February 6, 2024

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

Re:Certificates of Compliance, Docket No. CPSC-2013-0017
Supplemental Notice of Proposed Rulemaking/ 88 Fed. Reg. 85,760

The JPMA welcomes the opportunity to submit these comments in response to the Supplemental Notice of Proposed Rulemaking ("SNPR") by the U.S. Consumer Product Safety Commission ("CPSC" or "Commission").

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade organization representing 95% of the prenatal to preschool industry including the producers, importers, or distributors of a broad range of childcare articles that provides protection to infants and assistance to their caregivers. JPMA collaborates with government officials, consumer groups, and industry leaders on programs to educate consumers on the safe selection and use of juvenile products.

JPMA supports the CPSC's mission to reduce the unreasonable risk of injuries and deaths caused by consumer products. However, we are concerned that the SNPR may create undue operational burdens for manufacturers, private labels and importers through the creation of duplicative, non-correlated certifications. The long-term interval between CPSC's initial Notice of Proposed Rulemaking ("NPR") and the SNPR, which seeks to answer questions raised six years ago and juxtapose additional requirements under this SNPR has created confusion as to the current state of affairs and whether the record of compliance and enforcement over the almost 15 years since enactment of a specific, congressionally-mandated system of testing and on demand certification has been effectively implemented, or not. Under such circumstances, additional information on the record with input from CBP is required, together with an opportunity to better evaluate burdens in relation to benefits prior to finalization of a unique standalone rule, as currently proposed.

The CPSC Should Work with Stakeholders to Develop a Streamlined Certification Process With a Demonstrable Reduced Burden on Filers.

JPMA supports a flexible "On Request" Certification process (either hard copy or electronically) under which manufacturers and private labelers assume primary responsibility allowing importers, distributors and retailers to rely on such certifications to leverage and

JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION, INC.

1120 Route 73, Suite 200 • Mt. Laurel, NJ 08054
TEL: 856.638.0420 • FAX: 856.439.0525
jpma@jpma.org • www.jpma.org

reduce burdens for repeated introduction into U.S. commerce of the same product. This would promote reliance by downstream buyers of products without added burden.

CPSC should enable a more interconnected supply chain in conjunction with CBP (not as a standalone Agency Registry).

The CPSC Should Extend the Time for the Rulemaking Process and Implementation.

The CPSC should provide a clearer record on the status of the regulatory efficacy of the current testing and certification system as has been in place for almost 15 years, with an analysis of adherence and effectiveness, before overhauling its certification rules. This should also include a record on the results of its systemic Beta Testing thus far. The need for additional CPSC-stakeholder interaction is underscored by the lack of detailed analysis about the function and effect of expanding the definition of "importer" proposed by the SNPR. The Commission does not sufficiently explain why it's necessary or desirable based upon the record. Additionally, any proposed rule should allow for a phase-in process, given the complexity of the supply chain, so as not to negatively impact the availability of a broad array of admittedly safe consumer products.

Please note our corresponding comments on sectional changes as follows:

Purpose and Scope §1110.1: Existing §1110.1 describes the purpose and scope of the rule, explaining that the rule limits the entities required to issue certificates; specifies the content, form, and availability of certificates; and specifies the form of electronic certificates.[1] Existing §1110.1(b) explains that the rule does not implement eFiling certificates with CBP under section 14(g)(4) of the CPSA. The SNPR proposes to increase the number of entities responsible for issuing certificates.

We believe the approach should be to actually reduce the burden of filing by taking a stepped down approach. Our proposal is to more clearly and explicitly allow a "manufacturer" or "private labeler," willingly assuming responsibility for their products, to certify compliance to the requirements of paragraph (1) of section 14(a) (15 U.S.C. 2063(a) and to enable all their respective downstream customers (whether receipt of such goods is direct or indirect) to rely upon such Certifications.[2] Afterall, the statutory language a provides that "every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other Act enforced by the Commission

[1] 16 CFR 1110.1(a).

[2]We agree that if a manufacturer's name appears on a product, the product is not privately labeled under the definition of 15 U.S.C. 2052(a)(12), that the manufacturer would be required to test and certify the product.

and which is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which— (A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission; and (B) shall specify each such rule, ban, standard, or regulation applicable to the product.'' Only if there was no clear, responsible certifying party would expansion of entities that must issue certificates be justified.

In addition, CPSC should recognize that until their "Beta Testing" is complete, and the results duly analyzed and provided for comment on the record, that no "one size fits all" solution be proposed. In this regard, e-filing should be a permissible option, not a mandatory uniform requirement. We note that the record is void of any claim that required certifications and back-up required test data is not being made reasonably available under the current on-demand system of enforcement. Rather than creating a less burdensome integrated system with CBP, the Commission appears to be seeking to create its own unique system without adequate justification on the record.[3]

The proposed changes also seek to clarify which provisions in part 1110 apply to voluntary component part certificates, but fails to clearly define "component part" and should clarify that such Certification is only required for component or replacement parts if they are sold as fully independent, finished, packaged consumer products subject to a specific applicable regulation.

A plain reading of the underlying statutory language that such certification be available "upon request" by the Commission is distinct from a requirement that such certifications only be available by e-filing. Otherwise, Congress would have plainly set forth such a requirement in the statutory language in this section, instead of clearly stating that "Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission." Based upon that, the option for a certificate that is available upon request in hard copy or electronic form and complies with the certificate requirements of section 14 of the CPSA should remain intact. The SNPR as drafted would altogether eliminate the Statutory requirement for a "request" for such certifications. Then the section of part 1110 that defines ''electronic certificate'' as ''a set of information available in, and accessible by, electronic means that sets forth the information required by CPSA section 14(a) and section 14(g) and that meets the availability requirements of CPSA section 14(g)(3)'' should be maintained as an option.

[3] CPSC Staff notes that Certificates that are collected either as a hard-copy or a PDF copy via email, are not in a data-usable format that can be processed into "CPSC's RAM and risk scored" program, without explaining what it is, whether it's effective or whether a less publicly burdensome integrated flexible model as is currently working suffices.(See also Response 31)

The rule as revised should clearly state that, provided that the manufacturer or private labeler meets the underlying statutory requirements to support a certificate (meaning the required testing and/or other bases to support certification and issuance of certificates is undertaken), their downstream customers may rely on such certifications without having to independently file duplicative certifications. This would demonstrably reduce the burden of certification and filing.

As regards the option for electronic filing, an ''eFiled certificate,'' should actually align in full and not be differentiated from an electronic certificate that is submitted to CBP via their ACE system. The goal was always to have a single e-filing system option with sufficient bandwidth to capture the statutorily required Certification. Adding superfluous granular filing requirements to justify a unique agency platform has not been demonstrated as needed, nor cost effective based upon the record produced thus far. In fact, Congress drafted CPSA section 14(g)(4) to clearly require the Commission consult with, not supplant, CBP in developing an "upon request" availability of any e-filing information involving certification under such Statutory requirements when it required: "(4) ELECTRONIC FILING OF CERTIFICATES FOR IMPORTED PRODUCTS.—In consultation with the Commissioner of Customs, the Commission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of Customs." With this SNPR, the Commission seeks to substitute its requirements for those of the Commissioner of Customs and to nullify the again enunciated requirement that such certifications under Statute be available "upon request" by the CPSC and CBP.

We have no objection to the SNPR's more granular definitions to better describe the types of merchandise under CPSC's jurisdiction, which includes not only consumer products, but also hazardous substance and modification in the SNPR to replace the term ''General Conformity Certificate'' with ''General Certificate of Conformity,'' because the latter is the statutory term.

Proposed §1110.3: For the aforementioned reasons of reducing burdensome, duplicative filings, we also oppose the SNPR's proposed broadening of the definition of ''importer'' to include any entity CBP allows to be an importer of record (19 U.S.C. 1484(a)(2)(B)). Such term is already legislatively defined. The agency cannot arbitrarily expand the definition, create new categories within the definition or summarily conclude that certifications be required by any expanded class of parties, including currently excluded licensors, common carriers, warehousemen, distributors or retailers (in lieu of already defined manufacturers and private labelers). We contend a more efficient system, as noted above, is to allow any

"importer of record," "consignee," "owner or purchaser", "distributer" or "retailer" to rely upon a manufacturer or private labeler certification (whether by CPC or GCC).[4]

The proposal seeks to inexplicably expand the definition of importers and required certifiers/filers. There is no adequate explanation provided for such a contrary approach. Instead of definitions based on CBP's definitions, the Commission should look to the language of its enabling statute and the plain language found therein to more broadly clarify the practical recognition of manufacturers, who possess the requisite knowledge related to the design, material specifications, supply chain and manufacturing process for the regulated consumer products than a non-manufacturer importer of record, distributer or retailer. The manufacturer is where familiarity with the subject product resides.

CPSIA Section 14(g)(3) (15 U.S.C. 2063(g)(3) better reflects legislative intent than the contrived construction of a Staff desired rule, when Congress provided, "(3) AVAILABILITY OF CERTIFICATES.—Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission".

It is inconsistent with a plain reading of the statutory language to require a distributer or retailer that imports a manufacturer's or private labeler's products to assume filing responsibility for certifications when Congress mandated they be relied upon and provided by manufacturers or private labelers. A contrary construction undermines such reasonable construction and a plain reading of legislative language. Such construction places form over substance.

Products Required To Be Certified (§1110.5): We support the current §1110.5 with clarification that when a certificate is required, only finished products subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, that are imported for consumption or warehousing, or are distributed in commerce, need to be accompanied by a certificate. This is a restatement of the statutory requirement. Component parts of a consumer product are not required to be certified; the 1109 rule allows for voluntary component part testing and/or certification but testing or certification of component parts not intended to be offered for sale as finished products is never required.[5]

[4] In the SNPR Staff stated this approach is preferable when it stated, "For enforcement purposes, the NPR proposed to require either the domestic manufacturer or the private labeler to issue the certificate, because no other party would have the necessary knowledge of the product to be able to certify". (See response 11).
[5] See also Response 72.

Who Must Certify Finished Products (§1110.7): Section 1110.7 of the existing rule states that, except as otherwise provided in a specific standard, for products manufactured outside the United States the importer is required to certify the product and provide a certificate, as required by section 14(a) of the CPSA. We also note the Statutory language that Certificates be available to the Commission or CBP within 24 hours of "request". We do not agree the Statutory requirements can easily be supplanted, unless a filer elects to do so in their ordinary course of their business. We propose the sequential obligation to certify as set forth in subparagraph above is preferable to reduce burdens on businesses, especially small businesses which comprise most U.S. business. This avoids needless duplication and allows for downstream reliance of certifications by manufacturer and private labelers, regardless of form of entry or distribution. This approach is preferable to duplicative downstream imposition of requirements. Regardless, if no manufacturer or private labeler assumes the responsibilities related to required certification, then the importer of record can be reasonably expected to fulfill the certification requirements.

Certificate Language and Format (§1110.9): With the provisions above, we agree that Section 1110.9 of the existing rule which provides that certificates may be in hard copy or electronic form and must be provided in English but also may be provided in any other language, should remain. We do not agree that a unique ID that can be accessed online via a URL or other electronic means should be required, nor added to consumer packaging which is already often cluttered with product specific warnings codes (i.e., CBP and Treasury Department Requirements). Proposed §1110.9(b) clarifies the formats for e-filed and for hard copy and electronic certificates. The SNPR proposes that an e-filed certificate must meet the requirements in proposed §1110.13(a), and that certificates furnished to retailers, distributors, or to CPSC pursuant to §1110.13(b) and (c) may be provided in hard copy or electronically.

Proposed §1110.9(c) describes the format for the electronic certificates described in §1110.13(b) and (c), which are used to furnish a certificate to retailers or distributors, or to CBP or CPSC upon request. We believe this rule should affirmatively allow for password protection to maintain the confidentiality of proprietary competitively sensitive information, not generally available to the public. Such information may be required to be available to the requesting governmental agency within 24 hours of request (identical to statutory language requirements for the underlying certifications).

Certificate Content (§1110.11): This section of the existing rule identifies the statutorily required seven data elements that must be present on all certificates: (1) information identifying the product covered by the certificate; (2) a list of all applicable rules for which the product is being certified; (3) the name, full mailing address, and telephone number of the importer or domestic manufacturer certifying the product; (4) the name, email address, full mailing address, and telephone number of the individual maintaining records of test results; (5) the date (minimally, the month and year) and place (including city and state, country, or

administrative region) of manufacture; (6) the date and place (including city and state, country, or administrative region) where the product was tested; and (7) the name, full mailing address, and telephone number of the laboratory that conducted any required third party testing. We believe data commensurate with the Statutory requirements can be required.[6]

However, the SNPR proposes additional Product Identification in proposed (§1110.11(a)(1)). The SNPR proposes to require at least one unique ID from a list of seven options and a sufficient description to match the finished product to the certificate necessary for mandatory, unique CPSC Registry e-Filing. We believe all extraneous unique identifiers be permissible but not required. See the above comment that e-filing be optional, not mandatory and that customers of manufacturers and private labelers can reasonably rely on their respective certifications of compliance without duplication. We would maintain the requirement from the existing rule to provide the date when the finished product(s) were tested for compliance. We believe the certification should be permitted to be from a corporate representative and successor as may be customary with turnover. We do not oppose addition of corporate email contact information for the testing laboratory.

Proposed "Attestation" (§1110.11(a)(7)): We note that the SNPR proposes to add a requirement to provide an attestation certifying compliance, indicating that the information provided by the certifier is true and accurate and that the certified product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission and to add such attestation to the proposed, unique Product Registry. This seems redundant and unduly burdensome as the the Regulations can note that altering or falsifying a test report or certificate is already a prohibited act under section 19(a)(6) of the CPSA, and possibly a criminal act, as set forth in 18 U.S.C. 1001. For these reasons this requirement is opposed as needlessly redundant.

Proposed Disclaimers of Exclusions, Exemptions or Inapplicability: The SNPR also retains the proposal in §1110.11(c) for certifiers to list all claimed testing exclusions, instead of providing the date and place where the product was tested for compliance. As a matter of law, exemptions and exclusions are self-effective and do not need to be disclaimed or cited to be effective or to render a certification of compliance meeting the Statutory requirements. We note the statutory requirements do not require sectional, sub-sectional or any such reference to affirmative test requirements, exemptions, exclusions or enforcement policies.[7] Staff has

[6] Section14(a)(1) (15 U.S.C. 2063(a)(1) requires the certificate to reference applicable rules and Section14(g)(1) (15 U.S.C. 2063(g)(1) require the certificate to reference where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results.

[7] As noted, the statutory language requires certified compliance to applicable rules ("rules, bans, standards, or regulations" not to citation by every subsection of such requirements. In addition, some Beta Test participants note in some cases staff seeks such citation, while in others they do not.

noted that if no product safety rule or similar rule, ban, standard, or regulation applies, or the product is subject to enforcement discretion, then no certificate would be required. Therefore, it is wholly inappropriate to require any disclaimer for self-operative legal requirements. We agree that that certifiers are not required to conduct duplicative testing for any rule that refers to, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission.

Certificate Availability (§1110.13): Section 1110.13(a) of the existing rule restates the statutory requirement in section 14(g)(3) of the CPSA that certificates must "accompany" each product or product shipment and be furnished to distributors and retailers. Section 1110.13(a)(1) and (2) explains how electronic certificates satisfy the "accompany" and "furnish" requirements of that section, and §1110.13(b) states that an electronic certificate must have a means to verify the date of its creation or last modification. Whether by hard copy or electronic filing (since we contend both options should continue to be maintained until CPSC's own Beta Testing is completed and a fully unified singular e-filing platform integrated into the ACE Entry filing system can be established and tested) we believe the terms "accompany'' a product shipment, be ''furnished'' to retailers or distributors, and be ''furnished'' to CPSC and CBP within 24 hours, should continue to be upon request as we have noted per the express statutory language . We reject as overreach and arbitrary a requirement seeking to nullify existing substantive regulations consistent with on demand production requirements as provided for and permitted under the express plain language of CPSIA Section 102.

Therefore, based upon the aforementioned comments we oppose as unnecessary and burdensome the Proposed §1110.13(a)(1), §1110.13(a)(2), §1110.13(a)(3) of the 2013 NPR and the current SNPR which is solely predicated on a parallel, ACE-independent, e-filing CPSC Registry. Likewise, it should be noted that the requirement as described under proposed §1110.13(a) that a finished product certificate must accompany "each" finished product or "finished product shipment" required to be certified pursuant to §1110.5, requires greater definition. This requirement reflects a practical misunderstanding of how manufacturer production (compliant with 16 CFR 1109, et seq) of finished products with different unique model numbers, UPC codes and identification numbers may involve multiple production, date codes and shipments of the identical product or variations unique to different customer requirements that rely upon baseline and supplemental certifications for multiple production.

We support the current §1110.15 allowance that another entity may maintain an electronic certificate platform, but the certifier is still responsible for ensuring its validity, accuracy, completeness, and availability.

WTO Technical Barrier to Trade: CPSC Staff in its summary dismissal of previous rulemaking comments misconstrues "technical barrier to trade" requirements, only assuming

if the rules apply both domestically and internationally, they cannot be a technical barrier to trade. In fact, Technical Barriers to Trade may result from legal requirements that countries enact to ensure that products are safe. If these legal requirements as imposed are arbitrarily and needlessly burdensome, they may represent hidden restrictions to international trade. We believe this proposed rule would be subject to such notification and review requirements.

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

Component Part Certificates (§1110.19): The current rule does not address component part certificates. The SNPR's proposal retains the component part certificate requirements from the 2013 NPR yet fails to fully clarify it remains inapplicable to finished products and to better define those products.

Effective Date: The Commission proposes that a final rule for revisions to 16 CFR part 1110 will become effective 120 days after publication in the Federal Register. Given the extensive changes that the SNPR makes for large and small domestic manufacturers, importers, certifiers, e-filing formats, additional data sets, much more time will be required to onboard and upgrade software. The proposed 120-day effective date is wholly inadequate unless our proposals are adopted. If rejected, in whole or part, we recommend a staggered implementation commencing 12 months will be required.

Regulatory Flexibility Analysis Comment. The Regulatory Flexibility Act (RFA) requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[8] See Tab C of the Staff's SNPR Briefing Package, which assesses the impact of the SNPR on small businesses. Based on staff's analysis, the Commission certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Staff assesses that firms affected by the SNPR import or domestically manufacture products that fall under numerous North American Industry Classification System (NAICS) codes and HTS codes 22. Using these guidelines, staff estimates that as many as 43,061 small firms import regulated non-children's consumer products and substances annually, and will be required to eFile GCCs, while 211,148 firms annually import regulated children's products and would be required to eFile CPCs. We believe the number of individual certifications required for each manufacturer, private labeler and importer (as CPSC seeks to define) of each product would be many times such numbers and this has not been adequately analyzed and considered.

[8] 5 U.S.C. 603.

Compliance, Reporting, and Recordkeeping Requirements of the SNPR: The SNPR acknowledges that the proposed rule would impose a new reporting burden on importers who must eFile certificates at the time of entry, or at entry summary, if both entry and entry summary are filed together. The SNPR would also impose an additional recordkeeping burden for GCCs, which is the mandatory retention of records for two additional years and, in most cases, from three to five years. To achieve compliance with the SNPR's eFiling requirements, small importers of products requiring either a GCC or CPC could possibly incur costs from several activities including: (1) the costs of inputting and filing certificate information with CBP through a PGA Message Set; (2) the one-time conversion costs of updating technology; and (3) broker fees. Staff contends that with the creation of CPSC's unique Product Registry, CPSC does not expect small businesses to need to invest in technology to e-file certificates. It notes that larger importers and manufacturers who import larger volumes of regulated consumer products and substances would be more likely to invest in technology to enable batch uploads of data into the Product Registry, or to create their own registries.

Yet there is no record to support such contentions or provide validated cost estimates. Its circuitous to argue that just because the SNPR does not require a technology investment, that there will not be substantial technology costs required by both large and small businesses. Staff just assumes that when using the Product Registry, 95 percent of importers will bear an additional 20 second burden per Reference Message Set filed during entry, while five percent of importers will bear a one-minute burden per Full Message Set filed. Yet there is not any statistically-validated record set out to justify such assumptions, which do not seem realistic given the vast amount of certification for every product sought to be imposed under their SNPR. Similarly, they have not adequately modeled the cost of using third party service providers or Custom's Brokers to comply with their filing under a new unique CPSC only registry. Instead, they merely assume repeated use will reduce costs.

Indeed, a small-business member company of JPMA has already advised that they stand to accrue an additional $30,000 for document prep ½ headcount, $75,000 for additional forwarder certificate of compliance filing fees, and $40,000 for document prep full headcount at factory – totaling an extra $145,000 burden. These are conservative estimates, implying that the cost could realistically be even higher. The economic impact on large and small businesses is gratuitously burdensome and will have negative impacts on American companies across industry sectors regardless of size.

Conclusion

All of JPMA's comments listed above are made with consideration of the safety and wellbeing of infants, parents and caregivers. Our members provide parents and caregivers with products of indispensable utility. This SNPR would establish burdensome and onerous requirements for these companies that would have drastic and negative effects on the industry.

We appreciate the opportunity to provide comment on this matter and look forward to remaining engaged with CPSC as leaders in ensuring the safe design, manufacture, and use of juvenile products.

Respectfully submitted,

Lisa Trofe, CAE
Executive Director