Standard 60335–2–24,

Household and Similar Electrical Appliances—Safety—Part 2–24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers, CPSC will not enforce the requirement that every manufacturer issue and provide a GCC. 84 FR 37767 (Aug. 2, 2019). CPSC’s CATAIR, Tab B of Staff’s SNPR Briefing Package, explains how importers of refrigerators can file a “disclaim” with CBP to avoid an error for not filing a certificate PGA Message Set.

#### Q. Fireworks

*Comment 65:* Two commenters (C31, C61) stated the requirements set in the 2013 NPR are “virtually impossible” for fireworks, because these products are not serialized or lot-controlled.

*Response 65:* Certain fireworks are subject to CPSC regulation and must be certified under existing law, and those certificates must be based on a test of each product or upon a reasonable testing program. Certificate requirements are found in section 14 of the CPSA and part 1110, and have been in effect since 2008. We seek additional comment on how regulated fireworks meet this requirement now and how they can meet the eFiling requirement in the SNPR.

#### Analysis of Cost and Burden

##### R. Costs, Burden, the RFA and PRA

*Comment 66:* Several commenters (C14, C20, C32, C36, C40, C47, C55, C75) stated that the Paperwork Reduction Act (PRA) and Initial Regulatory Flexibility Analysis (IRFA) did not accurately estimate the impact of the NPR on businesses, especially for large importers and specific industries, and did not reflect publicly available business information. One commenter (C49) suggested that the rule’s requirements would be costly or otherwise detrimental to small businesses and the associated annual burden would be \$27,500 per firm rather than the estimated \$275.

Two commenters (C39, C51) suggested that CPSC is not correctly estimating the recordkeeping burden by failing to take into account a realistic number of entries, IT costs for importers, and costs to private labelers to implement new testing and certification processes. One commenter (C41) stated that the proposed five-year paperwork retention period is longer than the three-year requirement in some current rules and is not supported by data. The commenter claimed that the burden calculated for the GCC for the apparel industry does not consider

<sup>18</sup> Note that in 2016, the Commission issued enforcement discretion stating that no certificate is required for adult wearing apparel that falls within one of the testing exemptions in § 1610.1(d). <https://www.federalregister.gov/documents/2016/03/10/2016-04533/statement-of-policy-on-enforcement-discretion-regarding-general-conformity-certificates-for-adult>. Children’s wearing apparel that falls within § 1610.1(d) must still issue a certificate and claim the testing exemption.

retention of GCCs and supporting test reports.

*Response 66:* Tabs C and D of Staff's SNPR Briefing Package, and sections VI and VII of this preamble, contain revised RFA and PRA analyses for the revised part 1110 and the eFiling requirement. These analyses can be more specific now that the IT solutions are developed and have been tested. As explained in the updated analysis, the burden of the SNPR consists of a marginal increase in recordkeeping for some non-children's products from three to five years and an additional eFiling requirement for importers of regulated consumer products. The SNPR requires importers to eFile certificates each time a regulated product is imported, but this burden is small.

CPSC conducted an eFiling Alpha Pilot in 2016 with importers and brokers and determined the costs of eFiling were minimal. CPSC created a Product Registry, described in section II.D.4 of this preamble, which allows for one-time data entry for certificates that importers can reference each time the product is imported, without reentering data. The Product Registry also provides an IT solution for the storage and management of certificate data. No technological system is required other than a basic computer or laptop and an internet connection, which are normal business capital expenditures. No technical skills are required other than the ability to navigate the Product Registry website and fill out a series of web forms. Larger firms may invest in technology or processes to automate this process such as APIs or bulk data uploads to further reduce time burden. The PRA analysis in section VII of this preamble and Tab D of Staff's SNPR Briefing Package, estimates the burden of eFiling, including the time and cost burden for firms that may elect to automate data upload into the Product Registry. As explained in Tab C of Staff's SNPR Briefing Package, CPSC does not expect that the proposed rule would significantly impact small manufacturers and importers. Over time, moreover, the new eFiling requirement should reduce burden for importers who eFile compliant certificate data. Staff anticipates that additional certificate data will allow for better targeting of shipments with potentially hazardous products. Importers who file compliant certificate data may see a reduction in their risk scores, which may result in a reduced number of shipments placed on hold and examined and shorter wait times associated with exams.

*Comment 67:* A few commenters (C39, C42, C46, C79) expressed concern that

brokers and importers would have technical challenges implementing the rule, leading to costs for infrastructure upgrades and programming/software development. Commenters asserted that linking their IT systems with the brokers' IT systems would cost between \$30,000 and \$500,000. In addition, commenters stated that increasing the number of data fields will incrementally increase the cost for the certifier and thus consumers. The commenters also expressed concern that importers and their supply chain partners will incur costs in creating new electronic certificates.

*Response 67:* The commenters' concerns have been addressed by use of the existing PGA Message Set structure and the creation of the Product Registry, which can be used to create, store, and transmit certificates. The only interface requiring more than basic technical knowledge is the API interface, which CPSC is not mandating be used. However, firms that do choose to use this function would experience efficiency gains and time savings.

*Comment 68:* Several commenters (C33, C43, C61, C80) expressed concern over the asserted complexity of filing certificates for multiple products within a shipment and the resulting burden, delays, duplication, and supply chain disruptions. Commenter (C21) stated that CPSC is underestimating the numbers of shipments per importer and the number of certificates required per shipment.

*Response 68:* As described in section II.D of this preamble, to reduce cost and burden, CPSC developed the Product Registry, which allows importers to enter certificates prior to filing entry. Importers can reference a certificate stored in the Product Registry in a short PGA Message Set at Entry each time the product is imported. CPSC tested this concept in 2016 in the eFiling Alpha Pilot. During the eFiling Alpha Pilot, multiple certificates were successfully filed for a single entry. CPSC learned that importers that used the Product Registry were able to re-use certificates multiple times, alleviating potential burden from re-entering certificate information. The Commission's burden estimate reflects this efficiency.

*Comment 69:* One commenter (C49) claimed that CPSC and Congress use different definitions for small entities.

*Response 69:* CPSC applies the definitions for small businesses as prescribed in the Small Business Regulatory Enforcement Fairness Act. Additionally, CPSC uses the definition for Small Business Manufacturer as found under section 14(i)(4) of the CPSA.

Comments Regarding Justifications for the Proposed Requirements

#### *S. Alleged Rulemaking Defects*

*Comment 70:* Many commenters (C14, C23, C35, C36, C39, C40, C46, C61, C64, C71, C76) alleged that the NPR's proposal was burdensome and unnecessary and that the Commission failed to identify sufficient evidence that the eFiling proposal would enhance targeting of violative products or improve safety.

*Response 70:* CPSC explained in the 2013 NPR that the CPSA allows CPSC to require eFiling with CBP by rule, and that CPSC would use certificate data to target noncompliant, imported consumer products. *See, e.g.,* 78 FR 28088–89. The preamble to this SNPR provides additional detail of the efforts in outreach, education, pilots, study, and infrastructure investment that have occurred over the last ten years to refine how importers will file certificate data, provide burden reduction options for importers, and demonstrate how CPSC will use the data to target noncompliant shipments. CPSC has also updated the burden estimate for this rule, demonstrating that eFiling for importers that are compliant with existing certificate requirements will not have a significant economic impact on industry. Finally, the efficiencies gained by using technology will not only improve enforcement of individual certificate violations, but also aid in the identification of noncompliant, hazardous shipments. eFiling will allow CPSC to use its staff assigned to ports more efficiently to focus on examinations of noncompliant shipments.

*Comment 71:* A commenter (C71) stated that by establishing two types of certificates (the GCC and CPC), the NPR goes beyond the authorization of the CPSA.

*Response 71:* CPSC is implementing the testing requirements in section 14 of the CPSA, which creates this distinction. CPCs for children's products must be supported by third party testing, whereas GCCs for non-children's products must be based on a test of each product or a reasonable testing program; third party testing is not required for GCCs. Other than the type of testing required to support the certificate, all data elements on GCCs and CPCs are the same.

*Comment 72:* Several commenters (C21, C71, C50, C61) stated that the proposed requirement to file certificates with CBP diverges from the intent of Congress as expressed in CPSA section 14(g)(4) and poses a substantial burden to importers.

*Response 72:* Section 14(g) sets forth minimum content requirements that CPSC may implement and expand through rulemaking, and section 14(g)(4) expressly allows CPSC to require eFiling with CBP by rule. The Certificate Study demonstrated that certifiers fulfill certificate data requirements in a variety of ways; but to use certificate data for algorithmic targeting, CPSC must standardize the presentation of this information. Thus, CPSC is clarifying expectations for standardized certificate data, which is consistent with CPSC's authority in sections 3 and 14 of the CPSA, and with notice and comment rulemaking under section 553 of the APA.

Since 2013, moreover, CPSC has developed the Product Registry with substantial input from importers that is on-going in the Beta Pilot, to ease burdens on industry and assist in standardization of the format and content of certificate data for imported products.

Additionally, since 2013 CBP completed ACE development as the "single window" for Federal agencies to collect required data at entry. CBP has now implemented the PGA Message Set, which is attached to an entry; CPSC will use this now well-developed method to receive certificate data, as contemplated by the statutory framework for imported products.

*Comment 73:* Many commenters objected to requiring certificates for products that are either subject to a ban or have a testing exemption, stating that CPSC does not have the authority to require certificates for products that do not require testing. One commenter (C23) stated that "negative" certificates would be especially complicated when children's products have many component parts subject to different rules, alleging that the CPSA does not authorize the CPSC to issue a rule requiring a finished product certifier to list each component in a children's product and require separate product safety rule certification of each component part. Commenter C22 suggested that the proposal would require certifiers to list every rule that a product is not subject to, or risk enforcement. Two commenters (C41, C47) noted previous CPSC guidance (Statement of Policy: Testing and Certification of Lead Content in Children's Products, and Statement of Policy: Testing of Component Parts With Respect To Section 108 of the Consumer Product Safety Improvement Act) and an FAQ stating: "If, however, your children's product is wholly composed of components that satisfy the determinations and/or satisfy the

determinations on inaccessibility, and there are no other applicable children's product safety rules, then you do not have to issue a children's product certificate."

*Response 73:* Section 14 of the CPSA requires that certificates list all *applicable* rules, bans, standards, and regulations. Accordingly, all finished product certificates, including children's products, must list all applicable rules, bans, standards, and regulations. 15 U.S.C. 2063(a)(1)(B). The certificate is attesting that the product was tested to these rules and passed. Where multiple rules apply, as may be the case with children's products, for example, the certificate should list all applicable rules; the testing information where testing was required and successfully conducted under the listed rules; and any exceptions or exemptions that apply under the listed rules.

CPSC recognizes several types of testing and/or certificate "exceptions" or "exemptions." To address the issues raised by the commenters, proposed § 1110.11(c) is now prefaced with "[u]nless otherwise provided by the Commission," the certifier should replace the lab place and date with the testing exclusion code. This phrase is intended to encompass any existing or future Commission enforcement discretion or other policy statements that provide testing or certification guidance. Therefore, as stated in the quoted FAQ, the Commission will not require certificates for products that are subject to Commission enforcement discretion or are otherwise wholly exempt or excluded from testing.

Importers will use CBP's "disclaim" feature for non-regulated products within CPSC's jurisdiction and for products that are regulated but do not require certification. CPSC's CATAIR explains how to file a "disclaim" in a PGA Message Set for products such as adult wearing apparel and refrigerators that are not required to issue a certificate based on the Commission's enforcement discretion. Using CBP's "disclaim" option reduces burden for importers by not requiring a certificate and allows CPSC to capture data on why an importer did not file the expected certificate data.

Tab B of Staff's SNPR Briefing Package, and the Commission's website (<https://www.cpsc.gov/eFiling>) provide CPSC's CATAIR detailing how these exemptions and exceptions are addressed by the eFiling requirement, as well as a list of all exemption/exception codes being tested during the Beta Pilot. The Product Registry will also assist importers to understand the available testing exemption/exception codes

using drop down menus. CPSC encourages certifiers to review this information and submit comments on the proposed implementation of this requirement. Domestic manufacturers can also use this information to understand certificate requirements and how testing exemptions or exclusions should be noted on a certificate.

Finally, the 2013 NPR discussed the issues involved in certifying to a ban, discussing that some bans do not remove an entire product category from the market, rather, they ban certain hazardous product characteristics. 78 FR 28080. The Commission's website contains a list of product safety rules, bans, standards, and regulations that require certification in a GCC.<sup>19</sup>

*Comment 74:* A commenter (C74) stated that certificates should be required at manifest and provide only those elements included in the importer security filing requirements.

*Response 74:* Manifest occurs at an earlier import stage than entry. CBP has now finalized using the PGA Message Set to collect data required by PGAs. The PGA Message Set is tied to filing CBP's entry. Accordingly, CPSC will use this existing infrastructure to establish an eFiling requirement for certificates.

*Comment 75:* Commenter C7 suggested requiring a full certificate at customs entry would create differential treatment between imports and domestically produced goods. Another commenter (C56) pointed out Article 5.1.2. of the World Trade Organization's Technical Barriers to Trade (TBT) Agreement, stating that conformity assessment procedures should not be adopted or applied with the effect of creating unnecessary obstacles to international trade, and should not be applied more strictly than necessary to importers.

*Response 75:* The SNPR does not impose different testing or data element requirements on certificates for imported products. Unless otherwise provided by the Commission, all finished products or substances regulated by CPSC are required to be tested and certified as compliant, regardless of whether products are manufactured within the United States or imported. Regarding the eFiling process, CPSC's economic analysis demonstrates that for compliant importers, the PGA Message Set requirement will not have a significant impact on small (or large) importers, and thus the requirement should not create an obstacle to trade.

<sup>19</sup> <https://www.cpsc.gov/Business-Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Requiring-a-General-Certificate-of-Conformity>.

*Comment 76:* The EU requested that the CPSC supply additional information on the rationale for imposing third party testing requirements for the flammability of children's clothing and apparel.

*Response 76:* The SNPR does not require third party testing of the children's clothing and apparel standards set forth in 16 CFR part 1610. Rather, 15 U.S.C. 2063(a)(2) and 16 CFR part 1107 require third party testing to all children's product rules. Part 1107 has been in effect for more than 10 years.

#### IV. Description and Explanation of Proposed Revisions to Part 1110

Below we explain the basis for the SNPR to amend the current 1110 rule and describe the provisions of the current rule, proposed revisions in the 2013 NPR, and how the 2023 SNPR either retains or changes the 2013 proposals. Because of the number of changes, the Commission proposes to strike and replace the existing 1110 rule in its entirety, as described below.

##### A. Purpose and Scope (§ 1110.1)

*Current rule:* Existing § 1110.1 describes the purpose and scope of the rule, explaining that the rule limits the entities required to issue certificates; specifies the content, form, and availability of certificates; and specifies the form of electronic certificates. 16 CFR 1110.1(a). Existing § 1110.1(b) explains that the rule does not implement eFiling certificates with CBP under section 14(g)(4) of the CPSA.

*2013 NPR:* The 2013 NPR proposed to increase the number of entities responsible for issuing certificates, stating that the purpose was to "specify" the entities that must issue certificates. Proposed § 1110.1(b) explained that the rule would implement section 14(g)(4) and require certificates for imported products to be eFiled with CBP. 78 FR 28081. The proposed changes also would clarify which provisions in part 1110 apply to voluntary component part certificates.

*2023 SNPR:* The SNPR maintains the scope proposed in 2013, with non-substantive editorial changes.

##### B. Definitions (§ 1110.3)

*Current rule:* This section of part 1110 defines "electronic certificate" as "a set of information available in, and accessible by, electronic means that sets forth the information required by CPSA section 14(a) and section 14(g) and that meets the availability requirements of CPSA section 14(g)(3)" and states that definitions of section 3 of the CPSA and

additional definitions in the CPSIA apply to part 1110.

*2013 NPR:* The 2013 NPR added 13 new definitions to introduce concepts and terms used in the 1107 and 1109 rules and to clarify the requirements of part 1110. 78 FR 28081–82.

*2023 SNPR:* The SNPR maintains the additional terms proposed in the 2013 NPR, adds several more terms, and revises several definitions. Newly defined terms include: "eFiled certificate," to differentiate an electronic certificate from a certificate that is submitted to CBP in a PGA Message Set, and "Product Registry," to describe the CPSC-maintained repository for certificate data. The SNPR revises several definitions to better describe the types of merchandise under CPSC's jurisdiction, which includes not only consumer products, but also hazardous substances. The SNPR replaces the term "General Conformity Certificate" with "General Certificate of Conformity," because the latter is the statutory term.

The SNPR broadens the definition of "importer" to include any entity CBP allows to be an importer of record (19 U.S.C. 1484(a)(2)(B)). Proposed § 1110.3 also defines additional terms to develop the revised definition of "importer" in the SNPR, such as "importer of record," "consignee," and "owner or purchaser." These definitions are based on CBP's definitions, found in 19 CFR 101.1 and Customs Directive 3530–002A, with slight changes to reflect CPSC's purposes.

The 2013 NPR proposed to codify the existing policy of placing the obligation to test and certify consumer products and substances on the IOR. In response to comments on the NPR and staff's experience with enforcement, the SNPR broadens the definition of "importer" beyond the IOR to allow a party familiar with the products with a beneficial ownership in the goods to be the importer responsible for testing and certification. The revised definition of "importer" includes the IOR, consignee, owner, or purchaser, which are typically all parties that have a financial interest in the products or substances being imported, and effectively caused the consumer product to be imported into the United States. The private labeler, which could certify a privately labeled product, is also included under this proposed definition, because a private labeler can be the consignee, owner, or purchaser.

##### C. Products Required To Be Certified (§ 1110.5)

*Current rule:* The current § 1110.5 states what is an acceptable form for certificates. In the existing rule, the

Commission sought to allow "electronic certificates" to ease the burden of placing paper copies of certificates in a shipping container or box. Accordingly, the existing rule explains that a certificate that is in hard copy or electronic form and complies with all applicable requirements of part 1110 meets the certificate requirements of section 14 of the CPSA. The existing rule states that the importer or domestic manufacturer must also meet the underlying statutory requirements to support a certificate, meaning the required testing and/or other bases to support certification and issuance of certificates.

*2013 NPR:* The 2013 NPR proposed to revise § 1110.5 to state when a certificate is required, clarifying that only finished products 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, that are imported for consumption or warehousing, or are distributed in commerce, need to be accompanied by a certificate. This is a restatement of the statutory requirement. Use of the term "finished product" in the 2013 NPR clarified that component parts of a consumer product are not required to be certified; the 1109 rule allows for voluntary component part testing and/or certification, but testing or certification of component parts not intended to be offered for sale as finished products is never required. 78 FR 28082–83.

The 2013 NPR also explained when banned products are required to be certified, stating that bans "generally remove the subset of products with hazardous characteristics, but still leave some products subject to CPSC regulation. In sum, manufacturers of products in a category where a subset of the products are subject to a ban must still issue certificates." 78 FR 28082. The 2013 NPR provided a list of bans for which a GCC certifying compliance is required. 78 FR 28083. This list is also maintained on CPSC's website at <https://www.cpsc.gov/Business-Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Requiring-a-General-Certificate-of-Conformity>.

*2023 SNPR:* The SNPR retains proposals in the 2013 NPR clarifying that a certificate is required only when: (1) the product is a finished product; (2) the product 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) the product is imported for consumption or warehousing, or is distributed into commerce.

#### *D. Who Must Certify Finished Products (§ 1110.7)*

**Current Rule:** Section 1110.7 of the existing rule states that, except as otherwise provided in a specific standard, for products manufactured outside the United States the importer is required to certify the product and provide a certificate, as required by section 14(a) of the CPSA. Certificates must be available to the Commission as soon as the product is available for inspection in the United States. For products manufactured in the United States, the manufacturer must certify products and provide the required certificate. Certificates must be available prior to the introduction of the product or shipment into domestic commerce.

**2013 NPR:** Section 1110.7 of the 2013 NPR continued to require that, unless a specific rule states otherwise, importers certify imported products, except for products that are delivered directly to consumers in the United States, such as products purchased through an internet website. For products delivered directly to a consumer, the Commission proposed that the foreign manufacturer be required to issue a certificate, unless the product bears a private label, and then the private labeler would be required to issue a certificate. Thus, the 2013 NPR would have placed on a private labeler the responsibility for ensuring testing and certification of privately labeled products, either by testing and certifying the product, or by ensuring that the manufacturer has done so. The proposed revision clarified that the consumer would not typically be responsible for certifying a product, even if the consumer could technically meet the definition of an “importer” under a direct-purchase scenario. 78 FR 28083–84.

For finished products manufactured in the United States that are required to be certified, the 2013 NPR maintained the requirement that, unless a specific rule requires otherwise, a manufacturer must issue the certificate. But, as with imported products, the 2013 NPR placed testing and certification responsibility for domestically manufactured, privately labeled products on the private labeler. The 2013 NPR allowed private labelers to continue to rely on a manufacturer’s certification if they choose to do so and follow the requirements in part 1109. *Id.*

**2023 SNPR:** For imported consumer products that require testing and certification, the SNPR retains requirements from the existing rule, rather than the changes proposed in the 2013 NPR. The SNPR requires that, unless a specific rule states otherwise,

only importers, as newly defined, must issue a certificate for imported products. However, a private labeler could assume responsibility for certifying an imported product under the SNPR, because a private labeler would fall within the definition of a consignee, owner, or purchaser of the goods under the new importer definition proposed in § 1110.3.

For domestically manufactured finished products, the SNPR maintains the 2013 NPR proposal that, unless otherwise required in a specific rule, the manufacturer must issue the certificate, except for consumer products or substances that are privately labeled. When a product is privately labeled, a manufacturer name does not appear on the product. Accordingly, for such products, placing responsibility on the private labeler is both pragmatic and appropriate. However, the SNPR proposes to allow private labelers to continue to rely on a manufacturer’s testing or certification if they choose to do so. Importantly, if a manufacturer’s name appears on a product, the product is not privately labeled under the definition in section 3 of the CPSA, 15 U.S.C. 2052(a)(12), and the manufacturer would be required to test and certify the product.

The SNPR moves the requirement regarding the availability of certificates for imports and domestic products, found in § 1110.7(c) of the existing rule, to proposed § 1110.13.

#### *E. Certificate Language and Format (§ 1110.9)*

**Current Rule:** Section 1110.9 of the existing rule provides that certificates may be in hard copy or electronic form and must be provided in English but also may be provided in any other language.

**2013 NPR:** The 2013 NPR maintained the two requirements in the existing rule with minor edits. The 2013 NPR continued to allow a broad range of formats for electronic certificates, as long as the certificate is identified by a unique ID and can be accessed online via a URL or other electronic means. The 2013 NPR proposed that the unique ID be “identified prominently on the finished product, shipping carton, or invoice.” The 2013 NPR discussed that experience with electronic certificates had shown that they can be effective when they are easily accessible. 78 FR 28084–85.

The 2013 NPR proposed that electronic certificates be available without password protection, stating that the number of manufacturers, private labelers, and importers that certify products could make the

maintenance of password information burdensome on CPSC and diminish the efficiencies achieved by allowing electronic certificates. 78 FR 28085. The 2013 NPR also clarified that electronic certificates, the URL or other electronic means, and the unique ID must be accessible to the Commission, CBP, distributors, and retailers “on or before the date the finished product is distributed in commerce.” *Id.*

Finally, the requirements for electronic certificates in the 2013 NPR only applied to: products manufactured in the United States; foreign-manufactured products that are delivered directly to a consumer in the United States; certificates furnished to retailers and distributors; and imported finished products after importation, such as when requested by CPSC or CBP. 78 FR 28084. The 2013 NPR specifically excluded certificates filed with CBP from the electronic certificate requirements in this section, because certificates eFiled with CBP would likely require different formatting based on CBP’s system of records. *Id.*

**2023 SNPR:** The SNPR retains most of the language proposed in the 2013 NPR with several changes for clarity. Proposed § 1110.9 (a) states that an eFiled certificate must be in English. Certificate data eFiled in an IT system built by CBP, or uploaded into CPSC’s Product Registry, must be in English based on system design. Proposed § 1110.9 (a) provides that a hard copy or electronic certificate must be in English, but may also contain the same content in any other language.

Proposed § 1110.9(b) clarifies the formats for eFiled and for hard copy and electronic certificates. The SNPR proposes that an eFiled certificate must meet the requirements in proposed § 1110.13(a), and that certificates furnished to retailers, distributors, or to CPSC pursuant to § 1110.13(b) and (c) may be provided in hard copy or electronically.

Proposed § 1110.9(c) describes the format for the electronic certificates described in § 1110.13(b) and (c), which are used to furnish a certificate to retailers or distributors, or to CBP or CPSC upon request. Based on the agencies’ IT development and comments received, the SNPR removes the provision that an electronic certificate must not be password protected. eFiled certificates will be filed into a government IT system with appropriate protections. However, if an importer provides a password protected electronic certificate to CPSC or CBP, the password must be provided to the relevant agency at the same time.

#### F. Certificate Content (§ 1110.11)

**Current Rule:** This section of the existing rule identifies the statutorily required seven data elements that must be present on all certificates: (1) information identifying the product covered by the certificate; (2) a list of all applicable rules for which the product is being certified; (3) the name, full mailing address, and telephone number of the importer or domestic manufacturer certifying the product; (4) the name, email address, full mailing address, and telephone number of the individual maintaining records of test results; (5) the date (minimally, the month and year) and place (including city and state, country, or administrative region) of manufacture; (6) the date and place (including city and state, country, or administrative region) where the product was tested; and (7) the name, full mailing address, and telephone number of the laboratory that conducted any required third party testing.

**2013 NPR:** The 2013 NPR proposed to clarify and expand upon the existing seven data elements and to add three new data elements that would assist in identifying the products covered by the certificate. 78 FR 28085–88. It clarified that additional identifying information for products may be included on a certificate, such as UPCs and GTINs. 78 FR 28085. The NPR allowed more than one product on a certificate, provided they were created at the same factory and relied upon the same testing. *Id.* The 2013 NPR also proposed to modify certificate content requirements to allow for certificates to cover finished products or component parts. Accordingly, the NPR proposed to require finished product certificates to list all applicable rules, while component part certificates would list only those rules for which the component part is being certified (because certifiers of component parts can choose which standards to test and certify to, and they may not know all of the standards that eventually may apply to the component part when it is integrated with a finished product). 78 FR 28086.

The three proposed new content requirements for certificates were date of initial certification, scope of the certificate, and attestation certifying compliance. The existing rule requires the date of initial certification, but it only applies to electronic certificates. Proposed § 1110.11(a)(2) of the NPR sought to ensure that all certifiers are using the same date on certificates. 78 FR 28086. Proposed § 1110.11(a)(3) sought to require the scope of the finished product or component part for

which the certificate applies, so that CPSC can better match a certificate to a product. 78 FR 28086. Finally, to educate certifiers of their legal obligations, proposed § 1110.11(a)(10) required an attestation certifying compliance indicating that the information provided by the certifier is true and accurate. 78 FR 28087.

The 2013 NPR also proposed in § 1110.11(b), (c), and (d), to describe more fully the requirements for certificate formats. 78 FR 28088. Proposed § 1110.11(b) would allow, but not require, the certifier to include a URL or other electronic means on the certificate, along with identification of the custodian of records, to allow for electronic access to supporting records such as test records. Proposed § 1110.11(c) described what certifiers must do when a product is subject to more than one consumer product safety rule, and the certifier is claiming a testing exception for some, but not all, of the applicable rules. Proposed § 1110.11(d) clarified that although each applicable rule must be listed on a certificate, finished product certifiers are not required to conduct duplicative third party testing for any rule that refers to or incorporates fully another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission. 78 FR 28088.

**2023 SNPR:** The SNPR requires the seven statutory data elements in the existing rule, and includes only one of the three additional requirements proposed in the 2013 NPR—attestation. However, the SNPR provides additional detail on the required data elements. Below we describe each data element proposed in § 1110.11(a) of the SNPR.

##### *Product Identification*

(§ 1110.11(a)(1)): The SNPR proposes to require identification of the finished product covered by the certificate, including at least one unique ID from a list of seven options and a sufficient description to match the finished product to the certificate. Certifiers may provide optional additional IDs to assist with product identification. The SNPR would clarify that “identification” means a unique ID is necessary for eFiling, so that certificates can be better tracked in the Product Registry and RAM. CPSC expects that it would be easier for importers to provide a unique ID that already exists for the product as allowed by the SNPR, instead of having certifiers manage an additional identifier assigned by CPSC but invites comment on this question.

The SNPR also proposes to expand the term “description” from the 2013 NPR to mean a “sufficient description to

match the finished product to the certificate.” Currently, the description in a certificate is sometimes insufficient to enable CPSC staff to determine whether the certificate describes the product being examined.

##### *List of Applicable Rules*

(§ 1110.11(a)(2)): The SNPR would retain without change the requirement in the existing rule and the 2013 NPR to provide a list of all applicable rules to which the product is being certified. The eFiling system makes this requirement easier for certifiers because CPSC will provide a standardized list of all rules, each assigned a code. When eFiling certificate data, the certifier would only need to select from these codes, either in the Full Message Set or in the Product Registry.

##### *Identification of Certifier*

(§ 1110.11(a)(3)): The SNPR would maintain the requirement from the 2013 NPR to identify the party certifying compliance of the finished product(s), including the party’s name, street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number. Adding a more specific street address interprets the statutory requirement for a “full mailing address,” and would assist staff in distinguishing facilities or locating certifiers for site visits. If a certifying party’s physical location does not have a street address, then a location identification typical of the country of origin, or a GPS coordinate, is also permissible. We also retain the proposal to include an email address, which is intended to improve communication between CPSC and the certifying party, particularly across time zones.

##### *Contact for Records (1110.11(a)(4)):*

The SNPR proposes to maintain the requirement from the existing rule and 2013 NPR to provide the identity and contact information for the individual maintaining records of test results. As with the certifier’s contact information, the SNPR describes in more detail the concept of a “full mailing address” to include “street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number.” The 2013 NPR also referenced the recordkeeping sections of the Code of Federal Regulations that apply to GCCs and CPCs, which the SNPR maintains.

The SNPR clarifies that the individual maintaining records may be a position title, provided that this position is always staffed and responsive to CPSC’s requests. This change is in response to public comments concerned that the individual maintaining the records of test results may leave the company or

otherwise be unavailable, and that a position title would provide continuity.

**Manufacture Date and Place (1110.11(a)(5)):** The SNPR would maintain the requirement from the existing rule to provide the date when the finished product(s) were manufactured, produced, or assembled. The first date of a batch run is the date of manufacturing. The SNPR also maintains the statutory requirement from the existing rule to provide the place where the finished product(s) were manufactured. The SNPR aligns the manufacturer information with the other data elements regarding contact information, proposing to require the manufacturer name, street address, city, state or province, country or administrative region, email address, and telephone number where the finished product(s) were manufactured, produced, or assembled. This requirement is consistent with section 14(g)(1) of the CPSA which requires “each party’s name, full mailing address, [and] telephone number.” CPSC proposes to require additional manufacturer detail, for eFiling in particular, because staff has experienced situations where it is difficult to distinguish between multiple firms with similar addresses and contact the correct manufacturer. If a location does not have a street address, a location identification typical of the country of origin or a GPS coordinate is permissible.

**Test Date and Place (1110.11(a)(6)):** The SNPR would maintain the requirement from the existing rule to provide the date when the finished product(s) were tested for compliance. The SNPR, however, amends this requirement to clarify that the required date is the most recent date of testing. This change is to aid CPSC in assessing the validity and integrity of a certificate, and to promote consistency across certificates for CPSC and certifiers, particularly where laboratory testing is done over several days.

The SNPR maintains the requirement from the existing rule to provide the place where the finished product(s) were tested for compliance. The SNPR standardizes the contact information required, including the name of each third party conformity assessment body or other party on whose testing the certificate depends, and the street address (or locally comparable location identification), city, state or province, country or administrative region, email address, and telephone number. The SNPR requires an email address, so staff has another means of contacting the testing laboratory.

**Attestation (§ 1110.11(a)(7)):** The SNPR proposes to maintain the requirement from the 2013 NPR to provide an attestation certifying compliance, indicating that the information provided by the certifier is true and accurate and that the certified product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission. We note that the Product Registry contains a certifier attestation and also allows an importer to designate third parties that can enter certificate information and certify on behalf of the importer, if such permission is granted. The importer remains responsible for the information provided to CPSC, making an attestation by each party entering information important to maintain accountability for the information.

The SNPR does not include two proposals from the 2013 NPR: the date of initial certification and the scope of the finished product(s) covered by the certificate. Based on revisions to the identification of the product, and manufacture and test dates, the proposed new fields are now unnecessary because CPSC will know the date of laboratory testing and the date the certificate was filed. Similarly, the proposed product identification requirement of at least one unique ID and a “sufficient description to match the finished product to the certificate” makes it unnecessary to have a statement of the scope of the finished product(s). However, the SNPR would allow certifiers to provide production start and end dates and lot numbers as optional fields.

Furthermore, the SNPR retains the proposal in § 1110.11(b) of the 2013 NPR for a certificate to optionally include a URL or other electronic means, along with the identification of the custodian of records, to allow for electronic access of supporting records, such as test records. If certifiers provide this information, staff can more easily confirm the veracity of the certificate. The SNPR contains minor clarifications that specify the sections of the CFR containing the recordkeeping requirements for supporting records.

The SNPR also retains the proposal in § 1110.11(c) of the 2013 NPR for certifiers to list all claimed testing exclusions, instead of providing the date and place where the product was tested for compliance. The Product Registry lists all available exclusions for each rule, streamlining and standardizing how to record these exclusions. These exclusions will also be maintained on CPSC’s website for use in a Full PGA

Message Set. The SNPR does not keep the proposal to include the basis for each exclusion, because this is resolved by stating the testing exclusion. Many certifiers already list their testing exclusions, so this requirement will standardize the process for all certifiers. Furthermore, this requirement would only be relevant when the product is subject to a product safety rule. If no product safety rule or similar rule, ban, standard, or regulation applies, or the product is subject to enforcement discretion (such as adult wearing apparel relying on § 1610.1(d), which only requires a disclaimer), then no certificate would be required.

Finally, the SNPR retains the proposal in § 1110.11(d) regarding duplicative testing. The SNPR states that certifiers are not required to conduct duplicative testing for any rule that refers to, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission. This proposal is maintained for the same reasons stated in the 2013 NPR, to reduce burden for certifiers.

#### G. Certificate Availability (§ 1110.13)

**Current Rule:** Section 1110.13(a) of the existing rule restates the statutory requirement in section 14(g)(3) of the CPSA that certificates must “accompany” each product or product shipment and be furnished to distributors and retailers. Section 1110.13(a)(1) and (2) explains how electronic certificates satisfy the “accompany” and “furnish” requirements of that section, and § 1110.13(b) states that an electronic certificate must have a means to verify the date of its creation or last modification.

**2013 NPR:** The 2013 NPR proposed to move the requirements for electronic certificates to proposed § 1110.9(c), while proposed § 1110.13 addressed when certificates had to “accompany” a product or product shipment, be “furnished” to retailers or distributors, and be “furnished” to CPSC and CBP. The 2013 NPR also proposed that certificates be eFiled with CBP prior to arrival of an imported product, as authorized in section 14(g)(4) of the CPSA. 78 FR 28088.

Proposed § 1110.13(a)(1) of the 2013 NPR stated that for imported products to meet the “accompany” requirement, importers must eFile certificates with CBP, either when the entry is filed, or when the entry and entry summary are



filed, if they are filed together.<sup>20</sup> The NPR explained that only finished products would require certification, and that certificates filed in the form of data elements would allow more efficient targeting. 78 FR 28089. The 2013 NPR acknowledged that, at that time, CBP was not yet able to collect PGA data. 78 FR 28089.

Proposed § 1110.13(a)(2) of the 2013 NPR required that for finished products manufactured domestically to meet the “accompany” requirement, the finished product certifier must make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce. 78 FR 28089.

Proposed § 1110.13(a)(3) of the 2013 NPR stated that for imported finished products that are required to be certified and that are delivered directly to a consumer in the United States, the finished product certifier could either eFile the certificate with CBP, or they could make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce. In the case where no entry is filed, a finished product certifier could meet the “accompany” requirement either by placing a hard copy of the certificate in the box with the product or by following the requirements for an electronic certificate. 78 FR 28089.

Proposed § 1110.13(b) of the 2013 NPR restated the statutory requirement in section 14(g)(3) of the CPSA that finished product certificates be furnished to distributors and retailers. Proposed § 1110.13(c) of the NPR added a new section reflecting the requirement in section 14(g)(3) that certificates must be furnished to CPSC and CBP upon request. The proposal states that certificates be made available immediately upon request by the CPSC or CBP. The preamble to the 2013 NPR defined the term “immediately” to mean “within 24 hours,” as it has been interpreted by CPSC in other rules. 78 FR 28089.

**2023 SNPR:** The SNPR retains some of the 2013 NPR’s proposals and amends others. Now that the IT solutions are available and more fully developed, proposed § 1110.13(a) in the SNPR points to a CPSC-specific CATAIR and Product Registry that contain the IT solutions for eFiling. Thus, for example, the SNPR does not retain a separate “accompany” requirement for imported finished products that are delivered

directly to a consumer in the United States, but rather provides for collecting these certificates electronically.

Like the 2013 NPR, proposed § 1110.13(a) explains that a finished product certificate must accompany each finished product or finished product shipment required to be certified pursuant to § 1110.5. Additionally, § 1110.13(a) requires that each certificate describe a single product. One product per certificate allows the RAM to conduct risk analysis on unique products in a shipment, which allows better targeting of potentially violative products and avoids delaying delivery of products in a shipment that do not warrant examination.<sup>21</sup>

Proposed § 1110.13(a)(1) of the SNPR states that GCC or CPC data elements for an imported product must be eFiled in ACE at the time of entry filing, or entry summary, if both are filed together, and as provided in CPSC’s CATAIR (and discussed in Tab B of the Staff SNPR Briefing Package). The requirement applies to all imported finished products subject to a CPSC regulation, including *de minimis* shipments and products imported from an FTZ. The SNPR also explains that for finished products that are imported by mail, the finished product certifier must enter the required GCC or CPC data elements into CPSC’s Product Registry prior to the product or substance arriving in the United States.

Proposed § 1110.13(b) of the SNPR maintains the statutory requirement from the 2013 NPR to “furnish” a required CPC or GCC to each distributor or retailer. Proposed § 1110.13(c) of the SNPR maintains the statutory requirement to make certificates available for inspection immediately upon request by CPSC or CBP. To be clear regarding the expectation, the SNPR proposes in the regulation text that “immediately” means within 24 hours. The 2013 NPR stated this in the preamble.

#### *H. Legal Responsibility for Certificate Information (§ 1110.15)*

**Current Rule:** Current § 1110.15 states that another entity may maintain an electronic certificate platform, but the certifier is still responsible for ensuring its validity, accuracy, completeness, and availability.

**2013 NPR:** The 2013 NPR maintained the requirement in the existing rule with slight edits. 78 FR 28090.

**2023 SNPR:** Proposed § 1110.15 of the SNPR maintains the NPR requirement, but proposes that the entity that maintains an electronic certificate platform and enters the requisite data into U.S. Government systems on behalf of the certifier may also certify the product(s) on the certifier’s behalf. This addition accommodates diverse relationships between certifiers and their trade partners to better facilitate trade. The SNPR maintains accountability for certifiers, who are ultimately responsible for testing and certification. Certifiers will have the ability in the Product Registry to manage permissions for trade partners to enter data and/or to certify products, including managing the roles of specific individuals who enter data or certify products on the certifier’s behalf. Certifiers should exercise due diligence if they allow another entity to certify on their behalf.

#### *I. Recordkeeping Requirements (§ 1110.17)*

**Current Rule:** The current rule does not contain recordkeeping requirements.

**2013 NPR:** The 2013 NPR proposed a new § 1110.17 to establish recordkeeping requirements. 78 FR 28090. For CPCs, the 2013 NPR summarized the existing recordkeeping requirements in other rules that apply to CPCs, including §§ 1107.26, 1109.5(g), and 1109.5(j), all of which have a five-year record retention period based on the applicable statute of limitations. The 2013 NPR proposed to align the record retention requirements for GCCs with those for CPCs, such that certifiers would maintain the certificate and supporting test records for at least five years. 78 FR 28090. The NPR explained that maintenance of such records may, for example, aid both the certifier and the Commission in the event of an investigation or product recall. *Id.*

**2023 SNPR:** Proposed § 1110.17 of the SNPR maintains the recordkeeping requirement from the 2013 NPR. CPCs have a five-year record retention period based on the 1107 and 1109 rules and the statute of limitations for enforcement.

#### *J. Component Part Certificates (§ 1110.19)*

**Current Rule:** The current rule does not address component part certificates.

**2023 NPR:** Proposed § 1110.19 of the 2013 NPR added a new section to clarify for stakeholders which sections of the 1110 rule apply to voluntary component part certificates. If a finished product certifier chooses to rely on a component part certificate, the component part certificate must meet the requirements

<sup>20</sup> An entry summary (CBP Form 7501) must be filed within 10 days of the cargo’s release from CBP custody or within 10 working days after entry of the merchandise and estimated duties deposited.

<sup>21</sup> See, for example, § 1107.23, which explains a “material change” to a children’s product. Products that are not the same in all material respects cannot be on the same certificate.

of the 1109 rule, as well as the form, content, and availability requirements described in the 2013 NPR. 78 FR 28090.

*2023 SNPR:* The SNPR's proposal retains the component part certificate requirements from the 2013 NPR.

## V. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes that a final rule for revisions to 16 CFR part 1110 will become effective 120 days after publication in the **Federal Register**. Although the SNPR makes few changes in the certificate requirements for domestic manufacturers, importers will require this time to onboard with CPSC's Product Registry and upgrade software to send a PGA Message Set to their broker for eFiling.

The proposed 120-day effective date is consistent with the experience of eFiling Beta Pilot participants that advised on IT solutions and initially tested the eFiling system. CPSC expects that once software is updated to submit entry data to CBP, gaining login credentials into the Product Registry will take less than 10 minutes and training will take less than two hours. CPSC seeks comment on the proposed effective date and intends to consider the experience of all Beta Pilot participants when considering a final effective date.

## VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603. Tab C of the Staff's SNPR Briefing Package, which we summarize in this section, assesses the impact of the SNPR on small businesses. Based on staff's analysis, the Commission certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Staff assesses that firms affected by the SNPR import or domestically manufacture products that fall under numerous North American Industry Classification System (NAICS) codes

and HTS codes.<sup>22</sup> Using these guidelines, staff estimates that as many as 43,061 small firms import regulated non-children's consumer products and substances annually, and will be required to eFile GCCs, while 211,148 firms annually import regulated children's products and would be required to eFile CPCs.

### A. Compliance, Reporting, and Recordkeeping Requirements of the SNPR

The SNPR would impose a new reporting burden on importers who must eFile certificates at the time of entry, or at entry summary, if both entry and entry summary are filed together. The SNPR would also impose a minor additional recordkeeping burden for GCCs, which is the mandatory retention of records for two additional years in most cases, from three to five years. To achieve compliance with the SNPR's eFiling requirements, small importers of products requiring either a GCC or CPC could possibly incur costs from several activities including: (1) the costs of inputting and filing certificate information with CBP through a PGA Message Set; (2) the one-time conversion costs of updating technology; and (3) broker fees.

Because of the creation of CPSC's Product Registry, CPSC does not expect small businesses to need to invest in technology to eFile certificates. A small business only needs a laptop with a hard drive for storing records and an internet connection to enter certificates into the Product Registry. Larger importers and manufacturers who import larger volumes of regulated consumer products and substances would be more likely to invest in technology to enable batch uploads of data into the Product Registry, or to create their own registries. But because the SNPR does not require a technology investment, and because small importers are unlikely to need to invest in new technology, we do not forecast technology costs in this burden analysis.

The Commission anticipates that 95 percent of importers will choose to use the Product Registry, and this estimate holds for small importers. When using the Product Registry, the Reference PGA Message Set is a shortened data set that only requires a few data elements, including the Unique ID for the certificate stored in CPSC's Product Registry each time the associated product is imported. Accordingly, if importers use the Product Registry and

a Reference PGA Message Set at the time of entry, 95 percent of importers will bear an additional 20 second burden per Reference Message Set filed during entry, while five percent of importers will bear a one minute burden per Full Message Set filed.

CPSC does not expect the SNPR to change the number of firms that chose to use brokers. Brokers typically charge a fee for each entry line that is filed. Through discussions with importers and brokers, Commission staff understands that this fee is greatly dependent on the number of entry lines filed, and the complexity of the PGA Message Set. The latter factor is greatly reduced by importers electing to use the Product Registry. By using the Product Registry, each time the same product is imported the importer can streamline eFiling by supplying the Unique ID for the associated product certificate to the broker.

Tab C of Staff's SNPR Briefing Package explains staff's procedure in classifying small businesses using NAICS codes. The Commission requests comment on staff's procedure, including methods of obtaining more precise estimates of percentages of small businesses belonging to a given NAICS, how many small firms covered by the SNPR fall within that NAICS, and how many certificates these firms may create.

Table 1 in Tab C of Staff's SNPR Briefing Package shows an estimated 43,061 small businesses that will need to eFile GCCs with CBP and keep records for certificates and supporting information. Staff estimates that the net cost of the SNPR's additional burdens on small suppliers of general use products is \$611,089. On average, each small business will spend approximately \$14 ( $\$611,089/43,061 \approx \$14$ ) on the SNPR's new requirements. This can be described as the cost of eFiling these certificates, with a small increase in the time cost of recordkeeping each certificate.

Table 2 in Tab C of Staff's SNPR Briefing Package shows that an estimated 211,148 small businesses will need to eFile CPCs with CBP. The total additional cost to eFile for children's products suppliers is \$922,934 annually. This means on average, that each small business will spend approximately \$4 ( $\$922,934/211,148 \approx \$4$ ) annually to comply with the SNPR. Note that the five-year recordkeeping requirement for children's products is consistent with the existing requirements of 16 CFR part 1107. Therefore, the additional burden that the SNPR imposes on small importers supplying children's products is that of eFiling. Except for the potential for

<sup>22</sup> The full list of HTS codes can be found in the Appendix to Tab D of Staff's SNPR Briefing Package.

some small private labelers to need to test and certify privately labeled children's products, domestic manufacturers will have no change in burden pursuant to the SNPR.

For the \$18 per firm costs (assuming both a \$14 cost per firm for GCCs and \$4 per firm for CPC impacts) to be greater than the one percent threshold that indicates a significant burden, a firm's revenues would have to be less than \$1,800 per year. We seek comment on the average annual revenues of small businesses within the impacted industries, as well as on alternative industry classifications that we should consider when classifying the relevant industry for SBA purposes.

#### *B. Alternatives for Reducing the Adverse Impact on Small Businesses*

Instead of the proposals in the SNPR, CPSC considered the alternatives of making the eFiling of certificates at entry voluntary rather than mandatory, and requiring PDF submissions of certificates rather than eFiling certificates.

Allowing, rather than requiring, certificates for imported products to be eFiled at entry would still require certificates to be made available for examination upon request, as it is now. Allowing, instead of requiring, certificates to be eFiled at entry could reduce the burden on small businesses, but it would not enhance the Commission's ability to target shipments for examination by using the additional certificate data elements collected via eFiling and to verify the accuracy of certificates. Noncompliant firms likely would not choose to eFile certificates, thwarting CPSC's ability to identify noncompliant products using algorithms and decreasing the accuracy and capabilities of algorithms that can learn based on eFiled data.

The alternative of requiring PDF submissions of certificates, to be uploaded into CBP's Document Image System, would not enhance the Commission's ability to target shipments for examination by using the additional certificate data elements collected via eFiling. It is cumbersome to extract data from PDF files for targeting purposes, and PDF files require a relatively large amount of storage space to maintain, particularly compared to isolated data elements.

#### *C. Request for Comment*

Based on staff's analysis, we conclude that the additional burden imposed by the SNPR is small when compared to one percent of the revenue for small firm typical of its industry. The SNPR does not change small firms' statutory

obligations to certify that their products meet applicable safety standards. The SNPR adds a minor burden of an additional two years of recordkeeping for GCCs, and adds a reporting burden for importers to eFile certificates with CBP using the PGA Message Set. These additional burdens add approximately \$1.5 million in cost to the industry, which is small when compared to the respective 43,000 and 211,000 suppliers of non-children's and children's products.

Small businesses that believe they would be affected by the SNPR are encouraged to submit comments. The comments should be specific and describe the potential impact and its magnitude, and the industry in which the firm resides.

#### **VII. Paperwork Reduction Act**

This SNPR contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the PRA. 44 U.S.C. 3501–3521. The PRA requires an agency to publish the following information:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that will result from the collection of information; and
- notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D). The SNPR creates a new collection of information for certificates for non-children's products, and would expand the existing collection for Third Party Testing of Children's Products, OMB Control No. 3041–0159. The Children's Product OMB control number would be expanded to include eFiling certificates for imported children's products that are subject to a CPSC rule requiring certification. Tab D of Staff's SNPR Briefing Package contains a detailed burden analysis by CPSC regulation. We summarize that information here. In accordance with OMB's requirement, the Commission provides the following information:

**Title:** (1) Certification of Non-Children's Products; (2) Amendment to Third Party Testing of Children's Products, approved previously under OMB Control Number 3041–0159.

**Summary, Need, and Use of Information:** Sections I and II of this preamble, and Tab D of Staff's SNPR Briefing Package, contain this information.

**Respondents and Frequency:** For products manufactured outside of the United States, respondents include importers of consumer products and substances subject to a CPSC-enforced regulation. For products manufactured within the United States, respondents include manufacturers and private labelers of consumer products and substances subject to a CPSC-enforced regulation.

**Estimated Burden:** CPSC has estimated the respondent burden in hours and the estimated labor costs to respondents.

**Estimate of Respondent Burden:** Below we categorize and estimate the burden created by both the statute and the SNPR for children's and non-children's regulated products as follows:

**Certificates:** The burden associated with the creation of certificates (GCCs and CPCs). This can be considered a general recordkeeping burden.

**Disclosure:** The burden derived from disclosing certificate information and from furnishing the certificates to these third parties (distributors and retailers). This is considered a third party disclosure.

**Recordkeeping:** The burden associated with the initial storage and routine maintenance of records, including records of the certificates and any supporting and testing documentation, for a period of five years. This is considered a recordkeeping burden.

**eFiling:** The initial burden from electronically filing the certificates, using either the CPSC-maintained Product Registry or the systems provided by the brokers that support importers' activities, as well as the routine burden on importers submitting associated Full or Reference PGA Message Sets. This would be considered a reporting burden.

The additional burden imposed specifically by the SNPR includes (1) the additional recordkeeping period for GCCs from three to five years and (2) eFiling GCC and CPC data for regulated, imported finished consumer products and substances.

#### *A. Total Burden for GCCs*

CPSC estimates that there may be 49,364 non-children's products firms subject to the SNPR. Staff expects these firms to create 1,333,952 certificates and spend 111,163 hours on their creation. These same firms must keep the records supporting the certificates for a period

of five years. This annual burden comes to 27,791 hours. The firms must also furnish each certificate to retailers and distributors of the product upon request; thus, we estimate an additional 0.25 hours (15 minute) burden for third party disclosure. This sums to 333,488 hours.

Staff estimates the number of responses for eFiling as 18,997,724 and estimates the eFiling burden as 200,532 hours. The aggregate burden associated with the SNPR for non-children's products suppliers is 672,973 hours and has a total cost of \$27,399,039. This

number includes burden imposed by statute, which the non-children's products suppliers would bear in absence of the SNPR. The net burden from the SNPR—excluding the statutory burden—is 202,755 hours and the net cost is \$6,828,781. Table 2 shows that importers of general use products requiring a GCC bear most of both the statutory burden and the additional burden from the eFiling requirement.

Staff expects that 82 percent of the firms subject to the SNPR will be importers with the remaining 18 percent

as manufacturers. We estimate the statutory burden borne by importers as 536,950 hours (80%) and the expected burden to manufacturers as 136,023 hours (20%). The net burden from the SNPR is 202,115 hours for importers (99.7%) and 640 hours for manufacturers (0.3%). Tab D of Staff's SNPR Briefing Package explains in more detail the methodology staff used to derive the burden estimate, as well as a PRA burden estimate for each regulated product that was used to calculate these totals.

TABLE 2—TOTAL BURDEN ON NON-CHILDREN PRODUCTS COVERED BY PART 1110

Total burden	Respondents	Frequency of response	Responses	Response time	Burden hours	Cost per burden hour	Total cost of burden
Certificates .....	49,364	27.0	1,333,952	0.0833	111,163	\$76.26	\$8,477,268
Disclosure .....	49,364	27.0	1,333,952	0.2500	333,488	33.68	11,231,879
Recordkeeping .....	49,364	27.0	1,333,952	0.0208	27,791	33.68	935,990
eFiling .....	40,665	467.2	18,997,724	0.0106	200,532	33.68	6,753,902
Total .....	49,364	465.9	22,999,581	0.0293	672,973	40.71	27,399,039
<b>Additional Burden from the Rule</b>							
Total .....	49,364	384.9	18,997,724	0.0107	202,755	<sup>23</sup> 33.68	6,828,781
<b>Manufacturers:</b>							
Certificates .....	8,699	44.2	384,066	0.0833	32,006	76.26	2,440,741
Disclosure .....	8,699	44.2	384,066	0.2500	96,017	33.68	3,233,838
Recordkeeping .....	8,699	44.2	384,066	0.0208	8,001	33.68	269,486
eFiling .....	0	0.0	0	0.0000	0	0.00	0
Total .....	8,699	132.5	1,152,199	0.1181	136,023	43.70	5,944,065
<b>Additional Burden to Manufacturers</b>							
Total .....	8,699	0.0	0	0.0000	640	33.68	21,559
<b>Importers:</b>							
Certificates .....	40,665	23.4	949,886	0.0833	79,157	76.26	6,036,527
Disclosure .....	40,665	23.4	949,886	0.2500	237,472	33.68	7,998,042
Recordkeeping .....	40,665	23.4	949,886	0.0208	19,789	33.68	666,503
eFiling .....	40,665	467.2	18,997,724	0.0106	200,532	33.68	6,753,902
Total .....	40,665	537.3	21,847,382	0.0246	536,950	39.96	21,454,974
<b>Additional Burden to Importers</b>							
Total .....	40,665	467.2	18,997,724	0.0106	202,115	33.68	6,807,222

### B. Total Burden for eFiling CPCs

Section 14 of the CPSA requires third party testing of children's products that are subject to an applicable children's product safety rule to ensure compliance with such rule. Based on this testing, manufacturers, including importers, are required to certify compliance of their products to the applicable standards. The burden associated with certificate production,

recordkeeping, and disclosure is already subject to an OMB control number, 3041–0159, for children's product testing, as set forth in 16 CFR parts 1107 and 1109. The SNPR adds a certificate eFiling requirement for importers of finished children's products and estimates the reporting burden for this requirement.

Table 3 presents CPSC's estimate that there are 244,000 firms producing

children's products. Staff estimates that 27,540 imported children's products are subject to a children's product safety rule and would be annually required to eFile certificates, with an estimated eFile burden of 290,710 hours. This number only includes burden imposed by the SNPR, so the net burden from the SNPR is also 290,710 hours, and the net cost of the SNPR (\$9,791,126) equals the total cost.

<sup>23</sup> Total compensation for Office and Administrative Support Occupation in Goods-producing industries as of March of 2023. U.S.

Bureau of Labor Statistics, "Employer Costs for Employee Compensation," March 2023, Table 4.

See [https://www.bls.gov/news.release/archives/ecec\\_06162023.pdf](https://www.bls.gov/news.release/archives/ecec_06162023.pdf).

TABLE 3—eFILING CHILDREN'S PRODUCT CERTIFICATES (CPC)

Total burden	Respondents	Frequency of response	Responses	Response time	Burden hours	Cost per burden hour	Total cost of burden
eFiling .....	224,000	123.0	27,540,984	0.0106	290,710	\$33.68	\$9,791,126
<b>Additional Burden from the Rule</b>							
Total .....	224,000	123.0	27,540,984	0.0106	290,710	33.68	9,791,126

*C. Burden Estimate Breakdowns by Imported and Domestically Manufactured Products*

Table 4 provides a summary of the analysis for imported products, and

Table 5 provides a summary of this analysis for domestically manufactured products. Tab D of Staff's SNPR Briefing Package contains additional detail on

how staff estimated the number of respondents and responses.

TABLE 4—IMPORT DATA ANALYSIS BY PRODUCT

Product	Total		CPC		GCC	
	Total respdnts	Total responses	Percent of resp as CPC	CPC responses	Percent of resp as GCC	GCC responses
Architectural Glazing Materials .....	792	11,717	0	0	100	11,717
Artificial Emberizing Materials .....	16	5	0	0	100	5
ATVs .....	41	37,795	25	9,449	75	28,346
Baby Changing Products .....	4,027	523,490	100	523,490	0	0
Bassinets and Cradles .....	76	2,299	100	2,299	0	0
Bedside Sleepers .....	230	75,979	100	75,979	0	0
Bicycle Helmets .....	624	16,300	50	8,150	50	8,150
Bicycles .....	194	125,796	50	62,898	50	62,898
Bunk Beds—Furniture .....	2,076	89,801	75	67,351	25	22,450
Button Batteries .....	57	523	0	0	100	523
Candles with metal-cored wicks .....	2,616	27,843	0	0	100	27,843
Carpets and Rugs .....	186	261,374	25	65,344	75	196,031
Carriages and Strollers .....	243	9,030	100	9,030	0	0
CB Antennas .....	538	12,594	0	0	100	12,594
Cellulose Insulation .....	5,764	46,511	0	0	100	46,511
Children's folding chairs and stools .....	1,273	67,489	100	67,489	0	0
Children's Sleepwear .....	112	66,855	100	66,855	0	0
Cigarette & Multipurpose Lighters .....	69	3,908	0	0	100	3,908
Clacker Balls .....	4,863	10,243	100	10,243	0	0
Clothing Storage Units .....	2,992	316,923	0	0	100	316,923
Consumer Patching Compounds .....	864	13,101	0	0	100	13,101
Crib mattresses .....	154	8,294	100	8,294	0	0
Cribs .....	81	14,206	100	14,206	0	0
Dive Sticks and Other Similar Articles .....	2,003	4,853	100	4,853	0	0
Drywall .....	68	35,134	0	0	100	35,134
Electrically Operated Toys or Articles .....	1,012	15,794	100	15,794	0	0
Fireworks .....	132	47,076	0	0	100	47,076
Frame Child Carriers .....	0	0	100	0	0	0
Furniture .....	1,092	5,402,165	0	0	100	5,402,165
Garage Door Openers .....	3,451	10,533	0	0	100	10,533
Gates and Enclosures .....	87	7,018	100	7,018	0	0
Hand-Held Infant Carriers .....	0	0	100	0	0	0
High Chairs .....	172	14,990	100	14,990	0	0
Imitation Firearms .....	992	3,853	0	0	100	3,853
Infant Bath Seats .....	73	507	100	507	0	0
Infant Bath Tubs .....	1,594	5,929	100	5,929	0	0
Infant Bouncer Seats .....	82	5,224	100	5,224	0	0
Infant Sleep Products .....	739	80,644	100	80,644	0	0
Infant Swings .....	95	1,388	100	1,388	0	0
Infant Walkers .....	33	3,183	100	3,183	0	0
Lawn Darts .....	2,353	4,704	0	0	100	4,704
Liquid Nicotine Packaging .....	536	2,242	0	0	100	2,242
Magnets .....	908	34,846	0	0	100	34,846
Matchbooks .....	71	241	0	0	100	241
Mattresses .....	329	167,504	50	83,752	50	83,752
Pacifiers .....	146	4,166	100	4,166	0	0
Paints .....	812	154,543	0	0	100	154,543
Play Yards .....	71	3,400	100	3,400	0	0
Pool and Spa Drain Covers .....	2,636	33,397	0	0	100	33,397
Portable Bedrails .....	7,605	29,814	100	29,814	0	0
Portable Fuel Containers .....	386	5,974	0	0	100	5,974
Portable Gas Containers .....	386	5,974	0	0	100	5,974
Portable Hook-On Chairs .....	564	5,328	0	0	100	5,328
Power Mowers .....	111	18,865	0	0	100	18,865
Rattles .....	592	7,939	100	7,939	0	0
Refrigerator Coors .....	140	74,190	0	0	100	74,190
Refuse Bins .....	2,407	2,717	0	0	100	2,717

TABLE 4—IMPORT DATA ANALYSIS BY PRODUCT—Continued

Product	Total		CPC		GCC	
	Total respdnts	Total responses	Percent of resp as CPC	CPC responses	Percent of resp as GCC	GCC responses
Sling Carriers .....	0	0	100	0	0	0
Soft Infant and Toddler Carriers .....	0	0	100	0	0	0
Special Packaging (PPPA) .....	310	1,410,691	0	0	100	1,410,691
Stationary Activity Centers .....	37	3,093	100	3,093	0	0
Swimming Pool Slides .....	886	4,184	0	0	100	4,184
Toddler Beds .....	76	1,839	100	1,839	0	0
Toys .....	1,926	1,349,066	100	1,349,066	0	0
Vinyl Plastic Film .....	729	33,719	50	16,859	50	16,859
Wearing Apparel .....	220	16,290,891	50	8,145,446	50	8,145,446

TABLE 5—DOMESTIC MANUFACTURER DATA BY PRODUCT CATEGORY

CFR	Product categories	NAICS	NAICS_Desc	Respdnts
16 CFR part 1201 .....	Architectural Glazing Materials .....	327211	Flat Glass Manufacturing .....	19
16 CFR part 1201 .....	Architectural Glazing Materials .....	321911	Wood Window and Door Manufacturing .....	48
16 CFR part 1201 .....	Architectural Glazing Materials .....	326199	All Other Plastics Product Manufacturing: Doors and door frames, plastics, manufacturing.	139
16 CFR part 1201 .....	Architectural Glazing Materials .....	327215	Glass Product Manufacturing Made of Purchased Glass .....	50
16 CFR part 1201 .....	Architectural Glazing Materials .....	332321	Metal Window and Door Manufacturing .....	45
16 CFR part 1305 .....	Artificial Emberizing Materials .....	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing: Asbestos products (except brake shoes and clutches) manufacturing.	7
16 CFR part 1420 .....	ATVs .....	336999	All other transportation equipment manufacturing: All-terrain vehicles (ATVs), wheeled or tracked, manufacturing.	5
16 CFR part 1203 .....	Bicycle Helmets .....	339920	Sporting and athletic goods manufacturing .....	38
16 CFR part 1512 .....	Bicycles .....	336991	Motorcycle, bicycle, and parts manufacturing: Bicycles and parts manufacturing.	125
16 CFR part 1500.17(a)(13) .....	Candles w/Metal Core Wicks .....	339999	All other miscellaneous manufacturing: candle manufacturing .....	1,000
16 CFR parts 1630 and 1631 .....	Carpets and Rugs .....	314110	Carpet and rug mills .....	185
16 CFR parts 1630 and 1631 .....	Carpets and Rugs .....	314999	All other miscellaneous textile product mills .....	219
16 CFR part 1204 .....	CB Band Base Station Antennas ..	334220	Radio and television broadcasting and wireless communications equipment manufacturing.	10
16 CFR part 1209 .....	Cellulose Insulation .....	321219	Reconstituted Wood Product Manufacturing .....	65
16 CFR part 1210 and 1212 .....	Cigarette Lighters .....	339999	All other miscellaneous manufacturing: Cigarette lighters (except precious metal) manufacturing.	29
16 CFR part 1261 .....	Clothing Storage Units .....	337122	Nonupholstered Wood Household Furniture Manufacturing .....	2,012
16 CFR part 1261 .....	Clothing Storage Units .....	337127	Institutional Furniture Manufacturing .....	581
16 CFR part 1507; 16 CFR 1500.17(3) and 1500.17(8).	Fireworks Devices .....	325998	All other miscellaneous chemical product and preparation manufacturing: Fireworks manufacturing.	.....
16 CFR parts 1213 .....	Furniture (bunk beds) .....	337122	Nonupholstered Wood Household Furniture Manufacturing .....	50
16 CFR part 1303 .....	Furniture (paint & entrapment) .....	337122	Nonupholstered Wood Household Furniture Manufacturing .....	201
16 CFR part 1303 .....	Furniture (paint & entrapment) .....	337127	Institutional Furniture Manufacturing .....	29
16 CFR part 1303 .....	Furniture (paint & entrapment) .....	337121	Upholstered Household Furniture Manufacturing .....	73
16 CFR part 1303 .....	Furniture (paint & entrapment) .....	337211	Wood Office Furniture Manufacturing .....	15
16 CFR part 1303 .....	Furniture (paint & entrapment) .....	337212	Custom Architectural Woodwork and Millwork Manufacturing .....	52
16 CFR part 1303 .....	Furniture (paint & entrapment) .....	337214	Office Furniture (except Wood) Manufacturing .....	5
16 CFR part 1211 .....	Garage Door Openers .....	335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing: Garage door openers manufacturing.	9
16 CFR part 1306 .....	Lawn Darts .....	339920	Sporting and Athletic Goods Manufacturing .....	10
15 USC sec 1472a .....	Liquid Nicotine Packaging .....	325411	Medicinal and Botanical Manufacturing: Nicotine and derivatives ( <i>i.e.</i> , basic chemicals) manufacturing.	278
16 CFR part 1262 .....	Magnets .....	327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing—Magnets, permanent, ceramic or ferrite, manufacturing.	7
16 CFR part 1262 .....	Magnets .....	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing—Magnets, permanent, metallic, manufacturing.	18
16 CFR part 1202 .....	Matchbooks .....	325998	All other miscellaneous chemical product and preparation manufacturing: Matches and matchbook manufacturing.	6
16 CFR parts 1632 and 1633 .....	Mattresses, Pads, and Sets .....	337910	Mattress manufacturing .....	314
16 CFR parts 1632 and 1633 .....	Mattresses, Pads, and Sets .....	337121	Upholstered Household Furniture Manufacturing .....	686
16 CFR part 1303 .....	Paints and Coatings .....	325510	Paint and coating manufacturing .....	100
16 CFR part 1304 .....	Patching Compounds .....	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing: Asbestos products (except brake shoes and clutches) manufacturing.	10
16 CFR part 1460 .....	Portable gas containers .....	326199	All Other Plastics Product Manufacturing .....	10
16 CFR part 1700 .....	PPPA .....	324110	Petroleum Refineries: Solvents made in petroleum refineries .....	16
16 CFR part 1700 .....	PPPA .....	325180	Other Basic Inorganic Chemical Manufacturing—Fuel propellants, solid inorganic, not specified elsewhere by process, manufacturing; Caustic soda ( <i>i.e.</i> , sodium hydroxide) manufacturing, Potassium hydroxide ( <i>i.e.</i> , caustic potash) manufacturing.	94
16 CFR part 1700 .....	PPPA .....	325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing: Turpentine.	13
16 CFR part 1700 .....	PPPA .....	325199	All Other Basic Organic Chemical Manufacturing: Fuel propellants, solid organic, not specified elsewhere by process, manufacturing.	156
16 CFR part 1700 .....	PPPA .....	325411	Medicinal and Botanical Manufacturing: Dietary supplements, uncompounded, manufacturing.	115

TABLE 5—DOMESTIC MANUFACTURER DATA BY PRODUCT CATEGORY—Continued

CFR	Product categories	NAICS	NAICS_Desc	Respdntrs
16 CFR part 1700 .....	PPPA .....	325412	Pharmaceutical Preparation Manufacturing .....	262

#### D. Cost to the Federal Government

The estimated annual cost of the information collection requirements to the Federal Government is approximately \$1.2 million, which includes 2,080 staff hours to manage the eFiling program and \$1 million in contracting costs. This estimate is based on an average annual compensation for a mid-level salaried GS-13 employee of \$88.45 per hour. Assuming that approximately 2,080 hours will be required annually, this results in an annual labor cost of \$183,976 (\$88.45 per hour × 2,080 hours = \$183,976) plus an annual contracting cost of \$1 million in IT development for an annual cost to the government of \$1.2 million. Contracting costs are expected to decrease over time and will only be required for ongoing operations and maintenance.

#### E. Comments

CPSC has submitted the information collection requirements of this rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d). CPSC requests that interested parties submit comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this NPR).

Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission invites comments on:

- whether the proposed and revised collections of information are necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- the accuracy of CPSC's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information the Commission proposes to collect;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated respondent cost other than burden hour cost.

#### VIII. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement.

Under these regulations, certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). Rules regarding product certification fall within this categorical exclusion. 16 CFR 1021.5(c)(2).

#### IX. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), addresses the preemptive effect of CPSC's consumer product safety standards. Part 1110, however, is a procedural rule, not a consumer product safety standard. Therefore, the preemption provision of section 26(a) of the CPSA would not apply to a final rule.

#### X. Request for Comments

The Commission requests comment on all aspects of the SNPR, including specifically the following items:

- proposed definition of "importer";
- whether the proposed requirement in § 1110.9(c) regarding the prominence of an electronically available certificate on an invoice or shipping container is supported by a valid concern for furnishing a certificate;
- how do regulated fireworks meet the obligation to test and certify now, and how will regulated fireworks meet the eFiling requirement in the SNPR if finalized;
- eFiling options and solutions for products imported from an FTZ;
- the proposed effective date of 120 days after publication of a final rule in the **Federal Register**;
- analysis and information regarding small business impacts, including:
  - whether CPSC can obtain more precise estimates of percentages of small businesses belonging to a given NAICS, how many small firms covered by the SNPR fall within that NAICS, and how many certificates these firms may create; and
  - the average annual revenues of small businesses within the impacted industries, as well as alternative industry classifications that CPSC should consider when classifying the relevant industry for SBA purposes; and
- PRA burden estimates.

#### List of Subjects in 16 CFR Part 1110

Administrative practice and procedure, Business and industry,

Certificate, Certification, Children, Component part certificate, Consumer protection, Electronic filing, Imports, Labeling, Product testing and certification, Reporting and recordkeeping requirements, Record retention, Regulated products.

For the reasons stated in the preamble, the Commission proposes to revise 16 CFR part 1110 to read as follows:

#### PART 1110—CERTIFICATES OF COMPLIANCE

##### Sec.

- 1110.1 Purpose and scope.
- 1110.3 Definitions.
- 1110.5 Products required to be certified.
- 1110.7 Who must certify finished products.
- 1110.9 Certificate language and format.
- 1110.11 Certificate content.
- 1110.13 Certificate availability.
- 1110.15 Legal responsibility for certificate information.
- 1110.17 Recordkeeping requirements.
- 1110.19 Component part certificates.

**Authority:** 15 U.S.C. 2063, Secs. 3 and 102 of Pub. L. 110–314, 122 Stat. 3016, 3017 (2008), Pub. L. 112–28 (2011).

##### § 1110.1 Purpose and scope.

This part specifies the entities that must issue certificates for finished products in accordance with section 14(a) of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2063(a); specifies certificate content, form, and availability requirements that must be met to satisfy the requirements of section 14 of the CPSA; requires importers to file certificates electronically (eFile) with CBP for imported finished products that are required to be certified; and clarifies which provisions of this part apply to component part certificates. This part does not address the type or frequency of testing necessary to support a certificate.

##### § 1110.3 Definitions.

(a) The definitions of section 3 of the CPSA, 15 U.S.C. 2052, and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, apply to this part.

(b) Additionally, the following definitions apply for purposes of this part:

*Automated Commercial Environment (ACE)* means the automated and electronic system for processing



commercial importations that is operated by CBP in accordance with the National Customs Automation Program established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act), or any other CBP-authorized electronic data interchange system.

*CBP* or *Customs* means U.S. Customs and Border Protection.

*Certificate* or *certificate of compliance* means a certification that the finished products or component parts within the scope of the certificate comply with the consumer product safety rules under the CPSA, or similar rules, bans, standards, or regulations under any other law enforced by the Commission, as set forth on the certificate. “Certificate” and “certificate of compliance” generally refer to all three types of certificates: General Certificates of Conformity (GCC), Children’s Product Certificates (CPC), and component part certificates.

*Certifier* means the party who issues a certificate of compliance.

*Children’s Product Certificate* (CPC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(2) of the CPSA, 15 U.S.C. 2063, and part 1107 of this chapter.

*Commission* or *CPSC* means the United States Consumer Product Safety Commission.

*Component part* means a component part of a consumer product or other product or substance regulated by the Commission, as defined in § 1109.4(b) of this chapter, that is intended to be used in the manufacture or assembly of a finished product, and is not intended for sale to, or use by, consumers as a finished product.

*Component part certificate* means a certificate of compliance for a *component part*, as defined in this section.

*Consignee* means the recipient of the goods being shipped or transported and who typically takes ownership of consumer products or other products or substances regulated by the Commission once they have cleared customs. A consignee includes the “ultimate consignee,” who is the party in the United States to whom the overseas supplier sold, consigned, or delivered the imported merchandise.

*eFiled certificate* means an electronic filing of the data elements in § 1110.11 in ACE, in the format required in § 1110.13(a).

*Electronic certificate* means a set of information available in, and accessible by, electronic means that sets forth the

information required in § 1110.11, in the format described in § 1110.9(c).

*Finished product* means a consumer product or other product or substance regulated by the Commission that is imported for consumption or warehousing or is distributed in commerce. Parts of such products or substances, including replacement parts, that are imported for consumption or warehousing or are distributed in commerce that are packaged, sold, or held for sale to, or use by, consumers are considered finished products.

*Finished product certificate* means a certificate of compliance for a finished product, as defined in this section. There are two types of finished product certificates: Children’s Product Certificates and General Certificates of Conformity.

*Finished product certifier* means a party who is required to issue a finished product certificate pursuant to § 1110.7.

*General Certificate of Conformity* (GCC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(1) of the CPSA, 15 U.S.C. 2063(a)(1).

*Importer* means the importer of record; consignee; or owner, purchaser, or party that has a financial interest in the product or substance being offered for import and effectively caused the product or substance to be imported into the United States. An importer can also be a person holding a valid customs broker’s license, pursuant to 19 U.S.C. 1641, when appropriately designated by the owner, purchaser, or consignee of the product or substance. For purposes of testing and certification, CPSC will not typically consider a consumer purchasing or receiving products for personal use or enjoyment to be an importer.

*Importer of Record* means the entity listed as the importer of record on CBP forms 3461 and 7501.

*Owner or purchaser* means any party with a financial interest in the imported product or substance, including, but not limited to, the actual owner of the goods, the actual purchaser of the goods, a buying or selling agent, a person or firm who imports on consignment, or a person or firm who imports under loan or lease.

*Product Registry* means a database created and maintained by CPSC that allows for the electronic entry of data elements required on GCCs and CPCs, as provided in § 1110.11. This definition includes any CPSC successor system.

*Third party conformity assessment body* means a testing laboratory whose accreditation has been accepted by the CPSC to conduct certification testing on children’s products.

#### **§ 1110.5 Products required to be certified.**

Finished products 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, which are imported for consumption or warehousing, or are distributed in commerce, must be accompanied by a GCC or a CPC, as applicable.

#### **§ 1110.7 Who must certify finished products.**

(a) *Imports*. Except as otherwise provided in a specific rule, ban, standard, or regulation enforced by CPSC, for a finished product manufactured outside of the United States that must be accompanied by a certificate as set forth in § 1110.5, the importer must issue a certificate that meets the requirements of this part.

(b) *Domestic products*. Except as otherwise provided in a specific rule, ban, standard, or regulation enforced by the Commission, for a finished product manufactured in the United States that must be accompanied by a certificate, as set forth in § 1110.5, the manufacturer must issue a certificate that meets the requirements of this part. However, if a finished product manufactured in the United States is privately labeled, the private labeler must issue a certificate that meets the requirements of this part, unless the manufacturer issues the certificate.

#### **§ 1110.9 Certificate language and format.**

(a) *Language*. An eFiled certificate must be in the English language. All other certificates, including hard copy and electronic certificates, must be in the English language and may also contain the same content in any other language.

(b) *Format*. Certificates for finished products that are manufactured outside the United States and offered for importation into the United States for consumption or warehousing are required to be eFiled using the format required in § 1110.13(a)(1). All other certificates must be made available as provided in § 1110.13(b) and (c), and may be provided in hard copy or electronically, as set forth in (c) of this section.

(c) *Electronic certificates*. An electronic certificate meets the requirements of § 1110.13(b) and (c) if it is identified prominently on the finished product, shipping carton, or invoice by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means, provided that the certificate, the URL or other electronic means, and the unique identifier are

accessible, along with access to the electronic certificate itself, to the Commission, CBP, distributors, and retailers, on or before the date the finished product is distributed in commerce. If the electronic certificate is password protected, the password must be provided at the same time as the certificate when requested by CPSC or CBP.

#### **§ 1110.11 Certificate content.**

(a) *Content requirements.* Each certificate must:

(1) Identify the finished product(s) covered by the certificate. Certifiers must provide at least one of the following unique identifiers: global trade item number (GTIN), model number, registered number, serial number, stock keeping number (SKU), universal product code (UPC), or alternate identifier, along with a sufficient description to match the finished product to the certificate. Certifiers may also include other identifiers, such as lot number, model style, and model color, that may assist with product identification.

(2) State each consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any law enforced by the Commission, to which the finished product(s) are being certified. Finished product certificates must identify separately all applicable rules, bans, standards, or regulations.

(3) Identify the party certifying compliance of the finished product(s), as set forth in § 1110.7, including the party's name, street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number.

(4) Identify and provide contact information (consisting, at a minimum, of the individual's name, street address, city, state or province, country or administrative region, email address, and telephone number) for the individual maintaining the records stated in this paragraph. An individual can be a position title, provided that this position is always staffed and responsive to CPSC's requests.

(i) Records of test results on which a GCC is based, and records described in §§ 1109.5(g) and (j) of this chapter (where applicable).

(ii) Records of test results and other records on which a CPC is based, as required by § 1107.26, and § 1109.5(g) and (j) of this chapter (where applicable).

(iii) Records of test results and other records on which a component part certificate is based, as required by § 1109.5(g) and (j) of this chapter.

(5) Provide the date (month and year, at a minimum) and place (including a manufacturer name, street address, city, state or province, country or administrative region, email address, and telephone number) where the finished product(s) were manufactured, produced, or assembled. For manufacturing runs over a series of days, provide the initial date of manufacture (month and year, at a minimum).

(6) Provide the most recent date and places (including the name of each third party conformity assessment body or other party on whose testing the certificate depends: name, street address, city, state or province, country or administrative region, email address, and telephone number) where the finished product(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in § 1110.11(a)(4).

(7) Include the following attestation: I hereby certify that the finished product(s) covered by this certificate comply with the rules, bans, standards, and regulations stated herein, and that the information in this certificate is true and accurate to the best of my knowledge, information, and belief. I understand and acknowledge that it is a United States federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statement, representation, or omission on this certificate.

(b) *Electronic access to records.* In addition to identification of the custodian of records as described in § 1110.11(a)(6), a certificate may include a URL, or other electronic means, which provides electronic access to the required underlying records to support the certificate as specified in §§ 1107.26 and 1109.5(g), or any other applicable consumer product safety rule, ban, standard, or regulation enforced by the Commission.

(c) *Statutory or regulatory testing exclusions:* Unless otherwise provided by the Commission, if a certifier is claiming a statutory or regulatory testing exclusion to an applicable consumer product safety rule or similar rule, ban, standard, or regulation, then in addition to listing all applicable rules, bans, standards, and regulations as required under § 1110.11(a)(2) and in lieu of providing the date and place where testing was conducted for that regulation under § 1110.11(a)(6), a certifier shall list on the certificate the applicable testing exclusions.

(d) *Duplicative testing not required.* Although certificates must list each applicable rule, ban, standard, or regulation separately, finished product

certifiers are not required to conduct duplicative third party testing for any rule that refers to, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission.

#### **§ 1110.13 Certificate availability.**

(a) *Accompanying certificates.* A certificate issued by a finished product certifier must accompany each finished product or finished product shipment required to be certified pursuant to § 1110.5. Each certificate must describe only one product.

(1) In the case of finished products that are manufactured outside the United States and are offered for importation into the United States for consumption or warehousing, including products offered for importation from a Foreign Trade Zone or products under the *de minimis* value (as defined in § 901 of the Trade Facilitation and Trade Enforcement Act of 2015 or any successor act), the finished product certifier must eFile the GCC or CPC data elements required under § 1110.11 in ACE at the time of filing the CBP entry, or the time of filing the entry and entry summary, if both are filed together, as provided in CPSC's PGA Message Set CATAIR Implementation Guide (including revisions thereto). In the case of finished products that are manufactured outside of the United States and imported as a mail shipment, the finished product certifier must enter the GCC or CPC data elements required under § 1110.11 into CPSC's Product Registry prior to the product or substance arriving in the United States.

(2) In the case of finished products manufactured in the United States, the finished product certifier must issue the required certificate on or before the date the finished product is distributed in commerce, and make the certificate available for inspection immediately, meaning within 24 hours, upon request by CPSC.

(b) *Furnishing certificates.* A finished product certifier must furnish a required GCC or CPC to each distributor or retailer of the finished product.

(c) *Availability.* Certifiers must make certificates available for inspection immediately, meaning within 24 hours, upon request by CPSC or CBP.

#### **§ 1110.15 Legal responsibility for certificate information.**

Certifiers may, directly or through another entity, maintain an electronic certificate platform, enter the requisite data into the Product Registry or into ACE, or certify the product(s) or substance(s). The certifier is legally

responsible for the information in a certificate, including its validity, accuracy, completeness, and availability.

**§ 1110.17 Recordkeeping requirements.**

For CPCs and component part certificates, certifiers must satisfy the recordkeeping provisions contained in §§ 1107.26, 1109.5(g), and 1109.5(j) of this chapter, as applicable. For GCCs, certifiers must maintain for at least five

years from their creation the certificate and supporting test records required under this chapter.

**§ 1110.19 Component part certificates.**

Pursuant to part 1109 of this chapter, component part certificates are voluntary. Certificates should not be filed in ACE upon importation of component parts. Certifiers of component parts must meet the requirements in part 1109 of this

chapter, and component part certificates must meet the form, content, and availability requirements described in §§ 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

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