



July 26, 2013

Via FedEx and Email

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Notice of Proposed Rulemaking on Certificates of Compliance
Docket ID: CPSC-2013-0017
Our File: 13-10900-0110001

Dear Sirs:

On behalf of the National Customs Brokers and Forwarders Association of America ("NCBFAA"), we submit these comments in response to the Notice of Proposed Rulemaking dated May 13, 2013 addressing potential changes to the CPSC regulations regarding certificates of compliance. We appreciate the opportunity to comment on the proposed rule.

1. Who Should be Responsible to File the Certificate

The NPRM proposes changes to 16 C.F.R. 1110.3(b)(13) that places the burden on the "importer of record" to provide the compliance certificate for finished products manufactured outside the United States that are not delivered directly to consumers in the United States. Proposed § 1110.3(b)(13) would define an "importer" as the importer of record, as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)) (Tariff Act). Pursuant to the Tariff Act, the importer of record is either "the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid" customs broker's license, pursuant to 19 U.S.C. 1641.

In the first instance, the proposed rule must be modified to eliminate any reference to "customs brokers." A customs broker is licensed by U.S. Customs & Border Protection ("CBP") to transact "customs business" on behalf of third parties. Customs business is defined as "*those transactions with the Customs Service involving the entry and admissibility of merchandise . . .*" By virtue of their being licensed and regulated by CBP, Customs brokers do not have any particular knowledge regarding product safety requirements and are not in a position to certify compliance of any product. Their involvement in the international supply chain should not require them to assume additional regulatory responsibility (and liability) for issues that they do not control. We respectfully submit that assigning this responsibility to a class of persons who do

not have the requisite product knowledge to certify compliance with the CPSIA requirements does not further the goals of the Commission. Reference to “customs brokers” as a class of persons who could potentially be responsible to provide product compliance information is inappropriate and should be removed from the final rule.

We also submit that the term “importer,” as defined in the proposed rule is overly broad and does not consider that many importers are actually service providers who are not in a position to certify the compliance of an imported product. The proposed rule should be modified to clarify that the certification obligation belongs to the “beneficial party in interest” who has knowledge about the imported product. The “beneficial party in interest” should be defined as a party with a financial interest in the imported goods such as the owner, purchaser or distributor of the merchandise.

2. How and When Must the Certificate be Made Available

The proposed section 1110.13(a)(1) contemplates requiring that certificates of compliance for imported products be filed with CBP at the time of entry. This is a substantial departure from the current rule which requires that the certificates be available when the product itself is made available for inspection and furnished upon request. Unless the Commission mandates that certificates of compliance must be generated electronically in a uniform format (in fact, the NPRM contemplates just the opposite), this requirement will impose a huge burden on the customs brokerage community.

First, there are substantial programming challenges to be overcome by both the government and the private sector before this requirement can become a reality. As the Commission is well aware, CBP is in the midst of developing the programming for the International Trade Data System (“ITDS”) and Participating Government Agency (“PGA”) message record set. It is imperative that the CPSC coordinate with CBP so that the certificate of compliance data can be managed through ACE. In this regard, we note also that there is currently no programming being developed in ACE to “flag” those items which require certificates of compliance. Without such system “edits,” it is highly unlikely that most customs brokers will be able to discern which products require certificate of compliance data transmission at the time of entry. (It is equally unclear how CBP will enforce the requirement without these system edits.)

Unless the Commission mandates that certifying parties transmit their data electronically (either directly to CBP or via a web posting), the reality is that most of the certificates will be generated in hard copy and customs brokers will be required to reformat, transcribe and transmit the data to CBP prior to entry. Given the uniqueness of the information set forth in the certificate of compliance, these documents will be subject to unique input efforts. That is, there will be very little overlap with the other data elements required to make entry. This will require a large amount of independent data input which is likely to increase the cost of clearing imported merchandise.

Further, the import community must be able to transmit this data before the merchandise arrives in the United States. The Commission must consider the complexity of the supply chain and recognize that many shipments will require multiple certificates of compliance, in some cases

issued by multiple parties in interest. Under the proposed rule, this information would have to be received and transmitted to CBP prior to the arrival of the merchandise in order to avoid delays and additional storage expense. The 24 hour rule suggested in the NPRM does not recognize routine contingencies of diversion in the international supply chain and is simply not realistic.

We strongly believe that the certificate of compliance should not be an entry requirement as this will greatly impede the flow of goods into the country without yielding a corresponding compliance benefit for the Commission. We believe that the current standard of requiring the certificate of compliance to be available at the time that the merchandise is presented to CBP is a workable solution that should be maintained.

The plain reality is that neither the Commission, CBP nor the trade is prepared to manage the consequences of requiring the transmission of compliance certification data as a condition of entry for imported merchandise.

We appreciate the opportunity to provide our comments in response to the proposed rule.

Sincerely,

NATIONAL CUSTOMS BROKERS &
FORWARDERS ASSOCIATION OF AMERICA



Alan R. Klestadt
Customs Counsel

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