

The contents of this document will be discussed at the open Commission Meeting scheduled for Wednesday, December 12, 2012.



**UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
BETHESDA, MD 20814**

This document has been electronically approved and signed.

**THIS MATTER IS NOT SCHEDULED FOR A BALLOT VOTE.**

**A DECISION MEETING ON THIS MATTER IS SCHEDULED ON:** To Be Determined

**DATE:** December 5, 2012

**TO:** The Commission  
Todd A. Stevenson, Secretary

**THROUGH:** Mary T. Boyle, Acting General Counsel  
Kenneth R. Hinson, Executive Director  
Patricia M. Pollitzer, Assistant General Counsel, RAD

**FROM:** Mary A. House, Attorney, RAD

**SUBJECT:** Amendment to Regulation on Certificates of Compliance

Staff of the Consumer Product Safety Commission (CPSC) recommends that the Commission propose to amend its rule on Certificates of Compliance, codified at 16 CFR part 1110 (the 1110 rule). A draft notice of proposed rulemaking for publication in the *Federal Register* is attached for your consideration.

Please indicate your vote on the following options:

- I. Approve publication of the attached document in the *Federal Register*, as drafted.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. Approve publication of the attached document in the *Federal Register*, with changes. (Please specify.)

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action. (Please specify.)

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment: *Draft Notice of Proposed Rulemaking: Amendment to Regulation on Certificates of Compliance*

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Billing Code 6355-01-P

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1110**

**[CPSC Docket No. CPSC-2012-xxxx]**

**Amendment to Regulation on Certificates of Compliance**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Consumer Product Safety Commission (Commission, CPSC, or we) is issuing a proposed rule that would amend the existing regulation on certificates of compliance at 16 CFR part 1110. The proposed amendment is intended to update the rule to clarify requirements in light of new regulations on testing and labeling pertaining to product certification, and component part testing, codified at 16 CFR parts 1107 and 1109, respectively. The proposed amendment would, among other things, use newly defined terms such as “finished product certificate” and “component part certificate”; require that regulated finished products that are privately labeled be certified by the private labeler for products manufactured in the United States; clarify requirements for the form, content, and availability of certificates of compliance; and require that importers of regulated finished products manufactured outside of the United States file the required certificate electronically with U.S. Customs and Border Protection (CBP) at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

**DATES:** Written comments must be received by [INSERT DATE THAT IS 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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**ADDRESSES:** You may submit comments, identified by Docket No. [insert CPSC docket number], by any of the following methods:

### Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through [www.regulations.gov](http://www.regulations.gov).

### Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to:

<http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>.

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**FOR FURTHER INFORMATION CONTACT:** Carol Cave, Director, Office of Import Surveillance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; ccave@cpsc.gov; telephone (301) 504-7677.

### SUPPLEMENTARY INFORMATION:

#### I. INTRODUCTION

##### A. *Background on 16 CFR part 1110*

The Commission promulgated a direct final rule on “certificates of compliance,” also referred to as “certificates,” on November 18, 2008 (73 FR 68328), which is codified at 16 CFR part 1110 (the existing 1110 rule). The Commission published the existing 1110 rule shortly after the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted on August 14, 2008, to clarify for stakeholders the certificate requirements imposed by the newly amended section 14(a) of the Consumer Product Safety Act (CPSA) and section 14(g) of the CPSA. The CPSIA amended section 14(a) of the CPSA to require that manufacturers and private labelers of children’s products subject to a children’s product safety rule certify such products as compliant based on testing conducted by a third party conformity assessment body, and that manufacturers and private labelers of regulated non-children’s products certify compliance based on a test of each product, or on a reasonable testing program. Section 14(g) of the CPSA states requirements for certificate content. Thus, the existing part 1110 rule sets forth certificate requirements, such as:

- limiting the parties who must issue a certificate to the importer, for products manufactured outside the United States, and, in the case of domestically manufactured products, to the manufacturer;
- allowing certificates to be in hard copy or electronic form;
- clarifying requirements for an electronic form of certificate; and
- providing certificate content requirements.

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*B. Why is the Commission proposing to amend the 1110 rule now?*

The Commission is proposing to amend the 1110 rule now to clarify certificate requirements in light of new rules related to testing and certification of consumer products and to implement section 14(g)(4) of the CPSA, which allows the Commission, in consultation with the Commissioner of Customs, to require that certificates for imported products be filed electronically with CBP up to 24 hours before arrival of an imported product.

Since the existing 1110 rule was promulgated in 2008, the Commission has been working diligently to implement the requirements of the CPSIA, including the requirements in section 14 of the CPSA for testing, labeling, and certification of consumer products. Recently, the Commission issued two key rules: (1) *Testing and Labeling Pertaining to Product Certification*, 16 CFR part 1107 (the Testing Rule or the 1107 rule), and (2) *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements*, 16 CFR part 1109 (the Component Part Rule or the 1109 rule). Both rules were published in the *Federal Register* on November 8, 2011 (76 FR 69482 & 76 FR 69546, respectively). The Testing Rule sets forth requirements for the testing, certification, and labeling of regulated children's products. It becomes effective on February 8, 2013. The Component Part Rule, which allows for component part testing and certification to meet testing and certification requirements, became effective on December 8, 2011. Amending the existing 1110 rule would allow the Commission to define and use new terms introduced by the 1107 and 1109 rules, and to describe and explain how certificates must be integrated and consistent with these new rules.

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*C. What statutory requirements apply to certificates of compliance?*

This section of the preamble describes the statutory requirements that apply to certificates and the Commission's authority to implement such requirements. Section 14 (a)(1) of the CPSA, as amended by the CPSIA, requires that except for certificates that apply to children's products, every manufacturer, or private labeler if there is one, of a consumer product that 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 that is imported for consumption or warehousing, or distributed in commerce, must issue a certificate. Section 3(a)(8) of the CPSA defines "distribute in commerce" to mean "to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." For non-children's products, the certificate must be based on a test of each product or on a reasonable testing program. The certificate must specify each applicable rule, ban, standard, or regulation enforced by the Commission and certify that the product complies with all such listed rules.

Similarly, section 14(a)(2) of the CPSA requires that every manufacturer or private labeler, if there is one, of a children's product that is subject to a children's product safety rule must have the children's product tested by a third party conformity assessment body, and based on such testing, certify that the product is compliant with all applicable rules. Before importing such children's products for consumption or warehousing, or before distributing such children's products in commerce, manufacturers or private labelers must submit sufficient samples of the children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body, whose accreditation has been accepted by the Commission to perform such testing, to be tested for compliance with all applicable children's product safety rules. The manufacturer or private labeler must issue a certificate or certificates

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based on such testing, certifying that the children's products covered by the certificate(s) comply with all applicable children's product safety rules. Section 14(a)(2)(B) of the CPSA states that a certificate can be issued for each applicable children's product safety rule, or one certificate for the product can combine all applicable rules, by listing each applicable children's product safety rule separately and certifying compliance with all of them.

Section 3(a)(11) of the CPSA defines the term "manufacturer" as any person who manufactures *or imports* a consumer product. As such, any statutory obligation assigned to a manufacturer, by definition, applies to an importer. Thus, as written, the statutory obligation to issue a certificate for children's and non-children's products falls to the manufacturer, importer, or the private labeler of a consumer product, if the product is privately labeled under section 3(a)(12) of the CPSA. Section 14(a)(4) of the CPSA provides that in the case of a consumer product that has more than one manufacturer or private labeler, the Commission may, by rule, designate which person is responsible for issuing a certificate, and exempt all other persons from issuing certificates.

Section 14(g) of the CPSA contains certificate requirements. Section 14(g)(1) of the CPSA requires that a certificate shall 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. At a minimum, certificates are required to 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. Additionally, section 14(g)(2) of the CPSA requires that every certificate be legible and that all contents must be in English. Contents may also be in any other language. Moreover, pursuant to section 14(g)(3) of the CPSA, certificates must

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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. Finally, section 14(g)(4) of the CPSA states that in consultation with the Commissioner of Customs, the 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 or to CBP.

In addition to the statutory authority to require certificates for regulated products, as outlined in sections 14(a) and (g) of the CPSA, the Commission has general implementing authority with regard to certificates, pursuant to section 3 of the CPSIA, which provides: “[t]he Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.”

## II. Description of the Proposed Rule

Because of the number of proposed changes, the Commission intends to strike the existing 1110 rule in its entirety and replace it with the proposed rule set forth below.

### A. *What Is the Purpose and Scope of this Part? – Proposed § 1110.1*

Proposed § 1110.1 would continue to describe the purpose of part 1110 but does so in language that is clearer and more simple. The changes also clarify which provisions of this part apply to component part certificates. Existing § 1110.1(a)(1) states that the purpose of the rule is to “limit” the entities required to issue certificates because the existing rule does not cover private labelers. The proposed rule would increase the number of entities responsible for issuing certificates and therefore would state that the purpose is to “specify” the entities that must issue

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certificates. The proposed rule also would implement section 14(g)(4) and require certificates for imported products to be filed electronically with CBP. Proposed § 1110.1(b) would reflect this change.

*B. What Definitions Apply to this Part? – Proposed § 1110.3*

Existing § 1110.3 defines an “electronic certificate,” and incorporates definitions from section 3 of the CPSA as well as definitions set forth in the CPSIA. Proposed § 1110.3 would maintain these provisions, with minor grammatical changes, and would add 12 new definitions. The proposed new definitions would clarify the different types of certificates outlined in the Testing and Component Part Rules, such as “Children’s Product Certificate (CPC),” “General Conformity Certificate (GCC),” “finished product certificate,” and “component part certificate.” For example, two types of finished product certificates would be defined in the proposed rule: CPCs and GCCs. Either a CPC or GCC would only be required for “finished products” but not for “component parts” of consumer products under the proposed rule. Only certain regulated finished products would be required to be certified because our regulations typically are based on finished products. Under the Component Part Rule certification of component parts is voluntary, so not all component parts will be tested or certified, unless and until they become part of a regulated finished product; and component part suppliers may not know how the component part will be used and whether it will become part of a regulated finished product.

The proposed new definitions would also make part 1110 consistent with the Component Part Rule, by including and clarifying terminology used in that rule, such as “component part” and “finished product.” Proposed § 1110.3(b)(6) would define a “component part” as “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

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manufacture or assembly of a finished product, and is not intended for sale to or use by consumers as a finished product.” Thus, the term “component part” would refer only to parts of products that are intended to be used in the manufacture or assembly of a finished product. In contrast, the term “finished product” refers to a product that is “imported for consumption or warehousing or is distributed in commerce.” Under the proposed definition, parts of such products that are packaged, sold, or held for sale to or use by consumers would also be considered finished products.

The distinction between a “component part” and a “finished product” is important because it defines when a product must be accompanied by a certificate under the proposed rule. “Finished products” are intended for sale to, or use by, consumers. “Component parts” are intended for incorporation into a finished product, and are not packaged, sold, or held for sale for use by consumers. In contrast, replacement parts of finished products that are sold separately would be considered finished products under the proposed rule. Because use of the Component Part Rule is voluntary, not every component part will be certified. It is only at the finished product stage that finished product certifiers will know all of the regulations that apply to a product and whether it must be accompanied by a certificate.

For example, doll clothing can be packaged and sold directly to consumers as a doll accessory. Such doll clothing that is packaged for sale to consumers would be considered a finished product under the proposed rule and must be certified. However, the same doll clothing could also be imported for use in the final assembly of a doll. Doll clothing that is imported for the purpose of being assembled with a doll for sale to consumers would be considered a component part under the proposed rule, and it would not be required to be accompanied by a certificate. If such doll clothing is a portion of a children’s product, however, it still must

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comply with the applicable rules. Moreover, such doll clothing would need to be certified as compliant as part of a finished children's product.

Proposed § 1110.3(b)(11) would define a “finished product certifier” as “a party that is required to issue a finished product certificate pursuant to § 1110.7.” Note that § 1107.2 of the Testing Rule defines a “manufacturer” as “the parties responsible for certification of a consumer product pursuant to 16 CFR part 1110.” Thus, changing the party responsible for issuing a certificate in the proposed rule would also change the party responsible for third party testing under the Testing Rule.

### *C. When Are Certificates Required? – Proposed § 1110.5*

Existing § 1110.5 states that a certificate that is in hard copy or electronic form “and complies with all applicable requirements of this part 1110 meets the certificate requirements of section 14 of the CPSA,” and that such a certificate “does not relieve the importer or domestic manufacturer from the underlying statutory requirements concerning the supporting testing and/or other bases to support certification and issuance of certificates.” Requirements for certificate format have been moved to proposed § 1110.9.

Proposed § 1110.5 would clarify when consumer products are required to be certified. Proposed § 1110.5 would require that only finished products that are 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. Component parts of a consumer product are not required to be accompanied by a certificate.

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*D. Who Must Certify Finished Products? – Proposed § 1110.7*

Existing § 1110.7 provides that, except as otherwise provided in a specific standard, in the case of a product manufactured outside the United States, only the importer must certify a product and provide a certificate in accordance with section 14(a) of the CPSA, and that only the manufacturer must certify a product and provide a certificate for products manufactured in the United States. As explained below, the proposed rule would modify this section.

1. Imports – Proposed § 1110.7(a)

Proposed § 1110.7 would retitle the section to read: “Who must certify finished products?” to state more accurately the focus of proposed § 1110.7 and to clarify that only finished products must be certified. Proposed § 1110.7(a) would maintain the requirement that an importer certify products manufactured outside the United States, except in the circumstance of products that are delivered directly to consumers in the United States, such as products purchased through an Internet website. In such a case, the proposed rule would require that the foreign manufacturer certify the product, unless the product bears a private label. The private labeler would be required to issue a certificate for products that bear a private label that are delivered directly to a consumer in the United States, unless the foreign manufacturer issues the certificate.

Products introduced into commerce in the United States must comply with applicable laws and regulations. This proposed revision would clarify and remove any doubt about which entity has the burden to certify products directly delivered to consumers. The Commission recognizes that when a foreign entity delivers products directly to a consumer in the United States, the consumer could be considered the importer. Placing the obligation to test and certify consumer products on the purchasing consumer would be inconsistent with the goals of the

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statute, in that it would not protect consumers as intended by the testing and certification scheme set forth by Congress, and implemented by the Commission. Accordingly, the proposed rule would not place the burden of ensuring such compliance on consumers; rather, the Commission believes that the appropriate way to ensure compliance is to require companies that purposefully send their products into the United States to test and certify their products, as required by United States law.

For the vast majority of products imported into the United States through CBP, the proposed rule would continue to require that the importer of record certify the product, to provide a uniform, consistent, and predictable means of enforcing testing and certification requirements for imported products. We understand that some private labelers and brand owners with foreign manufacturing facilities want to test and certify their products. The Component Part Rule, which is already in effect, allows an importer to rely on testing or certification conducted by another party, as long as the importer meets the requirements of the 1109 rule, including exercising due care (see 16 CFR §1109.5(i)). Thus, private labelers and brand owners already can test and certify products on which an importer can then rely to issue their own certificate. The proposed rule would clarify that a finished product certificate must be issued by a required finished product certifier. An importer cannot simply pass along a component supplier's certificate. Thus, proposed § 1110.7(a) would ensure that the certificate required by the CPSC must be issued by the importer, who is required to certify the product. The ability of finished product certifiers, such as importers, to rely on another party's testing or certification under the 1109 rule allows a private labeler to test and certify, as needed, while maintaining the Commission's ability to enforce its regulations against the party responsible for importing the product.

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2. Domestic products – Proposed § 1110.7(b)

For products manufactured in the United States, the proposed rule would continue to place the responsibility for issuing a required finished product certificate on the manufacturer, except in circumstances where a product is privately labeled, as defined in the CPSA. If a product is privately labeled, the proposed rule would place the obligation to certify the product on the private labeler, unless the manufacturer certifies the product. The Commission recognizes that under the existing 1110 rule, privately labeled products are required to be certified by the manufacturer. This relationship may continue as long as the product is certified. The proposed rule, however, would shift the obligation to ensure compliance for privately labeled products on to the private labeler.

Duplication of effort to issue a certificate should not occur by requiring the private labeler to certify privately labeled products. A “private labeler” is a defined term in the CPSA. Pursuant to section 3(a)(12) of the CPSA, the term applies only to products that carry the private labeler’s brand or trademark on the product and not the manufacturer’s brand or trademark. Therefore, all products manufactured in the United States that contain a brand or trademark in addition to a manufacturer brand or trademark are not considered privately labeled under the CPSA, and the manufacturer would remain the required finished product certifier under the proposed rule. The proposed rule would change only the obligation to certify a product to the private labeler for products manufactured in the United States that bear a private label, which are those products that do not contain the brand or trademark of the manufacturer.

A “brand owner” is not defined in the CPSA. A brand owner would not be a required finished product certifier under the proposed rule, unless that entity imports products, manufactures products in the United States, or meets the definition of a “private labeler” for

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products made in the United States. We understand that some brand owners license their brand or trademark to appear on consumer products. Like “brand owner,” “licensee” and “licensor” are not defined terms under the CPSA, and the Commission cannot require a “licensee” or a “licensor” to issue a certificate. Regardless of who the required finished product certifier is under the proposed rule, brand owners can already test and certify products under § 1109.5(i) of the Component Part Rule. If the product is imported, an importer can rely on a brand owner’s testing or certification as a basis to issue the required finished product certificate. Moreover, a domestic manufacturer can rely on a brand owner’s testing or certification to issue a required certificate, as long as all parties follow the requirements in the 1109 rule.

The proposed revisions to expand the required finished product certifier to include the private labeler for privately labeled products should not necessarily result in a change to existing relationships with regard to testing products and issuing certificates. Testing and certification can already be conducted by other parties under the Component Part Rule, and in both cases, where the private labeler has been included, the manufacturer can continue to issue the certificate.

### *E. What Form(s) May the Certificate Take? – Proposed § 1110.9*

Existing § 1110.9, titled, “Form of certificate,” states that “the information on a hard copy or electronic certificate must be provided in English and may be provided in any other language.” Proposed § 1110.9 would revise and elaborate on this concept, establishing requirements for language, format, and electronic certificates. This section would restate the statutory requirement that certificates must be in English, and may also contain the same content in any other language. The section would state that, except as provided in proposed §

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1110.13(a)(1), which requires an electronic certificate for products imported into the United States, certificates may be provided in hard copy or electronically.

Proposed § 1110.9(c) would set forth requirements for electronic certificates in all cases, except certificates that would be required to be filed electronically with CBP at importation. The proposed rule would continue to allow a broad range of formats for electronic certificates, as long as they are identified by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means. However, several changes are proposed. First, proposed § 1110.9(c) would provide requirements for electronic certificates *other than* the filing of certificates electronically with CBP for imported products, which is discussed in detail in proposed § 1110.13(a)(1) in section II.G of this preamble. Accordingly, proposed § 1110.9(c) would apply only to: products manufactured in the United States; foreign-manufactured products that are delivered directly to a consumer in the United States; and imported finished products after importation, such as when requested by CPSC or CBP, or when certificates are furnished to retailers and distributors.

Second, proposed § 1110.9(c) would still allow for use of a “unique identifier” to access a certificate electronically, but it would require that the unique identifier be “identified prominently on the finished product, shipping carton, or invoice.” Experience with electronic certificates has shown that they can be effective as long as they are easily accessible. Searching products and paperwork for a certificate identifier should not require significant time and resources because it detracts from the efficiencies achieved by allowing electronic certificates. Requiring the placement of a unique identifier to be “prominent” and limiting the placement to three distinct options is intended to ensure the efficiency of allowing electronic certificates.

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Third, proposed § 1110.9(c) would state that electronic certificates must be accessible “without password protection.” This amendment would ensure that access to electronic certificates is easy and efficient and does not require significant CPSC time and resources. If accessing information electronically is cumbersome, it defeats any efficiency achieved by electronic certificates. Thousands of entities, including manufacturers, private labelers, and importers, likely must certify consumer products. Maintenance of password information by the CPSC could become burdensome for CPSC’s import surveillance and other enforcement efforts. Accordingly, we propose that electronic certificates be accessible without password protection.

Finally, existing § 1110.13(a)(1) requires that electronic certificates be available to “the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.” Neither CPSC nor CBP regulations define or interpret this phrase, so it is currently unclear when the obligation to present a certificate on demand actually vests. Proposed § 1110.9(c) would clarify that electronic certificates, the URL, or other electronic means, and the unique identifier be accessible to the Commission, CBP, distributors, and retailers, “on or before the date the finished product is distributed in commerce,” to set forth a definite point in a finished product’s distribution chain when the certificate must be available. This requirement is intended to prevent a scenario where the CPSC or a retailer or distributor attempts to access an electronic certificate to find that it does not exist yet or is unavailable.

### *F. What Must the Certificate Contain? – Proposed § 1110.11*

Existing § 1110.11 restates and interprets the requirements for the contents of certificates, as provided in sections 14(a) and 14(g) of the CPSA. Proposed § 1110.11 would revise content requirements to reflect that such content requirements apply to all three types of certificates: GCCs, CPCs, and component part certificates. In addition, proposed § 1110.11 would add three

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content requirements to a certificate: (a) date of initial certification (proposed § 1110.11(a)(2)); (b) scope of the certificate (proposed § 1110.11(a)(3)); and (c) an attestation of compliance (proposed § 1110.11(a)(10)). Each requirement in the proposed rule is discussed below.

1. Identification of the component part or finished product – Proposed §1110.11(a)(1)

The existing rule requires: “Identification of the product covered by the certificate.”

Proposed § 1110.11(a) would state that each certificate must contain the information described therein, and then list each piece of information as numbered items 1 through 10, under proposed § 1110.11(a). Thus, proposed § 1110.11(a)(1) would incorporate the requirement to identify the product being certified, but it would broaden the nature of the “product” that can be covered by a certificate to include component parts as well as finished products. The proposed rule would require the certificate to state whether it covers a finished product or a component part to assist with enforcement and to clarify for all other parties the scope of the certificate.

Proposed §1110.11(a)(1) would further state that “[a] model number, style, or other unique identifier of the product should be provided, if any, along with a description of the finished product or component part. Certifiers may also include an identifier, such as a universal product code (UPC), a global trade item number (GTIN), or other identifying code that may assist with product identification.” This clarification is intended to provide guidance on the type of information that would be considered to be identifying information for a product. Providing a model number or style number, if they exist, would be the most useful way for the CPSC to identify the product, along with a narrative description of the product. Certifiers may also provide a stock-keeping unit, or SKU, to assist in product identification. Additionally, the CPSC is aware that many manufacturers use codes for purposes of product identification, such as UPC codes and GTINs. This type of information is also useful for CPSC to identify products.

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Certifiers would be encouraged to include any type of identifying code on the certificate, if it would aid in product identification. UPCs and GTINs are examples of identifying codes.

Stakeholders are encouraged to comment on whether other types of codes should be stated specifically in the codified text. Although harmonized tariff codes may be placed on a certificate, they are insufficient, alone, to identify a product on a certificate. Similarly, a registered identification number, or RN, on wearing apparel, alone, is insufficient to identify a product on a certificate. An RN is a number, assigned by the Federal Trade Commission, which identifies a business, and does not distinguish products. This type of information can be used in conjunction with other identifying information to identify a product adequately on a certificate but is not sufficient by itself to identify a product.

Certifiers are reminded that they may rely on one certificate to certify more than one product, if products are manufactured at the same facility and the tests apply to all of the products on the certificate. For example, several sizes of a garment may be listed on one certificate, if they were manufactured at the same facility and the testing on the component parts (*e.g.*, fabric, buttons, and zippers) is applicable to each size garment produced. Certificates can be based on the one set of tests. The manufacturer could create one certificate, or it could create a certificate for each product. For example, under the Component Part Rule, a manufacturer of plastic trains that uses the same plastic resin in five different molds to create five different types of trains may test the plastic resin under the 1109 rule and then use those test results to support certification of all products made with the plastic resin. If that were the only testing required, the manufacturer could create one certificate for all five types of trains, or it could create five separate certificates relying on the same testing. The certificate must be explicit as to which product or products it is intended to cover. If additional testing is required that is unique to each

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product, certifiers should certify each product, but may rely on the same testing, where warranted.

### 2. Date of initial certification – Proposed § 1110.11(a)(2)

Proposed § 1110.11(a)(2) would require the certificate to: “[s]tate the date of initial certification of the finished product(s) or component part(s) to which the certificate refers.” This would be a new content requirement on the certificate, but the requirement is drawn from a current requirement in existing § 1110.13(b), which requires that electronic certificates have a means to verify the date of creation or last modification. In practice, many certificates, regardless of whether they are electronic or paper based, contain a date. The proposed rule would standardize the date required to be provided to reflect the date the product was originally certified. If a children’s product undergoes a material change, a new certificate must be issued, pursuant to the Testing Rule. Accordingly, we anticipate that the certification date would be updated after a material change to reflect that the product was subjected to testing for applicable consumer product safety rules affected by the material change, and a new certificate was issued, as required.

### 3. Identification of certificate scope – Proposed § 1110.11(a)(3)

Proposed § 1110.11(a)(3) would require the certificate to: “[i]dentify the scope of finished product(s) or component part(s) for which the certificate applies, such as by a start date, a start and end date, by a lot number, starting serial number, serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate.” This would be a new content requirement on the certificate that would assist the Commission in understanding the scope of the products covered by a certificate. By adding this requirement, the Commission does not intend to require certifiers to modify or create certificates to change the

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scope of the certificate for each shipment. Certifiers can identify the scope of products covered by a certificate through any reasonable means, such as a date or dates, lot numbers, or serial numbers, providing such information will assist the Commission in understanding the scope of each certificate. Certifiers are required to maintain information on the scope of certificates for children's products, pursuant to § 1107.26 of the Testing Rule and § 1109.5(g) and (j) of the Component Part Rule, when applicable.

4. List of rules being certified – Proposed § 1110.11(a)(4)

Existing § 1110.11(b) requires: “Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified. Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.” Proposed § 1110.11(a)(4) would incorporate the statutory requirement in section 14(a) of the CPSA to specify each rule on a certificate, but it would broaden the nature of the “product” that can be covered by the certificate to include component parts of a product. Accordingly, the first sentence in proposed § 1110.11(a)(4) would require the certifier to: “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) or component part(s) are being certified.”

Moreover, proposed § 1110.11(a)(4) would clarify the different requirements for finished product certificates versus component part certificates. A finished product certificate would need to “identify separately all applicable rules, bans, standards, or regulations.” A finished product certifier is responsible for knowing what rules, bans, standards, or regulations apply to each product and for listing all of them on the certificate, or providing a certificate for each

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applicable rule. However, a component part certifier would have the option to certify a component part to specific rules or parts of rules, even though such certification may not ultimately cover all applicable rules. This is because the component part certifier might not know the final use of the component part, and thus, not know the scope of all applicable rules or because additional tests may be required to be conducted on a finished product. Accordingly, a component part certificate would need to “identify all rules, or parts of rules, standards, bans, or regulations for which the component part(s) are being certified.” The proposed component part requirement recognizes that some component parts can be certified to portions of a standard. For example, an accessory used on a children’s product may be tested separately from the children’s product with regard to lead in paint. It would remain the responsibility of a finished product certifier, relying on a component part test or certification, to ensure that all component parts of a finished children’s product are tested and certified not only to the lead in paint standard, but also to all other applicable rules, bans, standards, and regulations.

### 5. Identification of the certifying party – Proposed § 1110.11(a)(5)

Existing § 1110.11(c) requires: “Identification of the importer or domestic manufacturer certifying compliance of the product, including the importer or domestic manufacturer's name, full mailing address, and telephone number.” Proposed § 1110.11(a)(5) would incorporate the statutory requirement in section 14(g)(1) of the CPSA to “identify the manufacturer or private labeler issuing the certificate” and provide “each party’s name, full mailing address, telephone number,” but would broaden the requirement to include certificates for both finished products and component parts. Regardless of the type of certificate being issued, proposed § 1110.11(a)(5) would require the certificate to “[i]dentify the party certifying compliance of the finished product(s) or component part(s), including the party’s name, electronic mail (e-mail)

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address, full mailing address, including the street address, and telephone number.” Note that the proposed rule would broaden the identification requirement to include an electronic mail (e-mail) address and a street address. The e-mail address would provide CPSC with an additional means of contacting and communicating with certifiers, including those located overseas or in different time zones. Providing a street address would ensure that CPSC staff can locate the certifier’s place of business should an investigation require a site visit.

6. Contact information for records custodian – Proposed § 1110.11(a)(6)

Existing § 1110.11(d) requires: “Contact information for the individual maintaining records of test results, including the custodian’s name, e-mail address, full mailing address, and telephone number. (CPSC suggests that each issuer maintain test records supporting the certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 CFR 1508.10 for full-size baby cribs.)”

Proposed § 1110.11(a)(6) would incorporate the statutory requirement in section 14(g)(1) of the CPSA to provide contact information for the individual maintaining records of test results but would broaden it to include contact information for the custodian of all records required for each type of certificate, as set forth in the Testing Rule and the Component Part Rule. Proposed § 1110.11(a)(6)(ii) would require contact information for the individual “maintaining records of test results and other records on which a CPC is based.” Proposed § 1110.11(a)(6)(iii) would require contact information for the individual “maintaining records of test results and other records on which a component part certificate is based.” As in proposed § 1110.11(a)(5), proposed § 1110.11(a)(6) would require the record custodian’s e-mail address, in addition to a full mailing address and telephone number to provide additional means for CPSC to contact the custodian of records. Further, the proposed rule would delete the portion of existing §

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1110.11(d) that requires records be maintained “for at least three years” for all records, because the 1107 and 1109 rules require certificates and test results to be maintained for 5 years. For GCCs, the recommendation to maintain records for 3 years has been retained in some circumstances, but this information has been moved to proposed § 1110.17, which summarizes existing recordkeeping requirements for certificates. Recordkeeping requirements are discussed in section II.I of this preamble.

7. Date and place of manufacture – Proposed § 1110.11(a)(7)

Existing § 1110.11(e) requires: “Date (month and year at a minimum) and place (including city and state, country, or administrative region) where the product was manufactured. If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.”

In addition to requiring that a certificate contain the date and place of manufacture of a product, proposed § 1110.11(a)(7) would use the newly defined term “finished product” and broaden the nature of the “product” to include component parts. Moreover, proposed § 1110.11(a)(7) would interpret “place” to include a street address in all circumstances, not just when a manufacturer operates more than one location in the same city. A post office box would be insufficient to meet this requirement. In addition, the proposed rule would clarify that “place” also includes either the name of a state or a province, as well as either the name of a country or an administrative region. To clarify where a product has been “manufactured,” the definition of “manufactured” is included in the proposed rule. Section 3(a)(10) of the CPSA states: “manufactured” means “to manufacture, produce, or assemble.” The Commission is also requesting comment on the possibility of requiring additional information on a certificate, such

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as the name of the manufacturer, including foreign manufacturers. Please see section III.1 of this preamble for further discussion of this issue.

8. Date and place of testing to support the certificate – Proposed § 1110.11(a)(8)

Existing § 1110.11(f) requires: “Date and place (including city and state, country or administrative region) where the product was tested for compliance with the regulation(s) cited above in subsection (b).” In addition to requiring that a certificate contain the date and place where the product was tested, proposed § 1110.11(a)(8) would use the newly defined term “finished product” and broaden the nature of the “product” to include component parts. Moreover, proposed § 1110.11(a)(8) would make the words “date” and “place” plural, recognizing that finished products and component parts may be tested in multiple or different locations. The Commission’s preference is that all required information be condensed into one certificate, but we acknowledge that section 14(a)(2) of the CPSA allows for a certificate for each applicable standard. Supporting documentation, such as test results, component part certificates, and other finished product certificates, should be available for review upon request, or may be bundled with the required certificate but do not take the place of a required certificate that contains the 10 elements in proposed § 1110.11(a). The proposed rule would also require “place” to include a street address, city, state, or province, and country or administrative region. Thus, proposed § 1110.11(a)(8) would state: “Provide the dates and places (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in § 1110.11(a)(4) of this part.”

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9. Identification of parties that conducted testing to support the certificate – Proposed § 1110.11(a)(9)

Existing § 1110.11(g) requires: “Identification of any third party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.” In addition to requiring that a certificate identify and provide contact information for any third party conformity assessment body on whose testing the certificate depends, proposed § 1110.11(a)(9) would use the statutory language for a third party laboratory, *i.e.*, “third party conformity assessment body,” and would broaden the scope to include all parties who conducted testing on which the certificate depends. This provision would allow all parties, including the CPSC, to identify whether a GCC or a CPC is based on first or third party testing. Finally, required contact information would be broadened to include an e-mail address and a street address, in addition to a name, mailing address, and telephone number. Providing an e-mail address would provide CPSC with additional means of contacting and communicating with parties conducting testing, including those located overseas or in different time zones. Providing a street address would ensure that CPSC staff can locate the third party conformity assessment body if an on-site visit becomes necessary.

10. Attestation of Compliance – Proposed § 1110.11(a)(10)

Proposed § 1110.11(a)(10) would be a new section of the certificate that would require an attestation that the finished products or component parts covered by the certificate are compliant with the applicable rules. The attestation would be made by the party identified as the certifier under proposed § 1110.11(a)(5). The certifier would attest that the finished products or component parts covered under the certificate comply with the rules, bans, standards, and regulations stated in the certificate, at proposed § 1110.11(a)(4), and that the information in the certificate is true and accurate to the best of the certifier’s knowledge, information, and belief.

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Finally, the certifier would acknowledge an understanding that it is a federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statements, representations, or omissions, on the certificate. The proposed language stems from 18 U.S.C. 1001. The language in this section serves several purposes. First, the certificate is an attestation of compliance. The existing certificate requirements do not state explicitly what attestation or affirmation the certifier is making with regard to the products covered by the certificate. Thus, the proposed language would make plain to everyone the scope and gravity of the obligation being made. Second, requiring each certificate to include this language would educate the certifier, including foreign certifiers, of the certifier's obligations under United States law. Finally, some portions of the applicable consumer product safety rules that require compliance, such as certain labeling requirements, are not subject to testing. The attestation is an affirmation by the certifier that the product complies with all the requirements of the applicable rules, not only those provisions for which there are test results.

### 11. Electronic access to records – Proposed § 1110.11(b)

Proposed § 1110.11 would contain a new subsection (b) regarding electronic access to records. This new provision would allow a certificate to include a Web address that links to required records, in addition to identification of the custodian of records, as described in proposed § 1110.11(a)(6). Providing contact information for a custodian of records is a statutory requirement, but certifiers may find it efficient for business and regulatory purposes also to provide a direct link to the required records. For example, § 1109.5(g) of the Component Part Rule requires that “testing parties” and “certifiers,” as defined in that rule, must provide certain documentation, which may include, for example, a component part certificate to certifiers intending to rely upon such documentation to certify a product. Thus, to the extent that such

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records already exist in an easily accessible electronic format to meet recordkeeping requirements in other rules, access to this same electronic format can be provided on a certificate.

### 12. Exceptions – Proposed § 1110.11(c)

Proposed § 1110.11(c) is a new provision that would describe what certifiers must put on a certificate 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. In such a case, the certifier must list all of the applicable rules, and then state when the product is not subject to testing for a specific rule, and the basis for such claim, instead of providing the date and place where testing was conducted. Certifiers are already doing this in many instances, but this requirement would ensure that certifiers are consistent in how they document exceptions on a certificate. So, for example, if a manufacturer makes a children's product (not a toy) that is made entirely of untreated wood, but the product is painted, then the certifier will need to issue a certificate of compliance stating that the paint on the product is compliant with 16 CFR part 1303, the Commission's rule on lead in paint. The children's product is also subject to the lead content requirement in section 101 of the CPSIA, but the manufacturer can rely on the Commission's determination at 16 CFR § 1500.91 that untreated wood does not contain more than 100 ppm lead content. The manufacturer must list both the lead in paint and the lead content rule on the certificate. Applicable information on the date and place of testing, and the third party conformity assessment body that conducted testing, must be provided for the testing conducted on lead in paint. For lead content testing, however, the certifier must state on the certificate that it is relying on § 1500.91 to meet the requirement.

If a product is not required to be tested or certified, the proposed rule would not require a certificate to be issued. A consumer product that is not regulated by the CPSC would not require

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a certificate. Certain products subject to a ban, such as the Commission's rule at 16 CFR part 1306 on hazardous lawn darts, do not require testing or certification. Banned products cannot be sold in the United States, but manufacturers are not required to test and certify that their product is not a banned product. Similarly, although products must be compliant with the Federal Hazardous Substances Act (FHSA), the Commission does not require testing and certification for products requiring special labeling under section 3(b) of the FHSA. Finally, products that are wholly comprised of materials that either do not require testing, or that have been determined not to contain lead in excess of 100 ppm under the Commission's regulation at 16 CFR § 1500.91, do not require testing or certification. An example of this would be a child's purse, made of untreated and unadorned cotton fabric. Although the product is a children's product that must be compliant with the lead content requirement in section 101 of the CPSIA, the cotton fabric has been determined by the Commission not to contain lead in excess of the applicable limit, and does not need to be tested or certified to prove that the material is cotton.

### 13. Duplicative testing not required – Proposed § 1110.11(d)

Finally, proposed § 1110.11(d) is a new section of the rule that would explain that “[a]lthough 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 law enforced by the Commission.” It has come to the attention of the Commission that some standards, such as some of the durable infant and toddler standards, may fully incorporate or refer to an existing mandatory rule for children's products, such as the rule on lead in paint, codified at 16 CFR part 1303, and the rule on small parts, codified at 16 CFR part 1501. Some testing laboratories have advised their clients that

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such testing must be conducted twice; once as a standalone requirement and once as part of another, larger standard. This is not the position of the Commission. Although each applicable standard must be listed on the certificate, a certifier may certify compliance to both the standalone rule and the rule as incorporated into another standard, by testing it once as part of the larger standard where it is incorporated. For example, the mandatory standard for toddler beds, codified at 16 CFR part 1217, incorporates the Commission's standard for lead in paint (§ 1303) and for small parts (§ 1501). A certificate for a toddler bed must list all three mandatory standards, but may rely on the lead in paint and small parts testing conducted as part of the testing for the toddler bed standard to meet the requirements for § 1303 and § 1501.

### *G. When Must Certificates Be Made Available? – Proposed § 1110.13*

Existing § 1110.13 states the requirement in section 14(g)(3) of the CPSA that certificates required by section 14(a) “accompany” each product or product shipment and be “furnished to each distributor and retailer of the product in question.” Existing § 1110.13 states that an electronic certificate satisfies the “accompany” requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection. The existing section also states that an electronic certificate satisfies the “furnish” requirement if the distributor(s) and retailer(s) of the product are provided a reasonable means to access the certificate and it further provides that “[a]n electronic certificate shall have a means to verify the date of its creation or last modification.”

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Proposed § 1110.13 would modify the existing section in several ways, and incorporate the concept of availability in existing § 1110.7(c). Unlike the current provision, proposed § 1110.13 would not be limited to requirements for electronic certificates because requirements for electronic certificates generally have been moved to proposed § 1110.9(c). Accordingly, proposed § 1110.13 would set forth requirements for when certificates must accompany regulated products, and when they must be made available to CPSC and furnished to retailers or distributors.

The proposed rule would describe requirements for when a certificate must accompany a finished product or finished product shipment that is required to be certified pursuant to § 1110.5. It would require that such certificates be issued by a finished product certifier and state that only finished products would be required to be accompanied by a certificate. The Commission would limit the requirement for products to be accompanied by a certificate to finished products because component part certification is voluntary, and not all component parts are certified. Component part certificates must be maintained as supporting documentation, as described in the 1109 rule, if such component part certificates are being relied upon by a required finished product certifier to issue a finished product certificate.

1. Accompanying certificates for imported products – Proposed § 1110.13(a)(1)

Proposed § 1110.13(a)(1) would require that for finished products that are manufactured outside the United States and are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. Such a change would aid the Commission in enforcing the requirement to certify regulated products that require a certificate; and, if the certificate were required to be filed with CBP in the form of data elements,

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would aid the Commission to search the data elements on a certificate by uploading the information into a database. A database containing certificate information would enhance the Commission's ability to target shipments for inspection and track the accuracy of certificates. Because the proposed rule would require filing certificates electronically with CBP, the certificate, of necessity, would be available to the Commission and to CBP upon import; accordingly, the "accompany" requirement does not need to be restated as in the existing version of § 1110.13(a)(1).

Note that the requirements for certificates filed electronically with CBP in proposed § 1110.13(a)(1) would be specifically excluded from electronic certificate requirements for all other purposes as described in proposed § 1110.9(c). The Commission would leave the technical requirements for filing certificates electronically with CBP broad, to accommodate CBP's system resources. The Commission's ultimate goal would be to require filing of certificates with CBP in the form of data elements so that certificate contents can be uploaded into a database for targeting purposes. However, we realize that such a requirement may require software upgrades by CBP, CPSC, and stakeholders that must be completed in stages. Additionally, CPSC requires the assistance and cooperation of CBP to implement and maintain the receipt of certificates in an electronic format, and the CPSC must be mindful of resource limitations and stakeholder adjustments in implementing this new requirement. Initially, if the Commission requires electronic filing of certificates at the point of entry, we would likely allow such filing of certificates in two ways: (1) inserting an electronic copy of the certificate with the entry, such as

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a pdf file of the document; or (2) uploading the 10 required data points on a certificate into CBP's designated system of record.<sup>1</sup>

We welcome comments on the resources required to file the certificates electronically with CBP. Stakeholders are encouraged to comment on the format for filing certificates with CBP, including the two formats discussed (pdf format versus data elements format). The Commission is requesting comment on an additional option for filing electronic certificates at an earlier point in the import process, at manifest, in section III.2 of this preamble.

2. Accompanying certificates for products made in the United States – Proposed § 1110.13(a)(2)

Proposed § 1110.13(a)(2) would require that in the case of finished products manufactured in the United States, certificates shall not be filed with CPSC. Instead, the “accompany” requirement is met if a finished product certifier, as defined in proposed § 1110.3(11), makes a certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce. Pursuant to proposed § 1110.9(b), this may be accomplished, for example, by placing a copy of the certificate in the shipping container with the product, or by meeting the requirements for an electronic certificate. Unlike imported products, we do not want certificates for products made in the United States to be filed with the government as a matter of course. We do not have the infrastructure in place to accommodate or review certificates for all regulated products made in the United States. Enforcement of these certificates will continue to be based on Commission resources and targeting efforts.

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<sup>1</sup> Electronic filing of entries is required by CBP rule, titled, *Importer Security Filing and Additional Carrier Requirements* commonly known as “10+2.”

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3. Accompanying certificates for imported products delivered directly to consumers in the United States – Proposed § 1110.13(a)(3)

Proposed § 1110.13(a)(3) would require that in the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, that are delivered directly to consumers in the United States, the foreign manufacturer or the importer, as provided in § 1110.7(a), has the option to either file the required GCC or CPC electronically with the CBP as provided for in paragraph (1), or may make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce as provided in paragraph (2). Whether the certificates are filed with CBP depends on whether formal entry is made. If no formal entry is made for these products with CBP, then the certificate must still be made available to the Commission, either in hard copy or electronically, as set forth in § 1110.9, on or before the products are distributed into United States commerce.

4. Furnishing certificates – Proposed § 1110.13(b)

Existing § 1110.13(b) states that an electronic certificate must have a means to verify the date of its creation or the last modification. The proposed rule would delete this provision because proposed § 1110.11(a)(2) would require the certificate to state the date of initial certification. Proposed § 1110.13(b) would state the statutory requirement in section 14(g)(3) of the CPSA that a copy of the certificate shall be furnished to each distributor or retailer of the product. The proposed rule would clarify who must provide such a certificate (a “finished product certifier,” which is defined in § 1110.3(11) as a party that is required to issue a finished product certificate pursuant to § 1110.7), and for what types of products (finished products).

5. Availability of certificates – Proposed § 1110.13(c)

Proposed § 1110.13(c) is a new section that would state the requirement contained in sections 14(g)(3) and (g)(4) of the CPSA, that certificates must be provided to the Commission

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and to CBP upon request. The proposed rule would state: “Certifiers must make certificates available for inspection immediately upon request by CPSC or CBP.” This provision would apply to all types of certifiers, to all types of certificates (GCCs, CPCs, and component part), and at any time after a product is offered for import or distributed in commerce. The Commission interprets the word “immediately” consistent with other CPSC rules, to mean “within 24 hours.” However, we would expect that GCCs and CPCs would be made available to CPSC in a very short time, either at the time of request, or shortly afterward, because finished products are required to be accompanied by a certificate that is generated before importation or distribution in commerce, and must be either in hard copy with the product, or electronically available, as described in proposed § 1110.9(c).

### *H. Who Is Responsible for the Information in a Certificate? – Proposed § 1110.15*

Existing § 1110.15 states: “Any entity or entities may maintain an electronic certificate platform and may enter the requisite data. However, the entity or entities required by CPSA section 14(a) to issue the certificate remain legally responsible for the accuracy and completeness of the certificate information required by statute and its availability in timely fashion.” This provision was intended to allow third parties to assist with electronic certificate maintenance, while ensuring that the party certifying the product remained responsible for its contents.

Proposed § 1110.15 would maintain this concept but would broaden it to include component part certifiers by using the term “certifiers” in the first sentence. Certifiers may have any entity maintain an electronic certificate platform, or enter the requisite data, but the certifier would remain responsible for the contents of a certificate. The description of the certifier’s

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responsibility with regard to certificate content would be broadened in the proposed rule to include its validity, accuracy, completeness, and availability, as applicable.

### *I. What Recordkeeping Requirements Apply to Certificates? - § 1110.17*

Proposed part 1110 imposes no new recordkeeping burdens. Proposed § 1110.17 would be a new provision intended to summarize the existing recordkeeping requirements that apply to certificates. The requirement to create and maintain certificates based on third party testing of children's products arises from § 1107.26 of the Testing Rule. Recordkeeping for component part certificates, and reliance on another party's certificate or testing to certify a finished product, arises out of §§ 1109.5(g) and 1109.5(j) of the Component Part Rule. Moreover, some consumer product safety rules, and other similar rules, bans, standards, or regulations, already have a recordkeeping requirement. However, some GCCs for non-children's products may not be subject to a recordkeeping provision in any other regulation. For example, the Commission's safety standard for bicycle helmets (16 CFR part 1203) contains a recordkeeping provision, but the safety standard for swimming pool slides (16 CFR part 1207) does not.

To assist stakeholders in understanding the various recordkeeping provisions that apply to certificates, proposed § 1110.17 restates such requirements. If a standard does not contain a recordkeeping requirement, the Commission maintains the suggestion from existing § 1110.11(d), that each issuer maintain certificates and test records supporting the certificate for at least 3 years, as is currently required by certain consumer product safety rules. Maintenance of such records, for example, may aid both the certifier and the Commission in the event of an investigation or product recall.

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### *J. What Requirements Apply to Component Part Certificates? - § 1110.19*

Proposed § 1110.19 would be a new provision to explain which requirements in part 1110 apply to component part certificates. It would state that component part certificates are voluntary and that component parts of consumer products would not be required to be accompanied by a certificate, nor would such certificates need to be furnished to retailers and distributors, as described in proposed § 1110.13(b). CPSC also would not want component part certificates to be filed with CBP upon importation of component parts. Instead, certifiers of component parts would need to meet the requirements in the Component Part Rule, and component part certificates would also need to meet the form, content, and availability requirements described in the proposed rule in sections 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17.

### **III. Request for Comments**

The Commission encourages stakeholders to comment on all sections of the proposed amendments to 16 CFR part 1110, and specifically request comment on the following additional issues. Comments should be submitted in accordance with the instructions in the ADDRESSES section at the beginning of this notice.

1. The Commission is considering requiring certificates to state not only the place of manufacture in proposed § 1110.11(a)(7), but also to identify the name of the manufacturer, including foreign manufacturers. Stakeholders have argued in other contexts that the name of a foreign manufacturer is proprietary. This information, however, would be useful to the Commission and distributors in recall situations, and it would also be useful to the Commission for enforcement purposes. Investigating facts and limiting recalls would be enhanced, and thus, enforcement would be enhanced. We welcome comments on the nature of the information,

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whether, why, and how it may be confidential, and how the information being available outside the Commission advances, or does not advance, safety. The Commission is also interested in ideas that would allow manufacturers to be named on a certificate for disclosure to the Commission, but would protect their name from others, should it be an issue. The Commission, for example, could allow a private labeler or distributor to redact the name of a foreign manufacturer or supplier, as long as this information is readily available to CPSC. What reasons are there for retailers or others to know the names of suppliers on a certificate, if the CPSC has ready access to this information?

2. The Commission is also considering allowing, but not requiring, certificates to be filed electronically with CBP in advance of filing an entry, such as at the time of manifest. We welcome stakeholder input on this concept.

#### **IV. Environmental Impact**

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The certificate requirements in the proposed rule are not expected to have an adverse impact on the environment, and fall within the categorical exclusion in 16 CFR 1021.5(c)(2) for product certification rules. Accordingly, an environmental assessment or environmental impact statement is not required.

#### **V. Executive Order 12988 (Preemption)**

Executive Order 12988 (February 5, 1996) requires agencies to state in clear language the preemptive effect, if any, of new regulations. The proposed rule would be issued under the authority of the CPSA and the CPSIA. The CPSA provision on preemption appears at section 26 of the CPSA. The CPSIA provision on preemption appears at section 231 of the CPSIA. The

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preemptive effect of this rule would be determined in an appropriate proceeding by a court of competent jurisdiction.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. In addition, the IRFA must contain a description of any significant alternatives to the proposed rule that would minimize any significant economic impact of the proposed rule on small entities. This section summarizes CPSC staff's initial regulatory flexibility analysis for the proposed rule amending 16 CFR part 1110.

#### A. *Reasons for Agency Action and Objective of the Proposed Rule*

The proposed revisions to *16 CFR Part 1110: Certificates of Compliance* are needed to add definitions, clarify language, and make the requirements consistent with new regulations, *Testing and Labeling Pertaining to Certification* (16 CFR part 1107) and *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements* (16 CFR part 1109). The proposed rule would also implement part of section 14(g) of the CPSA by requiring that importers of regulated finished products file the required certificate electronically with CBP.

More specifically, the proposed rule revises the existing regulation by adding 12 new definitions. The new definitions clarify the three different types of certificates of compliance: General Conformity Certificates, Children's Product Certificates, and component part

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certificates. The definitions also clarify the types of products that can be certified as either finished products or component parts. The proposed rule clarifies when certificates are required to accompany a finished product, who must certify a finished product, as well as the form and content requirements for certificates. Among these clarifications is new language holding foreign manufacturers responsible for certification of products delivered directly to consumers in the United States, such as products purchased through an Internet website, unless private labelers certify the products. The proposed rule revises the certificate requirement for domestically manufactured products to require a private labeler to certify a privately labeled product, unless a domestic manufacturer certifies the product. Finally, the proposed rule requires importers of regulated finished products manufactured outside of the United States to file the required certificate electronically with CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

### *B. Small Entities Subject to the Proposed Rule*

The proposed revisions to part 1110 will apply to importers and domestic manufacturers, and will be extended to include private labelers for privately labeled domestic products (unless certificates are provided by manufacturers). It is difficult to know the number of small businesses that would, with certainty, be affected by the rule. Research of CBP data by CPSC staff found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products under CPSC's jurisdiction. The great majority of these firms (perhaps 90 percent or more) are likely to be small businesses under U.S. Small Business Administration (SBA) size standards for manufacturers, wholesalers, or retailers. On the basis of this information, each year as many as 210,000 small businesses might import products under CPSC jurisdiction that would make them subject to the proposed rule. However, firms that only

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import consumer products that are not subject to product safety rules requiring certification would not be affected by the electronic filing requirement.

In most cases, domestic manufacturers will continue to have the responsibility of providing certificates for products subject to a consumer product safety rule under the CPSA or other laws enforced by the Commission. According to Census of Manufactures data for 2007, about 104,000 companies manufactured products in the North American Industry Classification System (NAICS) codes that are likely to have included products under CPSC jurisdiction.<sup>2</sup> Although more than 90 percent of these firms (*i.e.*, close to 100,000) are considered small businesses under SBA guidelines, a significant percentage probably are not engaged in manufacturing products that are subject to a product safety rule. Still, tens of thousands of small manufacturers currently are responsible for providing certificates. Under the proposed rule, some of the burden of providing certificates could be transferred to small private labelers.

### *C. Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule*

The proposed revisions to part 1110 include the imposition of the new reporting requirement on importers of regulated finished products to file certificates of compliance (General Conformity Certificates or Children's Product Certificates) electronically with CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. This electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. It is important to note that many importers, including those that are small businesses, already make electronic certificates

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<sup>2</sup> U.S. Census Bureau, 2007 Economic Census, Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007.  
[http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_3111&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table)

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available under the existing part 1110, to satisfy the requirement that certificates accompany products, are furnished to distributors and retailers, and are available to the CPSC “as soon as the product or shipment is available for inspection.” Thus, for these firms, the incremental requirement would simply call for these certificates also to be provided electronically to the CBP.

Because the proposed requirement for electronic filing of certificates for imported products does not specify how that is to be accomplished, importers will have some flexibility in their method of compliance. For example, the preamble of the proposed rule discusses that certificates could be maintained as pdf files, or certificates could be provided in the form of data elements and uploaded to CBP’s system of records. Importers relying on paper certificates of compliance for distributors and retailers would have to create electronic certificates; however, these firms are likely to have the necessary office equipment and personnel to create and transmit these certificates electronically. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship’s arrival at a U.S. port, pursuant to CBP’s rule titled, *Importer Security Filing and Additional Carrier Requirements* (commonly known as “10+2”). Small importers often hire Customs brokers licensed by CBP to handle the procedures that must be followed to import goods; the proposed requirement of electronic filing of certificates will likely be added to the duties performed by these brokers.

Based on the current business practices of small businesses that import consumer products, the incremental costs of the requirement to file an electronic certificate of compliance should be minor. If electronic filing costs are similar to typical fees reportedly charged by

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Customs brokers for filing the required Importer Security Filing data elements, they might be \$25 or less, per filing. CBP estimated that “in 2005, more than 70 to 85 percent of all importers imported fewer than 12 shipments.”<sup>3</sup> Assuming this applies to importers of consumer products, annual incremental costs of electronic filing of certificates of compliance could be less than \$275 for most small businesses that import products that require certificates of compliance. This estimate is based on the assumption that one certificate of conformance would be required per shipment. If multiple certificates are required per shipment, costs could be higher. As noted by CBP in its assessment of costs of security filing requirements, some small importers of consumer products subject to electronic filing of certificates under part 1110 could choose to file the certificates electronically themselves with CBP, if their own filing costs are lower than fees charged by brokers.<sup>4</sup>

Another proposed revision to part 1110 revises the requirement for certification of domestically manufactured products to require that privately labeled products be certified by the private labeler, unless the domestic manufacturer issues a certificate. This amendment would result in a shift in the obligation to provide certificates from some small manufacturers to some small private labelers. However, these small private labelers can choose to continue to rely on the certificates that the manufacturers are currently required to provide, or they can use such certificates as a basis for issuing their own certificates. Moreover, the revisions would grant private labelers the authority to issue certificates, which some may prefer. While some private

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<sup>3</sup> Department of Homeland Security, Bureau of Customs and Border Protection, *Importer Security Filing and Additional Carrier Requirements*, Interim final rule. *Federal Register*, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>4</sup> Industrial Economics, Incorporated, *Importer Security Filing and Additional Carrier Requirements: Regulatory Assessment and Final Regulatory Flexibility Analysis for the Interim Final Rule*, November 6, 2008, p. 4-7 (97 of 266). Retrieved from [http://www.cbp.gov/linkhandler/cgov/trade/cargo\\_security/carriers/security\\_filing/ra.ctt/ra.pdf](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/ra.ctt/ra.pdf).

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labelers may experience some impact, this impact should not be significant because it is expected that some manufactures will continue to issue certificates as they are now legally required to do.

### *D. Other Federal Rules*

For small businesses importing consumer products by containerized shipping vessel, this electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship's arrival at a U.S. port. One of the elements required to be filed under the CBP's rule (*Importer Security Filing and Additional Carrier Requirements*, or "10+2 rule") is the name and address of the manufacturer or supplier of the finished goods in the country or origin, although alternative forms of manufacturer identification, such as identification numbers, are also acceptable. This CBP element is similar, but not identical, to the required information on date and place of manufacture required by certificates of compliance.

### *E. Alternatives to the Proposed Rule*

One alternative to the proposed rule would be *allowing*, rather than *requiring* certificates for imported products to be filed at entry. If this alternative were to be adopted, the certificate would still have to be available for inspection upon request, as it is now. Allowing, instead of requiring certificates to be filed electronically at entry would reduce the burden on small businesses, but it might not enhance the Commission's ability to target shipments for inspection and to track the accuracy of certificates.

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### VII. Paperwork Reduction Act

This proposed rule would not create a new recordkeeping burden for certificates, but it would create a new reporting requirement by requiring certificates for imported products to be filed electronically with CBP. The recordkeeping burden for the creation and maintenance of certificates for children's products is already described in the Testing Rule and the Component Part Rule. For general use, non-children's, products some of the applicable rules already have certificate and recordkeeping requirements. Many rules that apply to these products do not have a recordkeeping provision. Non-children's products subject to these rules are required to be certified and compliant with part 1110, but no record retention period is required by the proposed rule.

The proposed rule would impose a new reporting requirement for all imported products, both children's and non-children's products, that are required to be certified. The proposed rule would require importers of such finished products manufactured outside of the United States to file the required certificate electronically with the CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together. Accordingly, this proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). For children's products, the CPSC would be amending the existing recordkeeping requirement, as described in the Testing Rule and the Component Part Rule, to include this new reporting requirement. For non-children's products, the CPSC intends to create a new collection of records to accommodate this reporting requirement.

In this section, we describe an estimate of the increase in annual reporting burden for importers of children's products that are required to be certified to file electronic certificates with

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CBP. We also describe the annual reporting burden for importers of regulated non-children's products to file electronic certificates with CBP. Our estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on: (1) whether the amendment to the collection of information on Third Party Testing of Children's Products, and the new collection of information on Certification of General Use Products, are necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Title:* Children's Products – Amendment to collection on Third Party Testing of Children's Products.

Non-Children's Products – Certification of General Use Products

*Description:* We would amend the collection of information related to Third Party Testing of Children's Products as described in the Testing Rule and the Component Part Rule to include a reporting requirement for importers of children's products that require certification. We would create a new collection of information related to the reporting requirement for regulated general use, non-children's, products to describe the reporting requirement for importers of such products that require certification. Specifically, in the case of finished products that are manufactured outside the United States and are imported for consumption or

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warehousing, the importer would be required to file either a Children's Product Certificate or a General Conformity Certificate electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together. Such a requirement would implement section 14(g)(4) of the CPSA, which states that the Commission, in consultation with the Commissioner of Customs, may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product.

*Description of the Respondents:* Importers of regulated products that are required to be certified.

*Estimate of the Burden:* Children's Products – CPSC staff estimated that the total cost of the recordkeeping associated with the Testing Rule is \$197 million. 76 FR 69482, 69540 (November 8, 2011). The costs of the recordkeeping burden for the Testing Rule were estimated based on comments received from industry (in response to the notice of proposed rulemaking for that rule) that clerical, professional, and management staff would be involved in meeting the requirements of the rule. Therefore, we assumed that personnel in "management, professional, and related occupations" are responsible for half of the recordkeeping and personnel in "office and administrative support" occupations are responsible for the other half. We assume that these employees will also be involved in performing the tasks necessary to file Children's Product Certificates electronically with CBP. As of June 2012, total compensation for these occupational categories averaged \$37.34 per hour.<sup>5</sup>

Staff estimated that the total hour burden of the recordkeeping requirements associated with the Testing Rule would be 5.4 million hours. 76 FR at 69540. At the hourly compensation

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<sup>5</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Table 9. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, goods-producing and service-providing industries, by occupation group, June 2012" (June 2011). Retrieved from <http://www.bls.gov/news.release/ecec.t09.htm> on November 8, 2012.

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rate of \$37.34 per hour, the total costs of the recordkeeping associated with the Testing Rule would be about \$202 million. The proposed amendment to require that certificates for regulated finished products be filed electronically with CBP would increase the recordkeeping burden hours and costs associated with the Testing Rule. Because the Testing Rule already requires importers to prepare Children's Product Certificates, the increased time required to file certificates electronically with CBP would be attributable to associating the proper certificates to individual shipments for import, converting certificates to an electronic format, and transmitting the certificates to CBP (or to a Customs broker, if the importer does not self-file). If we assume that these activities require an additional 10 to 15 minutes per certificate and shipment, the employee compensation costs for this additional recordkeeping burden could range from \$6.22 to \$9.34 per shipment.

A review of Census data for industry categories (NAICS codes) that could include children's products found that there are almost 80,000 wholesalers and about 128,000 retailers in these categories. Also, there are more than 37,000 domestic manufacturers of products in these categories, some of which also import children's products subject to certification requirements. As noted in the final Testing Rule, not all of the firms in these categories import children's products that are covered by children's product safety rules and these numbers constitute a high estimate of the number of firms that are subject to the recordkeeping requirements. 76 FR at 69539. The draft initial regulatory flexibility analysis for this proposed rule to amend 16 CFR part 1110 cites research of CBP data by CPSC staff, which found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products

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under the CPSC's jurisdiction.<sup>6</sup> If we assume that 150,000 of these importers import children's products subject to electronic filing of certificates, and that these firms average 10 to 20 shipments with perhaps three products requiring certificates per shipment/bill of lading, the annual number of electronic filings of Children's Product Certificates with CBP could total between 4.5 million and 9 million. Using estimated average employee compensation costs of \$6.22 to \$9.34 per electronic filing, total incremental costs of recordkeeping for the Testing Rule could range from about \$28 million to \$84 million annually. These costs would be in addition to the estimated recordkeeping costs of about \$202 million without electronic filing requirements.

Non-Children's Products – For imported non-children's products that are required to be certified, part 1110 already requires importers to prepare General Conformity Certificates. The increased time required to file certificates electronically with CBP would be attributable to associating the proper certificates to individual shipments for import, converting certificates to an electronic format, and transmitting the certificates to CBP (or to a Customs broker, if the importer does not self-file). If we assume that these activities require an additional 10 to 15 minutes per certificate and shipment, the employee compensation costs for this additional recordkeeping burden could range from \$6.22 to \$9.34 per shipment. As stated above, research of CBP data by CPSC staff found that during 2009 there were 231,094 distinct importers of products categorized in import codes likely to include products under CPSC's jurisdiction. The value of regulated non-children's products is a relatively small share of the total value of products under the agency's jurisdiction. Table A contains a list of regulated non-children's products requiring a General Conformity Certificate.

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<sup>6</sup> Blachere, John, International Trade Specialist, Office of Import Surveillance, CPSC. December 8, 2010, e-mail to Charles Smith, Directorate for Economic Analysis, CPSC.

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**Table A: Non-Children’s Products Requiring General Conformity Certificates (GCCs)**

| <b>Regulation (Part)</b> | <b>Description</b>  |
|--------------------------|---|
| 1201                     | Safety standard for architectural glazing materials   |
| 1202                     | Safety standard for matchbooks  |
| 1203                     | Safety standard for bicycle helmets – General Use   |
| 1204                     | Safety standard for omnidirectional citizens band base station antennas   |
| 1205                     | Safety standard for walk-behind power lawn mowers   |
| 1207                     | Safety standard for swimming pool slides  |
| 1209                     | Interim safety standard for cellulose insulation  |
| 1210                     | Safety standard for cigarette lighters  |
| 1211                     | Safety standard for automatic residential garage door operators   |
| 1212                     | Safety standard for multipurpose lighters   |
| 1213                     | Safety standard for entrapment hazards in bunk beds – General Use   |
| 1303                     | Ban of lead-containing paint and certain consumer products bearing lead-containing paint – General Use: Applies to consumer paints and paint used on non-metal furniture. |
| 1402                     | CB base station antennas, TV antennas, and supporting structures  |
| 1420                     | Requirements for all-terrain vehicles – General Use   |
| 1450                     | Virginia Graeme Baker Pool and Spa Safety Act regulations   |
| 1507                     | Fireworks devices   |
| 1512                     | Requirements for bicycles – General Use   |
| 1610                     | Standard for the flammability of clothing textiles – General Use  |
| 1611                     | Standard for the flammability of vinyl plastic film – General Use   |
| 1630                     | Standard for the surface flammability of carpets and rugs – General Use   |
| 1631                     | Standard for the surface flammability of small carpets and rugs – General Use   |
| 1632                     | Standard for the flammability of mattresses and mattress pads – General Use (includes twin size mattresses, mattress pads, and mattress sets)                             |
| 1633                     | Standard for the flammability (open flame)of mattress sets – General Use  |
| 1700                     | Poison prevention packaging   |
| 1750                     | Standard for devices to permit the opening of household refrigerator doors from the inside  |

If we assume that 100,000 of the 231,094 distinct importers of consumer products import products subject to electronic filing of General Conformity Certificates, and that these firms average 10 to 20 shipments with perhaps 3 products requiring certificates per shipment/bill of lading, the annual number of electronic filings of General Conformity Certificates with CBP could total between 3 and 6 million. At estimated average employee compensation costs of

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\$6.22 to \$9.34 per electronic filing, total incremental costs for importers of regulated non-children's products could range from about \$19 million to \$56 million annually.

### **VIII. Effective Date**

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission proposes that any final rule based on this proposal would become effective 90 days after the final rule is published in the *Federal Register*. Certifiers should not require a lengthy period of time to come into compliance with a final rule because certificates are already required to be issued, and changes to the existing regulation are not extensive but merely clarifying expectations in light of new testing regulations. The most substantive amendment to the existing part 1110 would require that in the case of finished products that are manufactured outside the United States and that are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP. Stakeholders should provide information and evidence if they believe that implementing such a requirement would require longer than 90 days from the issuance of a final rule.

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

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Regulated products, labeling, certificate, certification, component part certificate.

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For the reasons stated in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations by striking the entirety of existing 16 CFR part 1110, and replacing it with a new part 1110 to read as follows:

**Part 1110—CERTIFICATES OF COMPLIANCE**

Sec.

1110.1 - What is the purpose and scope of this part?

1110.3 - What definitions apply to this part?

1110.5 - When are certificates required?

1110.7 - Who must certify finished products?

1110.9 - What form(s) may the certificate take?

1110.11 - What must the certificate contain?

1110.13 - When must certificates be made available?

1110.15 - Who is responsible for the information in a certificate?

1110.17 - What recordkeeping requirements apply to certificates?

1110.19 - What requirements apply to component part certificates?

AUTHORITY: 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110-314, 122 Stat. 3016, 3017 (2008), Pub. L. 112-28 (2011).

**§ 1110.1 – What is the purpose and scope of this part?**

(a) This part:

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(1) 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);

(2) Clarifies which provisions of this part apply to component part certificates;

(3) Specifies certificate content, form, and availability requirements that must be met to satisfy the requirements of section 14 of the CPSA; and

(4) Requires importers to file certificates electronically with CBP for imported finished products that are required to be certified.

(b) This part does not address issues related to type or frequency of testing necessary to support a certificate.

### **§ 1110.3 – What definitions apply to this part?**

(a) The definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110-314, apply to this part.

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

(1) “CBP” or “Customs” means United States Customs and Border Protection;

(2) “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 Conformity Certificates, Children’s Product Certificates, and component part certificates;

(3) “Certifier” means the party who issues a certificate of compliance;

(4) “Children’s Product Certificate” (CPC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(2) of the CPSA and part 1107 of this chapter;

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(5) “Commission” or “CPSC” means the United States Consumer Product Safety Commission;

(6) “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;

(7) “Component part certificate” means a certificate of compliance for a component part of a consumer product, as defined in paragraph(b)(6) of this section;

(8) “Electronic certificate” means a set of information available in, and accessible by, electronic means that sets forth the information required by sections 14(a) and 14(g) of the CPSA, § 1110.11, and that meets all other certificate requirements set forth in this part;

(9) “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 consumer products 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;

(10) “Finished product certificate” means a certificate of compliance for a finished product, as defined in paragraph(b)(9) of this section. There are two types of finished product certificates: Children’s Product Certificates and General Conformity Certificates;

(11) “Finished product certifier” means a party who is required to issue a finished product certificate pursuant to § 1110.7;

(12) “General Conformity Certificate” (GCC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(1) of the CPSA; and

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(13) “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 – When are certificates required?**

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, 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. However, if a finished product manufactured outside the United States is delivered directly to a consumer in the United States, such as products purchased through an Internet website, the foreign manufacturer must issue a certificate that meets the requirements of this part, unless the product bears a private label. The private labeler must issue a certificate that meets the requirements of this part for such products that bear a private label and are delivered directly to a consumer in the United States, unless the foreign manufacturer issues the certificate.

(b) *Domestic products.* Except as otherwise provided in a specific rule, ban, standard, or regulation, 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

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privately labeled, the private labeler must issue a certificate that meets the requirements of this part, unless the manufacturer issues the certificate.

### **§ 1110.9 – What form(s) may the certificate take?**

(a) *Language.* Certificates must be in the English language and may also contain the same content in any other language.

(b) *Format.* Except as required in § 1110.13(a)(1), certificates may be provided in hard copy or electronically.

(c) *Electronic certificates.* An electronic certificate meets the requirements of §§ 1110.13(a)(2), 1110.13(a)(3), 1110.13(b), and 1110.13(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, without password protection, to the Commission, CBP, distributors, and retailers, on or before the date the finished product is distributed in commerce.

### **§ 1110.11 – What must the certificate contain?**

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

(1) Identify the component part(s) or finished product(s) covered by the certificate and state whether the certificate is for a finished product or a component part. A model, style, or other unique identifier of the product should be provided, if any, along with a description of the finished product or component part. Certifiers may also include an identifier, such as a universal product code (UPC), a global trade item number (GTIN), or other identifying code that may assist with product identification;

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(2) State the date of initial certification of the finished product(s) or component part(s) to which the certificate refers;

(3) Identify the scope of finished product(s) or component part(s) for which the certificate applies, such as by a start date, start and end date, lot number, starting serial number or serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate;

(4) 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) or component part(s) are being certified. Finished product certificates must identify separately all applicable rules, bans, standards, or regulations. Component part certificates must identify all rules, or parts of rules, bans, standards, or regulations for which the component part(s) are being certified;

(5) Identify the party certifying compliance of the finished product(s) or component part(s), including the party's name, electronic mail (e-mail) address, full mailing address, including the street address, and telephone number;

(6) Identify and provide contact information (consisting, at a minimum, of the individual's name, e-mail address, full mailing address, and telephone number) for the individual:

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

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

(iii) maintaining 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;

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(7) Provide the date (month and year, at a minimum) and place (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were manufactured, produced, or assembled;

(8) Provide the dates and places (including a street address, city, state or province, and country or administrative region) where the finished product(s) or component part(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in §1110.11(a)(4) of this part;

(9) Identify all parties, including third party conformity assessment bodies, on whose testing the certificate depends, including name, e-mail address, full mailing address, including the street address, and telephone number; and

(10) Include the following attestation:

I hereby certify that the finished product(s) or component part(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 statements, representations, or omissions, 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 World Wide Web URL, or other electronic means, which provides electronic access to the required records.

(c) *Exceptions:* If the product being certified is subject to more than one consumer product safety rule or similar rule, ban, standard, or regulation, and a certifier is claiming a testing

## DRAFT

exception to some, but not all, applicable regulations, the certifier shall list all applicable regulations on the certificate. For those regulations that do not require testing, the certifier shall state the basis for not testing to such regulation on the certificate, instead of providing the date and place where testing was conducted for that regulation in § 1110.11(a)(8). If a finished product is not required to be tested or certified, then no certificate is required to be issued.

(c) *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 – When must certificates be made available?**

(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 .

(1) In the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together.

(2) In the case of finished products manufactured in the United States, certificates shall not be filed with CPSC. A finished product certifier, pursuant to § 1110.7(b), must make the required GCC or CPC available for inspection by the CPSC on or before the date the finished product is distributed in commerce.

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(3) In the case of finished products that are manufactured outside the United States and are imported for consumption or warehousing, that are delivered directly to a consumer in the United States, the foreign manufacturer or the private labeler, as set forth in § 1110.7(a), must either file the required GCC or CPC electronically with CBP as described in paragraph (1), or make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce, as described in paragraph (2).

(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 upon request by CPSC or CBP.

### **§ 1110.15 – Who is responsible for the information in a certificate?**

Certifiers may have any entity maintain an electronic certificate platform and enter the requisite data. However, the certifier is responsible for the information in a certificate, including its validity, accuracy, completeness, and availability, as applicable.

### **§ 1110.17 – What recordkeeping requirements apply to certificates?**

For CPCs and component part certificates, certifiers must follow the recordkeeping provisions contained in §§ 1107.26, 1109.5(g), and 1109.5(j) of this chapter, as applicable. For GCCs, the certificate and supporting test records should be maintained based on recordkeeping provisions within the applicable substantive standard. If a standard does not contain a recordkeeping requirement, the Commission suggests that each issuer maintain certificates and test records for at least 3 years, as is currently required by certain consumer product safety rules.

**DRAFT**

**§ 1110.19 – What requirements apply to component part certificates?**

Pursuant to part 1109 of this chapter, component part certificates are voluntary. Accordingly, component parts of consumer products, as defined in § 1110.3(b)(6) , are not required to be accompanied by a certificate, and component part certificates are not required to be furnished to retailers and distributors, as described in § 1110.13(b). Component part certificates shall not be filed with CBP upon importation of component parts. Instead, certifiers of component parts must meet the requirements in part 1109 of this chapter, and component part certificates must also meet the form, content, and availability requirements described in §§ 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17

Dated \_\_\_\_\_

\_\_\_\_\_  
Todd A. Stevenson,  
Secretary, Consumer Product Safety Commission.



**UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION**  
4330 East West Highway  
Bethesda, MD 20814

This document has been electronically  
approved and signed.

## MEMORANDUM

Date: December 5, 2012

TO: The Commission  
Todd A. Stevenson, Secretary

THROUGH: Mary T. Boyle, Acting General Counsel  
Kenneth R. Hinson, Executive Director  
J. DeWane Ray, Assistant Executive Director

FROM: Carol J. Cave, Director, Office of Import Surveillance

SUBJECT: Draft Notice of Proposed Rulemaking: Amendment to Regulation on Certificates of Compliance

### I. Introduction

The U.S. Consumer Product Safety Commission (CPSC) staff is recommending that the Commission issue a notice of proposed rulemaking (NPRM) that would amend the existing regulation on certificates of compliance found at 16 CFR part 1110 (the 1110 rule). The Commission originally promulgated regulations for the 1110 rule on November 18, 2008. Due to the number of changes that the staff is recommending in the proposed rule, we recommend that the existing version of 16 CFR part 1110 be stricken and replaced in its entirety with the proposed amendment.

Staff recommends that the 1110 rule be amended for a number of reasons. Primarily, the 1110 rule should be amended to incorporate terminology and concepts introduced in new rules on testing and certification, and to clarify how these concepts manifest in issuing certificates. Since the existing 1110 rule was issued in 2008, the Commission has issued two significant rules pertaining to testing and certification of consumer products: (1) *Testing and Labeling Pertaining to Product Certification*, 16 CFR part 1107 (the 1107 rule), which sets out the requirements for third party testing of regulated children's products to support product certification; and (2) *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements*, 16 CFR part 1109 (the 1109 rule), which allows for component part testing in order to meet certification requirements and also allows for reliance on another party's testing or certification to issue a certificate. The proposed amendments to the 1110 rule that staff is recommending define and use new terms and new concepts introduced by the 1107 and 1109

rules, and they describe and explain how certificates must be integrated and consistent with these new rules.

Moreover, since issuing the existing 1110 rule in 2008, the Commission has gained experience with the requirement that all regulated products be certified. For example, the existing 1110 rule limits the obligation to certify products manufactured in the United States to the manufacturer. Experience has shown that removing the private labeler from the obligation to certify may not be effective in all circumstances. In many cases, private labelers may desire to be the party responsible for certifying a product. In some cases, requiring a private labeler to certify a product may enhance compliance. Thus, while the draft proposed rule continues to require that manufacturers issue certificates for products manufactured in the United States, it would change this requirement for products that bear a private label, as defined in section 3(a)(12)(B) of the CPSA. For privately labeled products, the draft proposed rule would require that the private labeler issue a certificate, unless the manufacturer issues a certificate.

Questions have arisen regarding whether products that are manufactured outside of the United States and delivered directly to consumers in the United States, such as products purchased over the Internet, are required to be certified. The draft proposed rule would clarify that regulated finished products are required to be certified when they are distributed in commerce in the United States, regardless of how the products enter the country. The draft proposed rule would require foreign manufacturers to issue certificates for products that are delivered directly to consumers in the United States, unless the product bears a private label. Products that bear a private label must be certified by the private labeler, unless the foreign manufacturer issues the certificate.

Finally, staff recommends that the CPSC implement section 14(g)(4) of the Consumer Product Safety Act (CPSA) and require that importers of regulated finished products file certificates electronically with U.S. Customs and Border Protection (CBP). The existing rule requires that certificates for imported products be available to the CPSC as soon as the product is available for inspection in the United States. The draft proposed rule would require that importers of regulated finished products file a certificate electronically with the CBP at the time of filing the CBP entry or at the time of filing the entry and entry summary, if both are filed together.

This briefing package contains the staff's recommendations for issuing an NPRM proposing amendments to the 1110 rule. Tab A contains the initial regulatory flexibility analysis for the proposed rule.

## **II. Statutory Background**

On August 14, 2008, the Consumer Product Safety Improvement Act of 2008 (CPSIA) was signed into law [Public Law 110-314]. Section 102 of the CPSIA amended section 14(a) of the CPSA to require that manufacturers (including importers) and private labelers issue a certificate for all consumer 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 is imported for consumption or warehousing, or distributed in commerce, to certify

compliance with applicable rules. Certificates for children's products 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. Certificates for non-children's products must be based on a test of each product or a reasonable testing program.

Section 14(g) of the CPSA contains certificate requirements. 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. At a minimum, certificates are required to 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. Additionally, section 14(g)(2) of the CPSA requires that every certificate be legible and all contents must be in English. Contents may also be in any other language. Moreover, pursuant to section 14(g)(3) of the CPSA, 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. Finally, section 14(g)(4) of the CPSA states that in consultation with the Commissioner of Customs, the 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 or to CBP.

In addition to the statutory authority to require certificates for regulated products, as outlined in sections 14(a) and (g) of the CPSA, the Commission has general implementing authority with regard to certificates pursuant to section 3 of the CPSIA, which provides that "[t]he Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act."

### **III. Summary of the Draft Proposed Rule**

This section provides a summary of the staff's recommendations for proposed amendments to the existing 1110 rule. A more detailed description is provided in the preamble to the draft proposed rule.

Scope (proposed § 1110.1). Staff recommends broadening the scope of part 1110 to encompass proposed changes to the rule that would: increase the number of entities required to issue certificates; include requirements for component part certificates; and require importers to file certificates electronically with CBP for imported finished products that are required to be certified.

Definitions (proposed § 1110.3). Staff recommends that the proposed rule add 12 new definitions to introduce concepts and terms used in the 1107 and 1109 rules and to clarify the requirements of the 1110 rule. Newly defined terms in proposed § 1110.3 include: "certificate"; "certifier"; "Children's Product Certificate (CPC)"; "component part"; "component part certificate"; "finished product"; "finished product certificate"; "General Conformity Certificate (GCC)"; "finished product certifier"; and "third party conformity assessment body."

When certificates are necessary (proposed § 1110.5). Staff recommends adding new language to clarify 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, must be accompanied by a certificate. Use of the term “finished product” in the draft proposed rule is intended to clarify that component parts of a consumer product are not required to be certified.

Who certifies the finished product (proposed § 1110.7). The existing rule provides 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. For products manufactured in the United States, the manufacturer must certify products and provide the required certificate. For imported products, the existing rule requires the certificate to be available to the Commission as soon as the product is available for inspection in the United States. For domestically manufactured products, the existing rule requires that the certificate must be available prior to the introduction of the product or shipment into domestic commerce.

Staff recommends that part 1110.7 continue to require that importers certify imported products, with the exception of 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 foreign manufacturer would be required to issue a certificate, unless the product bears a private label. The private labeler would be required to issue a certificate that meets the requirements of this part for such products that bear a private label, unless the foreign manufacturer issues the certificate. Thus, the proposed rule would place the responsibility for ensuring testing and certification of privately labeled products on a private labeler, by either testing and certifying the product, or by ensuring that the product is tested and certified by the manufacturer. Staff recommends this change to the 1110 rule in order to clarify that the consumer would not be responsible for certifying a product, even if the consumer could technically meet the definition of an “importer” under a direct-purchase scenario. When a foreign entity delivers products directly to a consumer in the United States, those products must be compliant with United States law.

For finished products manufactured in the United States that are required to be certified, the draft proposed rule would maintain the requirement that a manufacturer issue the certificate in many cases, but would create a new requirement for products that bear a private label. Products that bear a private label under the CPSA only contain the brand or trademark of the private labeler, and not the manufacturer’s brand or trademark. The draft proposed rule would require the private labeler to certify products that bear a private label, unless the manufacturer issues the certificate. Such requirement would place on the private labeler the obligation to ensure that privately labeled products are tested and certified. The private labeler can either test and certify the product, or rely on a manufacturer to test and certify the product. This recommended change reflects the fact that some private labelers have expressed an interest in being able to issue a certificate for privately labeled products. Also, placing the obligation to certify privately labeled products on the private labeler is more efficient when the product only

bears that party's brand or trademark. If private labelers want to continue to rely on a manufacturer's certification, they may do so under the draft proposed rule.

Forms(s) of the certificate (proposed § 1110.9). Under the existing rule, certificates may be in hard copy or electronic form and that they must be provided in English but also may be provided in any other language. Staff recommends maintaining these two requirements with minor edits. The draft proposed rule would continue to allow a broad range of formats for electronic certificates, as long as they are identified by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means. The draft proposed rule would require that the unique identifier be "identified prominently on the finished product, shipping carton, or invoice." Staff believes that experience with electronic certificates has shown that they can be effective, as long as they are easily accessible. Also, to achieve efficiency, the draft proposed rule would require that electronic certificates be available without password protection. The number of manufacturers, private labelers, and importers that certify products could make the maintenance of password information burdensome on the CPSC and diminish any efficiency achieved by allowing electronic certificates. The draft proposed rule would also clarify that electronic certificates, the URL or other electronic means, and the unique identifier must be accessible to the Commission, CBP, distributors, and retailers, "on or before the date the finished product is distributed in commerce" in order to set forth a definite point in a finished product's distribution chain when the certificate must be available. Finally, the requirements for electronic certificates in the draft proposed rule would only apply 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. The draft proposed rule would specifically exclude certificates filed with CBP from the electronic certificate requirements in this section, because certificates filed with CBP will likely require different formatting based on CBP's system of records.

Contents of certificates (proposed § 1110.11). The existing rule contains seven data elements that must be present in all certificates. Currently, each certificate must contain: (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, e-mail 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.

Staff recommends maintaining these seven content requirements and adding three new requirements that assist in further identifying the products covered by the certificate. The draft proposed rule would modify, clarify, expand upon, and provide additional detail for each of the seven existing content requirements. For example, the draft proposed rule would clarify that additional identifying information for products may be included on a certificate, such as universal product codes and global trade item numbers. The draft proposed rule would also modify certificate content requirements to account for the fact that certificates can cover finished

products or component parts. Finished product certificates may require different information. The draft proposed rule would 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. This is because finished product certificates are required to certify all applicable rules, but certifiers of component parts can choose which standards to test and certify, and may not know all of the standards that eventually may apply to the component part, depending on how the part is integrated with the finished product.

Other changes staff recommends to the existing content requirements for certificates include requiring e-mail addresses and street addresses. The draft proposed rule would require an e-mail address for the parties issuing certificates and conducting testing, to allow for another method of contacting these entities. The draft proposed rule would also require a street address be provided for the parties issuing certificates and conducting testing, as well as for the place of manufacture and the place of testing. A street address would allow the CPSC staff to better distinguish testing facilities and to locate parties should a site visit become necessary. Section III of the preamble to the draft proposed rule requests comment on the option to require that certifiers include the name of the manufacturer, including foreign manufacturers, on the certificate, and any concerns that may arise from such a requirement.

Staff also recommends proposing three new content requirements for certificates (which would bring the total number of requirements for certificates to 10). The draft proposed rule would additionally require:

- The date of the initial certification of the finished product or component part (this requirement is in existing § 1110.13(b) for electronic certificates only). Certifiers generally include a date on certificates. This requirement would ensure that all certifiers are using the same date on certificates;
- The scope of the finished product or component part for which the certificate applies, such as by a start date, start and end date, lot number, starting serial number or serial number range, or other means to identify the set of finished product(s) or component part(s) that are covered by the certificate. This requirement would assist the CPSC to better understand the scope of products that are covered by a certificate; and
- An attestation certifying compliance, which is provided verbatim in the draft proposed rule, indicating that the information provided by the certifier is true and accurate. This requirement would educate the certifier, including foreign certifiers, of the certifier's obligations under United States law and ensure that they understand the scope and gravity of the obligation being made by certifying a product.

Staff also recommends three new sections in the draft proposed rule that clarify how to complete certificates. First, the draft proposed rule would allow, but not require, the certifier to include a World Wide Web URL, or other electronic means, on the certificate, along with identification of the custodian of records, to allow for electronic access of supporting records.

Second, the draft proposed rule would describe 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. In such a case, the certifier must list all of the applicable rules, state when the product is not subject to testing for a specific rule, and the basis for such claim, instead of providing the date and place where testing was conducted. Certifiers are already doing this in many instances, but this requirement would ensure that certifiers are consistent in how they document exceptions on a certificate. Moreover, if a product is not required to be tested or certified, the proposed rule would not require a certificate to be issued. Examples of products that are not required to be certified include: products that are not regulated by the CPSC; certain products subject to a ban do not require testing or certification to prove that the product is not a banned product; products requiring special labeling under section 3(b) of the Federal Hazardous Substances Act; and products that are wholly comprised of materials that either do not require testing, or that have been determined not to contain lead in excess of 100 ppm under the Commission's regulation at 16 CFR § 1500.91.

Finally, the draft proposed rule would clarify an issue that has caused some confusion in the regulated community involving duplicative testing. In some cases, products are subject to more than one standard, and occasionally two standards will require identical testing. This issue has arisen with regard to new mandatory standards for durable infant and toddler products. The draft proposed rule would resolve this issue by providing that 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. For example, the mandatory standard for toddler beds, codified at 16 CFR part 1217, incorporates the Commission's standard for lead in paint (16 CFR part 1303) and for small parts (16 CFR part 1501). A certificate for a toddler bed must list all three mandatory standards, but may rely on the lead in paint and small parts testing conducted as part of the testing for the toddler bed standard to meet the requirements for 16 CFR parts 1303 and 1501.

Availability of certificates (proposed § 1110.13. Section 14(g) of the CPSA requires that certificates "accompany" products or product shipments, be "furnished" to retailers or distributors, and be "furnished" to CPSC and CBP, upon request. Additionally, the CPSA allows the CPSC to require certificates to be filed electronically with CBP up to 24 hours before arrival of an imported product. The draft proposed rule would implement these statutory requirements by requiring that finished products that are required to be certified be accompanied by a certificate issued by a required finished product certifier.

Staff recommends that for imported products to meet the "accompany" requirement, the draft proposed rule require that importers file certificates electronically with CBP, either when the CBP entry is filed, or when the CBP entry and entry summary are filed, if they are filed together. This would be a new requirement. Requiring that the certificate be filed at entry would enhance the Commission's ability to target shipments for inspection and to track the accuracy of certificates. However, it would require the assistance and cooperation of CBP and would entail resource commitments from both the Commission and stakeholders. Because the CPSC must rely on CBP's system of records to receive certificate information, the format for filing electronically would likely be different than what CPSC proposes for all other electronic certificates. The preamble of the draft proposed rule discusses that initially, CPSC would likely

require that certificates be filed either in pdf format or in the form of data elements that are uploaded into CBP's system of records. Comments are sought on these data formats. Section III of the preamble requests comment on another option the Commission could allow for filing electronic certificates for imported products at an earlier stage of the importation process, at manifest.

For finished products manufactured in the United States, the draft proposed rule would clarify that certificates cannot be filed with the Commission. Instead, the "accompany" requirement would be met by making certificates available for inspection by the CPSC on or before the date the finished product is distributed in commerce. Unlike imported products, we do not want certificates for products made in the United States to be filed with the agency as a matter of course, because we do not have the infrastructure in place to accommodate or review certificates for all regulated products made in the United States. For now, enforcement of these certificates will continue to be based on Commission resources and targeting efforts.

For imported finished products that are required to be certified and that are delivered directly to a consumer in the United States, the draft proposed rule would give the finished product certifier (either the foreign manufacturer or the private labeler, as set forth in proposed § 1110.7(a)) a choice for meeting the "accompany" requirement. The finished product certifier can either file the certificate electronically with CBP, or make the certificate available for inspection by CPSC on or before the date the finished product is distributed in commerce. Staff recommends providing a choice for the certificate in this circumstance because whether a certificate can be filed with CBP will depend on whether a formal entry is made. In cases of informal entry, generally shipments with a value of less than \$2500.00, no electronic entry filing with CBP is likely to be made. In that case, a finished product certifier can meet the "accompany" requirement by either placing a hard copy of the certificate in the box with the product, or by following the requirements for an electronic certificate as set forth in proposed § 1110.9(c).

The draft proposed rule would require that finished product certificates be furnished to the distributor or retailer of the finished product, and it would require certifiers to make certificates (including GCCs, CPCs, and component part certificates) available immediately upon request to the CPSC or CBP. Staff recommends that the term "immediately" be interpreted as it has in other testing rules to mean "within 24 hours."

Responsibility for information in certificates (proposed § 1110.15). Currently, this section states that while another entity may maintain an electronic certificate platform, the certifier is still responsible for ensuring its validity, accuracy, completeness, and availability. The draft proposed rule would edit the language slightly to incorporate component part certificates, while maintaining the substance.

Recordkeeping (proposed § 1110.17). Staff recommends adding a new section in the rule to discuss recordkeeping. The draft proposed rule would not introduce new recordkeeping requirements, but would summarize the existing recordkeeping requirements in other rules that apply to certificates. CPCs and component part certificates must be maintained as required by the recordkeeping provisions in the 1107 and 1109 rules. With regard to GCCs, the draft

proposed rule would state that certifiers should maintain certificates as required in the underlying standard, if such a requirement exists. Otherwise, for GCCs related to standards that do not contain a recordkeeping requirement, the draft proposed rule would repeat the suggestion contained in existing § 1110.11(d)—that certifiers should keep records for 3 years. This will protect certifiers in the event that they are required to produce certificates at the CPSC’s request, and it also will assist in investigations and product recalls.

Requirements for component part certificates (proposed § 1110.19). Staff recommends adding a new section to the draft proposed rule that would clarify for stakeholders which sections of the 1110 rule apply to component part certificates. The 1109 rule contains the requirements for relying on testing or certification of component parts to meet testing and certification requirements in other rules. The 1109 rule provides that component part certificates are voluntary. No certifier is required to rely on component part testing. If a certifier relies on component part testing or certification, then such certifier must follow the 1109 rule. Proposed § 1110.19 would require that if a finished product certifier chooses to rely on a component part certificate, the component part certificate must meet the requirements of the 1109 rule, as well as the form, content, and availability requirements described in proposed §§ 1110.9, 1110.11, 1110.13(c), 1110.15 and 1110.17.

#### **IV. Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires CPSC staff to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives.

The IRFA focuses on two of the proposed new requirements: (1) regulated finished products that are imported must file certificates electronically with CBP at entry; and (2) domestic private labelers must certify domestically manufactured products that bear a private label. It states that as many as 210,000 small businesses annually import products under CPSC jurisdiction that could make them subject to the proposed rule. Also, tens of thousands of small domestic manufacturers would continue to operate under the certification requirements of part 1110, and small private labelers would have the responsibility to issue certificates for privately labeled products if certificates are not issued by domestic manufacturers. The IRFA concludes that these new requirements are not expected to have a significant economic impact on a substantial number of these small businesses. The IRFA is attached as Tab B to this memorandum.

#### **V. Effective Date**

We recommend an effective date 90 days after publication of the final rule in the *Federal Register*.

## **VI. Commission Options**

The following options are available for Commission consideration:

1. Publish the notice of proposed rulemaking as drafted by the Office of the General Counsel.
2. Publish the notice of proposed rulemaking, with changes, as directed by the Commission.
3. Pursue other options, as directed by the Commission.

## **VII. Staff Recommendation**

We recommend that the Commission publish the notice of proposed rulemaking as drafted by the Office of the General Counsel.

**Tab A – Initial Regulatory Flexibility Analysis**



UNITED STATE  
CONSUMER PRODUCT SAFETY COMMISSION  
BETHESDA, MD 20814

MEMORANDUM

**November 6, 2012**

**To:** Carol J. Cave, Director, Office of Import Surveillance

**THROUGH:** Gregory B. Rodgers, Ph.D., Associate Executive Director  
Directorate for Economic Analysis

Deborah V. Aiken, Ph.D., Senior Staff Coordinator  
Directorate for Economic Analysis

**FROM:** Charles L. Smith, Economist, Directorate for Economic Analysis

**SUBJECT:** Initial Regulatory Flexibility Analysis of a Proposed Rule that Would Amend  
*16 CFR Part 1110: Certificates of Compliance*

## 1. Introduction

CPSC staff is recommending that the Commission propose to amend provisions of *16 CFR Part 1110: Certificates of Compliance*. The draft proposed rule is intended to update the rule to clarify requirements in light of new regulations on testing and labeling pertaining to product certification and component part testing, codified at 16 CFR parts 1107 and 1109 [76 FR 69482 (Nov. 8, 2011); 76 FR 69546 (Nov. 8, 2011)], respectively. The proposed amendment, among other things, would: (1) use newly defined terms such as “finished product certificate” and “component part certificate”; (2) require that when a domestically manufactured finished product is privately labeled, the private labeler must certify the product, unless the domestic manufacturer certifies the product; (3) clarify requirements for the form, content, and availability of certificates of conformity; and (4) require the importer of products manufactured outside the United States to file an electronic certificate with U.S. Customs and Border Protection (CBP) at the time of filing the CBP entry, or at the time of filing the entry and entry summary, if both are filed together.

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires CPSC staff to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. The IRFA is to contain:

- 1) a description of the reasons why the action is being considered;
- 2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

- 3) a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- 4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement, and the types of professional skills necessary for the preparation of the report or record; and
- 5) an identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the IRFA must contain a description of any significant alternatives to the proposed rule that would minimize any significant economic impact of the proposed rule on small entities.

## **2. Reasons for Agency Action**

The proposed revisions to *16 CFR Part 1110: Certificates of Compliance* are needed to add definitions, clarify language, make the requirements consistent with new regulations,<sup>1</sup> and require that importers of regulated finished products manufactured outside of the United States file the required certificate electronically with CBP at the time of filing the CBP entry, or at the time of filing the entry and entry summary, if both are filed together.

## **3. Objectives of, and Legal Basis for, the Rule**

The draft proposed rule, 16 CFR part 1110, revises the existing regulation by adding 12 new definitions. The new definitions clarify the three different types of certificates of conformity: General Conformity Certificates, Children's Product Certificates, and component part certificates. The definitions also clarify the types of products that can be certified as either finished products or component parts. The draft proposed rule clarifies when certificates are required to accompany a finished product, who must certify a finished product, as well as the form and content requirements for certificates. Among these clarifications, is new language holding foreign manufacturers responsible for certification of products delivered directly to consumers in the United States, such as products purchased through an Internet website, unless private labelers certify the products. The draft proposed rule revises the certificate requirement for domestically manufactured products to require a private labeler to certify a privately labeled product, unless a domestic manufacturer certifies the product. Finally, the draft proposed rule requires importers of regulated finished products manufactured outside of the United States to file the required certificate electronically with CBP at the time of filing the CBP entry, or at the time of filing the entry and entry summary, if both are filed together.

The legal basis for proposed part 1110 is found in sections 14(a) and (g) of the CPSA, as amended by the CPSIA, and section 3 of the CPSIA. Section 14(a) of the CPSA requires every

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<sup>1</sup> *16 CFR Part 1107: Testing and Labeling Pertaining to Certification and 16 CFR Part 1109: Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements.*

manufacturer of a product that is subject to a consumer product safety rule enforced by the Commission and that is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) to issue a certificate that certifies that products are in compliance, and which specifies the rule or rules applicable to the products. Section 14(g) specifies the requirements for the certificates, including identification of the issuer, certificate availability (certificates must accompany a product or product shipment, be furnished to distributors or retailers, and made available to the Commission). Section 14(g)(4) specifically authorizes the Commission, by rule, to provide for the electronic filing of certificates under this section, up to 24 hours before arrival of an imported product.

#### **4. Small Entities Subject to the Proposed Rule**

The proposed revisions to part 1110 will apply to importers and domestic manufacturers and will be extended to include private labelers for privately labeled domestic products (unless certificates are provided by manufacturers). It is difficult to know the number of small businesses that would be affected with certainty. Research of CBP data by CPSC staff found that during 2009, there were 231,094 distinct importers of products categorized in import codes likely to include products under CPSC's jurisdiction.<sup>2</sup> The great majority of these firms (perhaps 90 percent or more) are likely to be small businesses under U.S. Small Business Administration size standards for manufacturers, wholesalers, or retailers. On the basis of this information, each year as many as 210,000 small businesses might import products under CPSC jurisdiction that would make them subject to the proposed rule. However, firms that only import consumer products that are not subject to product safety rules requiring certification would not be affected by the electronic filing requirement.

In most cases, domestic manufacturers will continue to have the responsibility of providing certificates for products subject to a consumer product safety rule under the CPSA or other laws enforced by the Commission. According to Census of Manufactures data for 2007, about 104,000 companies manufactured products in the North American Industry Classification System (NAICS) codes that are likely to have included products under CPSC jurisdiction.<sup>3</sup> Although more than 90 percent of these firms (*i.e.* close to 100,000) are considered small businesses, a significant percentage probably are not engaged in manufacturing products that are subject to a product safety rule. Still, tens of thousands of small manufacturers are currently responsible for providing certificates. Under the draft proposed rule, some of the burden of providing certificates could be transferred to small private labelers.

#### **5. Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule**

The proposed revisions to part 1110 include the imposition of the new reporting requirement on importers of regulated finished products to file electronic certificates of conformity (General Conformity Certificates or Children's Product Certificates) with CBP entry

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<sup>2</sup> Blachere, John, International Trade Specialist, Division of Import Surveillance, CPSC. December 8, 2010, e-mail to Charles Smith, Directorate for Economic Analysis, CPSC.

<sup>3</sup> U.S. Census Bureau, 2007 Economic Census, Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007. [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_3111&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table)

for consumption or entry for warehousing, or at the time of filing the CBP entry and summary, if both are filed together. This electronic filing requirement would be in addition to other electronic security filing requirements already imposed on importers by CBP. It is important to note that many importers, including those that are small businesses, already make electronic certificates available under the existing part 1110, in order to satisfy the requirement that certificates accompany products, are furnished to distributors and retailers, and are available to the CPSC “as soon as the product or shipment is available for inspection.” Thus, for these firms, the incremental requirement would simply call for these certificates also to be provided electronically to CBP.

Because the proposed requirement for electronic filing of certificates does not specify how that is to be accomplished, importers will have flexibility in their method of compliance.<sup>4</sup> Importers relying on paper certificates of compliance for distributors and retailers would have to create electronic certificates; however, these firms are likely to have the necessary office equipment and personnel to create and transmit these certificates electronically. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship’s arrival at a U.S. port.<sup>5</sup> Small importers often hire Customs brokers licensed by CBP to handle the procedures that must be followed to import goods; the proposed requirement of electronic filing of certificates will likely be added to the duties performed by these brokers. Based on the current business practices of small businesses that import consumer products, the incremental costs of the requirement to file an electronic certificate of compliance should be minor. If electronic filing costs are similar to typical fees reportedly charged by Customs brokers for filing the required Importer Security Filing data elements, they might be \$25 or less per filing.<sup>6</sup> CBP estimated that “in 2005, more than 70 to 85 percent of all importers imported fewer than 12 shipments.”<sup>7</sup> Assuming that this applies to importers of consumer products, annual incremental costs of electronic filing of certificates of conformity could be less than \$275 for most small businesses that import products that require certificates of conformity.<sup>8</sup> As noted by CBP in its assessment of costs of security filing requirements, some small importers of consumer products subject to electronic filing of certificates under part 1110 could choose to file the certificates electronically themselves with CBP, if their own filing costs are lower than fees charged by brokers.<sup>9</sup>

Another proposed revision to part 1110 revises the requirement for certification of domestically manufactured products to require that privately labeled products be certified by the

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<sup>4</sup> For example, the proposed rule discusses that certificates could be maintained as PDF files or certificates could be provided in the form of data elements that are uploaded into CBP’s system of records.

<sup>5</sup> Electronic reporting is required by a CBP rule titled, *Importer Security Filing and Additional Carrier Requirements* (commonly known as “10+2”).

<sup>6</sup> E-mail communication from Amy Magnus, Director of Customs Affairs and Compliance, A.N. Deringer, Inc., to Charles Smith, Directorate for Economic Analysis, CPSC, November 5, 2012.

<sup>7</sup> Department of Homeland Security, Bureau of Customs and Border Protection, *Importer Security Filing and Additional Carrier Requirements*, Interim final rule. *Federal Register*, Vol. 73, No. 228, November 25, 2008, p. 11765. Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27048.pdf>.

<sup>8</sup> This estimate is based on the assumption that one certificate of conformance would be required per shipment. If multiple certificates are required per shipment, costs could be higher.

<sup>9</sup> Industrial Economics, Incorporated, *Importer Security Filing and Additional Carrier Requirements: Regulatory Assessment and Final Regulatory Flexibility Analysis for the Interim Final Rule*, November 6, 2008, p. 4–7 (97 of 266). Retrieved from [http://www.cbp.gov/linkhandler/cgov/trade/cargo\\_security/carriers/security\\_filing/ra.ctt/ra.pdf](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/ra.ctt/ra.pdf).

private labeler, unless the domestic manufacturer issues a certificate. This amendment would result in a shift in the obligation to provide certificates from some small manufacturers to some small private labelers. However, these small private labelers can choose to continue to rely on the certificates that the manufacturers are currently required to provide, or they can use such certificates as a basis for issuing their own certificate. Moreover, the revisions grant private labelers the authority to issue certificates, which some may prefer. While some private labelers may experience some impact, this impact should not be significant because it is expected that some manufactures will continue to issue certificates as they are now legally required to do.

## **6. Other Federal Rules**

For small businesses importing consumer products by containerized shipping vessel, this electronic filing requirement would be in addition to other electronic importer security filing requirements already imposed by CBP. Since 2010, small businesses that import merchandise (including products under CPSC jurisdiction) by ocean vessel have been required to file information related to the shipments electronically with CBP no later than 24 hours prior to the ship's arrival at a U.S. port. One of the elements required to be filed under the CBP's rule (*Importer Security Filing and Additional Carrier Requirements*, or "10+2 rule") is the name and address of the manufacturer or supplier of the finished goods in the country or origin, although alternative forms of manufacturer identification, such as identification numbers, are also acceptable. This CBP element is similar, but not identical to, the required information on date and place of manufacture required by certificates of conformity.

## **7. Alternatives to the Draft Proposed Rule**

One alternative to the draft proposed rule would be *allowing*, rather than *requiring* certificates for imported products to be filed at entry. If this alternative were to be adopted, the certificate would still have to be available for inspection upon request, as it is now. Allowing, instead of requiring certificates to be filed electronically at entry would reduce the burden on small businesses, but it might not enhance the Commission's ability to target shipments for inspection and to track the accuracy of certificates.

## **8. Summary**

The amendments to 16 CFR part 1110 described in the draft proposed rule are intended to establish requirements authorized under section 14(g)(4) of the Consumer Product Safety Act for electronic filing of certificates of compliance by importers of consumer products. The revisions would also define and use terminology introduced in new testing regulations at 16 CFR parts 1107 and 1109 to clarify certificate requirements in light of these new regulations; clarify the requirements for the form, content, and availability of certificates of conformity; and revise the certificate requirement for domestically manufactured products to allow a private labeler to certify a privately labeled product, unless a manufacturer certifies the product.

As many as 210,000 small businesses might annually import products under CPSC jurisdiction that could make them subject to the proposed rule. Additionally, tens of thousands of small domestic manufacturers would continue to operate under the certification requirements of part 1110. Small private labelers would have the responsibility to issue certificates for

privately labeled products, if certificates are not issued by domestic manufacturers. Requirements for private labelers to provide certification (if domestic manufacturers do not) and new requirements for importers pertaining to electronic certificates of conformity are not expected to have a significant economic impact on a substantial number of these small businesses.