

June 14, 2024

Sabrina Keller  
Deputy Director, Import Surveillance  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Sabrina,

The NCBFAA Regulatory Agencies Committee (RAC) is pleased to see the Federal Register notice announcing the expansion of CPSC's e-filing Beta pilot. Customs brokers have been proud to participate in the initial Beta pilot, and we look forward to this next important step.

We do want to take this opportunity to express this concern: the timing of the official comment period for the final rule. CPSC solicited comments through a Supplemental Notice of Proposed Rulemaking in December 2023. However, the comment period ended before the initial Beta pilot was complete and before a broader swath of the trade could participate in the expanded Pilot. For many importers and brokers, our observations and viewpoints are only now taking shape, informed by our experiences with the pilot. Yet, there is no formal process to submit our comments on the rule itself in light of our experiences with the pilot. We think CPSC is missing an opportunity to gain valuable insight from the trade.

We have appreciated the deliberate and methodical process that the Commission has followed to reach this point. Your outreach has been outstanding. And by taking it step-by-step, with well-designed pilots to inform the path forward, you have avoided costly missteps. Now is not the time to rush this final lap.

NCBFAA will be submitting Federal Register comments before August 5, 2024 on aspects of the Paper Reduction Act, as invited by the June 4, 2024 Federal Register notice. But that only involves a narrow set of issues. We hope you will consider having a mechanism for the trade to submit additional public comments on the rule itself or the Beta pilot.

In the meantime, the RAC offers you our insights on the e-filing program and our experience with the Beta pilot:

- **Product Registry:** The Product Registry is especially valuable, streamlining data entry and requiring fewer data elements. The short reference message set works well with importers who use the Product Registry, especially if the importer can provide the version number with entry documents.
- **Upload by Labs and Manufacturers:** The ability of labs and manufacturers to upload data directly to the registry on behalf of importers is a great feature and works well for those utilizing this feature.



- **Batch Certifications:** We appreciate that CPSC developed a batch certify function in the Product Registry. Previously, the Importer had to individually certify each part number, which was very inefficient.
- **Search Function:** Access to the Product Registry is, of course, controlled by the importer/account owner. Brokers and other third parties like labs and manufacturers only have access when invited/granted by the importer/account owner. This limits the ability for customs brokers to search and find data needed for entry. This is particularly relevant for direct-to-consumer or small business shipments, where the US buyer/importer likely has very little to no understanding of the certificate requirements.

We encourage CPSC to consider a limited search function for qualified third parties. The search could be confined to only certain data, such as the Part #, Version # and certifier ID. The search function could be set so that no other data can be accessed unless authorized by the account owner. This would be similar to the Food and Drug Administration's (FDA) database of registered facilities and would allow the customs broker to file the reference message set after confirming a part or product is actually in the Product Registry. If CPSC does not open the Registry to a limited search function (or allow manufacturers/labs to upload certificate data for any importer to use), direct consumers and many small businesses will have to rely on paper certificates and full message sets.

- **Product ID Version Number:** The reference PGA dataset requires: a commercial description, the processing code REF, the product ID, the product ID version number, and the Certifier ID. The one data element that would not be included on typical entry documents is the Product ID version number, which is the certificate version number covering those parts. All the other data elements would be known beforehand or available on the entry documents. This means brokers will still need to either obtain the version info from the importer or have access to the Product Registry to find it there. This will be very challenging for direct consumer shipments and many small business shipments.
- **System Bugs:** As with all product development, there have been bugs in the registry development. Sometimes these have been slow to get fixed. We hope the system will work smoothly by the mandatory filing deadline.
- **Importer Participation:** Importers have been very slow to participate. Most importers are way behind CPSC's projected volumes. There have also been significant software challenges as software vendors have been slow in pivoting to changes. Although this has been a great PGA pilot experience overall, CPSC may not have anticipated the actual amount of time it would take for importers and software providers to implement.
- **Intended Use Code:** When we submit a PGA disclaim code for CPSC, an Intended Use code is required. This differs from nearly all other PGAs. While Intended Use codes are routinely provided to us by importers whose products are subject to CPSC requirements, that is not the case for non-CPSC regulated products. Therefore, we must track down

Intended Use Codes for many shipments not subject to CPSC – a time-consuming, costly and inefficient process from our perspective.

## **Additional Thoughts and Concerns**

We also want to share some broader concerns as you move forward.

**Definition of Importer:** CPSC has proposed to define the importer as “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...when appropriately designated by the owner, purchaser, or consignee of the product or substance....*” [Emphasis added.]

We understand and support your efforts to broaden the definition of “importer” for purposes of CPSC. You make it clear that the Importer of Record (IOR) for CBP purposes and the CPSC importer are not *necessarily* one and the same party. This is appropriate since the IOR may be an intermediary without extensive knowledge of the product. Instead, the CPSC importer/certifier should be a party with a direct financial interest in the product, which may or may not be the IOR.

We are uncertain, however, why CPSC proposes in its definition to highlight the customs broker as a potential “importer” for purposes of the CPSC certificate. While customs brokers play an important role in the entry process, a customs broker will never have the requisite knowledge of the product’s design or manufacture to issue a certificate attesting to the safety of the product. We cannot imagine a circumstance where a customs broker would choose to take on the responsibility as the CPSC importer/certifier.

It is also redundant to say: “An ‘importer’ can **also** be a person holding a valid customs brokers license...” A customs broker is already subsumed in the definition of “importer-of-record” (in 19 USC 1484(a)(2)(B)) and the IOR is one of the parties listed as a potential CPSC importer/certifier. The repetition places unnecessary emphasis on the customs broker, when in fact it will be rare (if ever) that a customs broker will choose to be the “importer” with the legal responsibility for issuing a certificate. We urge CPSC to remove that sentence from its proposed definition. It is unnecessary and misleading.

Since the CPSC-defined “importer” is the party responsible for issuing the certificate, it is important to assign such a responsibility to the person with the knowledge and control over the product to perform this function effectively. Therefore, we urge CPSC to make it clear that a customs broker or other non-beneficial owner will never be the CPSC importer by default, merely due to their role in the import process.

At the same time, we recommend the CPSC more clearly distinguish between the party responsible for issuing the certificate (a party with knowledge and control of the product) versus the party responsible for filing the certificate data at the time of entry (the importer of record, as defined in customs law) versus the party transmitting the certificate data in ACE (in

most cases, the customs broker).

**Trusted Trader Program:** We hope CPSC will consider a Trusted Trader program where highly compliant importers can be eligible for an exemption from the shipment-by-shipment e-filing requirement, or for streamlined procedures for repetitive shipments. This would incentivize and reward importers who exceed the requirements, while sharpening CPSC's ability to target higher risk shipments.

**Type 86 Entries:** In the e-commerce world of individual shipments, individuals are unlikely to be able to manage the Product Registry process. This will mean relying on a paper process with a full message set – a costly and unrealistic undertaking for low-value shipments. CPSC must understand just how much of a challenge this will be – so much so that it has the potential to push consumer products out of the Type 86 entry process altogether (giving CPSC even less visibility into the shipment). We hope CPSC will work with the trade to overcome these challenges.

**Participation from the Trade:** The Beta Pilot has been a successful beginning. Yet it is still just a beginning. The lessons learned have been valuable, but with only 38 importers participating in a very controlled environment, we do not really know how it will function in the day-to-day trade world.

The fact is most importers have not yet focused on the CPSC e-filing initiative or are only just starting to take notice. Recently, we began hearing concerns from importers who are concerned about the impact of the CPSC e-filing mandate. One importer, who routinely has hundreds (and sometimes thousands) of CPSC certificates per entry, questions how this can ever work for their company and similarly situated importers.

We will, of course, encourage importer clients to participate now that CPSC has opened the pilot up. From experience, we know it can be difficult to overcome the initial skepticism and their reluctance to invest in an evolving program. Yet, we need this broad participation to know how the Product Registry and the PGA Message Set work in the real world. We hope CPSC can provide the incentives to bring more importers into the process.

**Feedback from the Trade:** Just as important, we need feedback on what works and what does not in a wide range of supply chains. Accordingly, we encourage CPSC to reopen the SNPR comment period to invite further comment on the proposed rule and the experience of importer participants in the Beta pilot (or at least have an official mechanism to receive additional comments). We think this opportunity could spur more importers to try out the Product Registry. We also think CPSC and the e-filing process will benefit from greater scrutiny and the additional feedback.

In any event, we urge CPSC not to issue a final rule until you can evaluate how the e-filing process functions with broad participation and make any needed adjustments. We all need to know the challenges for various products and their supply chains, as well as the capability of CPSC's systems and ACE to handle entries with large volumes of certificates. With the end in sight, it is tempting to push rapidly through this last segment; but it would be a mistake to do so.

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Thank you again for your efforts. The NCBFAA RAC looks forward to working with you in the months ahead to improve upon the process and to broaden voluntary importer participation in the e-filing initiative.

Sincerely,

Michael E. Lahar  
Chairman