

NAFTZ Meeting Log
05/31/2024



Attendees:

Jim Joholske	Consumer Product Safety Commission (CPSC)
Sabrina Keller	Consumer Product Safety Commission (CPSC)
Andrea Rucker-Yarosh	Consumer Product Safety Commission (CPSC)
Arthur Laciak	Consumer Product Safety Commission (CPSC)
Carla Garcia	Guidehouse Federal
Christopher Smith	NAFTZ, IKEA
Eric Berry	NAFTZ, Copper Hill
Melissa Irmen	NAFTZ
Katie Tangman	NAFTZ, Columbia Sportswear
Shannon Fura	NAFTZ
Jeffrey Tafel	NAFTZ
Robert Yoder	NAFTZ, Ponbike

SUBJECT: NAFTZ eFiling Public Comments

DATE OF MEETING: 31 May 2024

LOG ENTRY SOURCE: Arthur Laciak, EXIS

LOCATION: Virtual Web meeting

SUMMARY OF MEETING: CPSC staff from the Office of Import Surveillance (EXIS) met with the National Association of Foreign Trade Zones (NAFTZ) and some of its member companies to discuss how the proposed eFiling requirement may impact importers who conduct business within Foreign Trade Zones (FTZs).

I. eFiling Public Comments – Time to Comply

- Columbia Sportswear read through the public comments submitted to the eFiling Supplemental Notice of Proposed Rulemaking (SNPR) and noticed that almost all comments pointed to concerns with the lack of time provided to comply with eFiling requirements after the Final Rule is published.
 - Columbia Sportswear suggests at least one year after the eFiling Final Rule is published before enforcement begins.
 - While the concerns for lack of time to comply apply to all the trade industry, the concerns are magnified for FTZs.

- IKEA explains that as a participant in the eFiling Beta Pilot, they have found system integration to be the most significant challenge.
 - For example, IKEA's brokers were not ready to accept product certificate information for transmission into ACE until January, and then IKEA dealt with additional internal issues, which impeded their ability to move forward with Beta Pilot participation.
- NAFTAZ has noted from speaking with many importers in the industry that many of them are having technical issues with getting data to flow properly from internal systems to applicable external systems.
- NAFTAZ is also concerned that many companies, both big and small, are not aware of the eFiling initiative and requirements yet which is likely to cause major delays and technical issues upon eFiling Final Rule publication.
 - Some importers have suggested that they do not plan to start programming and implementing solutions to comply with eFiling until it is an official requirement.
 - The trade industry will require at least one year after the Final Rule is published to comply.
- CPSC staff is reviewing the public comments submitted to the Supplemental Notice of Proposed Rulemaking (SNPR) and is aware of comments related to concerns with implementation of the final rule.
 - CPSC staff surveyed Beta Pilot participants regarding the level of time and resources required for eFiling.
 - CPSC staff informed that the Commission will determine the implementation and enforcement dates of a final rule.
 - Columbia Sportswear works with the testing lab, Intertek, to transmit Message Sets into CBP's ACE system, and reports that Intertek is working to integrate and automate their systems to enable eFiling and is close to testing their updated system and has received inquiries from other importers that want to work with them to comply with the eFiling requirements.

eFiling Public Comments – FIFO Method Incompatible

- NAFTAZ highlights the incompatibility of the inventory method used in FTZs called the First-In, First-Out (FIFO) Method, with eFiling.
- NAFTAZ explained that the current inventory tracking system does not allow importers to associate a certificate of compliance with a specific product in any given shipment that is leaving a zone.
- Due to the nature of the FIFO method and FTZs, importers do not file entry until the shipment is leaving the zone (Entry Type 06).
- Columbia Sportswear discussed specific metrics to indicate the negative impact eFiling would have on its business and its participation in FTZs.
 - 25% of their products are subject to certification.
 - Within the last 12 months, 14 million imported units have been subject to certification.
 - In order for Columbia Sportswear to identify a physical item for certification, they would have to tell an employee on the ground in an FTZ to open a physical shipment pallet, pull the item, confirm the season of the product, report the

- product details, communicate the required product certificate data elements, and work with a broker to manually key the elements into the Message Set.
 - Just for labor alone, Columbia Sportswear asserts that eFiling would cost \$4 million per year and 27 cents per unit.
- NAFTAZ asks whether it would be possible to include all possible certificates that could apply to that inventory accounting for all seasons because of CBP's ACE entry line limitations.
 - There are limitations to the data load that CBP's ACE system can handle and
- In one example given by IKEA, they had a product that did not sell well but continued to be housed in the zone inventory. Eventually, the product was no longer sold but was still in inventory. In cases like this, IKEA says there may be certificates that go back 7+ years when taking into account the time from entering the zone, to slowing sales, to final purging from the zone.
- CPSC staff informed that Customs and Border Protection (CBP) ACE system can handle up to 999 lines per entry.
 - NAFTAZ expressed major concern with this capacity because there are many times when their entry lines exceed 999 currently, and with the implementation of eFiling, importers would frequently exceed this capacity. For example, instances exist where an FTZ weekly entry is split because of line limitations.
- CPSC staff questioned NAFTAZ as to what they do currently to comply with the CPSC product certification requirements that began in 2008, especially when a shipment is targeted for exam.
 - NAFTAZ responds saying that if a specific shipment is targeted for an exam, importers manually pull the product certificate data by manually opening the shipment pallet to pull the product label and season in order to provide the full product certificate data.
 - CPSC reiterates that per statute, every product that leaves an FTZ requires a certificate of compliance and is required to be made available if requested.
 - IKEA confirms that they do not send a physical certificate of compliance out of any distribution center but instead, every retail store has access to a system that compiles product certificate data so that they can pull the data if needed.
 - Columbia Sportswear does the same thing and allows retailers access to a system that compiles product certificate data.

eFiling Public Comments – Impact on Operations

- Columbia Sportswear alleges that eFiling would cause such a significant negative impact on operations that they would have to pull out of FTZs.
- Columbia Sportswear also asserts that if the eFiling program were to be required for products that flow through FTZs, the eFiling program could be detrimental to the United States economy.

eFiling General Discussion

- CPSC staff questions Columbia Sportswear and IKEA whether their products fall under any other agency's jurisdiction.

- Columbia Sportswear falls under the jurisdiction of other agencies including the Environmental Protection Agency (EPA).
- IKEA also falls under the jurisdiction of various other agencies including Federal Communications Commission (FCC), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), and Fish and Wildlife Service (FWS).
- Both Columbia Sportswear and IKEA explain that other agencies allow products from an FTZ to be filed with a disclaimer message.
- Other agencies would prefer to get the actual product certificate data provided in a Message Set but accommodate FTZs due to their inventory and tracking methods.
- FTZs would be able to provide the Message Set data if Customs and Border Protection had that capability through their ACE system.
- EPA had to agree to accept the certificate data after arrival due to the state of ACE and lack of compatibility with FTZs.
- CPSC staff asks whether EPA requests Message Set data on a per product basis at the time of entry.
 - When filing for EPA, importers are able to file on an article supplier basis and include more than one product on one entry for instances when multiple products have the same product certificate information.
 - Providing product certificate data for multiple products on one entry makes it easier to file Message Sets because products with the same HTS class and manufacturing and testing information can be combined.
- CPSC staff asks how compliance data is tracked on a product level in FTZs for requirements such as CBP Antidumping.
 - Companies such as Columbia Sportswear and IKEA do not have a problem complying with antidumping requirements because products with the same HTS class and other manufacturing and testing requirements can be combined into one entry.
 - Further, the issue with seasonality does not exist for antidumping.
 - The timing of safety testing and certification requirements pose a big challenge when it comes to eFiling because retesting is conducted often, therefore requiring that certificates are updated frequently.
 - For antidumping, importers do not have to worry about the timing of safety certificates.
 - CBP audits are done at the unit level. Importers track product data in inventory record keeping systems with information such as style, color, size, etc.
 - If CBP conducts an audit at ports outside of FTZs, they will open a carton to check the contents to ensure they match what the importer's system indicates the carton contains.
 - If CBP conducts an audit in a FTZ, an importer would not be able to say that the system matches the contents of the carton due to the nature of their inventory tracking system.
 - The only way for importers to know the contents of a carton in a FTZ is to manually open the carton and look at the tag of the physical product.
 - Historically, if CBP conducts an audit in an FTZ, the importer will walk the officer through the process for a single shipment out of the zone by

- walking them through their internal systems, opening the carton, and explaining the zone inventory and FIFO process.
 - It is widely known that many auditors are not familiar with the processes within FTZs, so importers are often the ones walking the auditors through the process and find it difficult to get the auditors to understand the applicable processes for units under foreign versus domestic status.
 - During an audit, if the zone inventory indicates that an importer has 5,000 units in foreign status, the importer will take the auditor to the warehouse to physically show them the 5,000 units.
- Based on CPSC staff's understanding, certificates are done at batch or lot level and therefore CPSC staff believes importers in FTZs could add that additional data element and make the software update to adjust their inventory tracking methods to comply with eFiling.
 - Importers responded saying that their inventory tracking method, FIFO, does not accommodate this level of tracking and therefore makes it impossible to track product certificates on a per product basis.
 - Importers assert that the eFiling initiative would require an entire overhaul of their FIFO inventory process which lies at the center of why importers decide to do business in an FTZ. The FIFO method is part of an existing regulation that structures how FTZs conduct business as per 19 CFR part 146.
 - An example was provided referencing a previously proposed requirement to add country of origin as a new data element included in inventory tracking.
 - This requirement was pulled back after realizing that the cost did not outweigh the benefit. The cost of adding the single data element was too expensive.
 - Instead of automatically tracking the country of origin in their systems, importers were required to look at the physical label to communicate the country of origin.
 - The only reason looking at the physical label was a feasible solution was because only 1% of products fell under this requirement.
 - When conducting research on the feasibility of updating product labels to automatically include country of origin, Columbia Sportswear says they found that they are at least three years away from a solution. IKEA says a similar project is projected to take them at least 7 years.
- Many agencies that require Message Sets to be filed accept disclaimer entries from FTZs at the time of entry and then track the certificate information after the fact.
- The scope of products and Message Sets that are currently required for other agencies do not accurately reflect the proposed requirements and updates necessary for eFiling.
- IKEA provides another example related to Message Sets filed in compliance with the EPA TSCA PFAS Reporting Rule.
 - To comply with TSCA requirements for products such as markers, pens, etc. IKEA makes the compliance data available upon request after the filing occurs, but at the time of entry, IKEA files with a hard coded default statement that lets EPA know that their product complies with the TSCA testing and certification requirements.
- NAFTAZ indicates that they have ongoing discussions with CBP about updating their ACE system and e214 form to accommodate Message Set information.

- CPSC staff has communicated with CBP points of contact that have indicated that there are currently no plans to update the e214 form.
- NAFTAZ says that CBP has indicated future plans to update ACE and the e214 form but that the initiative has fallen down the priority list year after year.
- NAFTAZ considers it a necessary priority that Partner Government Agencies (PGA) receive information from CBP's e214 form to limit unnecessary overlapping efforts.
- NAFTAZ would like to bring stakeholder government agencies together in a round table format to make sure everyone is on the same page when it comes to FTZs.
- NAFTAZ states that many agencies make special accommodations for FTZs due to the nature of the inventory tracking system, at least until CBP establishes a connection between PGAs and their e214 form.
- NAFTAZ sees three reasonable solutions for complying with CPSC eFiling requirements.
 - One option is to provide the latest product certificate available for a product at the time of entry.
 - The second option is to enter certificate data in the Product Registry when the product is admitted into the zone and then file a Disclaim Message Set at entry
 - The third option is to file multiple certificates until CBP e214 form is updated.
- IKEA finds it unreasonable to ask importers to hire additional people to hand type product certificate data into the Product Registry for each product they import.
 - CPSC staff responds to say that the Product Registry has various options to enable bulk upload including via CSV or API integration.

Next Steps

- NAFTAZ will follow up with A. Laciak to provide the list of points of contact at CBP they have been communicating with about updates to the FTZ e214 form.