

CPSC Extends Comment Period on Expansion of eFiling Beta Pilot Test

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On September 10, 2024, the U.S. Consumer Product Safety Commission (CPSC or the Commission) published a [notice](#) extending the comment period for its expansion of the eFiling Beta Pilot Test to October 10, 2024. This extension is referred to by CPSC staff in [training materials](#) as the “eFiling voluntary stage” to differentiate it from the initial Beta Pilot Test, which ended in June 2024. The initial Beta Pilot Test was conducted in consultation with U.S. Customs and Border Protection (CBP), which will also be involved in the “eFiling voluntary stage.” CPSC continues work on a revised rule on Certificates of Compliance (CoC or certificates), 16 C.F.R. Part 1110 (Rule 1110), which would establish requirements for eFiling of CoC data. (We previously wrote about the proposed revisions to CoCs [here](#).) CPSC’s current proposal would impose onerous new requirements for importers to pair each product with its own CoC, including exclusion codes for products subject to certain exemptions. CPSC also created a list of disclaimer codes for products outside CPSC’s jurisdiction, suggesting that importers should include this information in shipping documents to avoid hold-ups at the ports. With the extension of the comment period for expansion of the eFiling Beta Pilot Test, finalization of at least the eFiling requirements will almost certainly be delayed beyond this month (in training sessions, CPSC staff noted that “rollout” of final eFiling requirements is not expected until 2025). As the CoC proposed rule and eFiling initiative are intertwined, importers should keep a close watch on the timing of both.

Importantly, CPSC has proposed that eFiling requirements take effect 120 days after publication of a final rule revising Rule 1110. In response to CPSC’s [proposed rule](#) to amend Rule 1110, some commenters expressed concerns with this implementation timeline. To date, CPSC’s only response to those concerns was the June 2024 notice expanding the eFiling Beta Pilot Test and initiating the “eFiling voluntary stage” to add up to 2,000 additional participants from an initial limit of 50. CPSC explained in the [June 2024 notice](#) that the “expansion would allow importers of regulated consumer products to voluntarily participate in the test by electronically submitting (eFiling) data from a certificate of compliance for up to three additional years, or until an effective date of a final rule requiring eFiling.” Although allowing for three additional years of testing

through *voluntary* participation, CPSC's June 2024 notice did not foreclose the possibility that eFiling could still be *required* 120 days after publication of a final rule that changes the data required for eFiling.

The comment period for the burden estimate associated with the June 2024 notice of Beta Pilot Test expansion initially closed on August 5, 2024. CPSC's September 10, 2024, notice announced that additional comments on the burden estimate for the Beta Pilot Test expansion would be accepted until October 10, 2024. That notice also addressed the only two comments submitted in response to the June 2024 notice. Of note, the September 2024 notice stated that previously submitted out-of-scope comments (i.e., those that did not directly address burden estimates) will still be considered "[t]o the extent that these comments are relevant to the final rule" on eFiling. While the current formal comment request remains limited to burden estimates, given the interconnection of the 1110 Rule and eFiling, members of the regulated community may wish to comment on both CPSC's proposed eFiling *and* CoC requirements by October 10, 2024.

The most recent two comments received by CPSC in response to the Beta Pilot Test expansion raised several issues, including the following:

- Burden estimates are considerably greater than CPSC's projections. Depending on the size of the business and the number and variety of imports, that burden (for data gathering and submission) could be twice as much or more than CPSC's projections.
- It was unclear to commenters—
 - If the burden estimates took into account costs and burdens associated with CPSC and CBP's ability to scale the eFiling program to cover all regulated products;
 - If CPSC's burden estimates account for expected holds and associated delays of imports due to eFiling errors; and
 - To what extent the disclaim process for exempted or excluded products was included in the burden analysis.
- Commenters argued that the timeline for implementation of the eFiling process is too short for companies to fully implement new procedures, and there should be a minimum testing period of 18 months before a final rule is implemented.
- Commenters noted that CPSC may not have adequately considered the burdens for importers of consumer products containing button cell or coin batteries subject to Reese's Law, for whom CPSC reporting may be new.

In its September 2024 notice, CPSC responded to a few of these issues but viewed the last two points as out-of-scope comments that would be considered later if deemed relevant to the final rule. Regarding the other points above, CPSC explained that the expansion of the Beta Pilot Test was to better understand burdens. While CPSC did not revise its burden estimate in response to the comments, it promised to take into account the experience of Beta Pilot Test participants in the burden estimate for the final rule. CPSC also clarified that it "does not intend to delay shipments for eFiling errors, but instead will use the certificate data for risk scoring of shipments." The notice does not elaborate on the implications of this risk scoring, but the December 2023 proposed rule revising Rule 1110 explained that "increasing an importer's risk score ... increases the risk of a hold for examination." Many companies already experience delays based on paperwork issues, such as failure to immediately produce CoCs, missing tracking labels for children's products, and other matters. Finally, CPSC explained that the disclaim process is optional during the Beta Pilot Test. However, it remains unclear if the disclaim process will remain optional once proposed changes to Rule 1110 are finalized, and if so, how CPSC estimates the costs and impacts of requiring exclusion and disclaim codes.

Many in the regulated community may be unsatisfied with CPSC's responses, which raise additional questions. Those seeking to comment on the burden estimate and address other issues related to the proposed CoC revisions and eFiling requirements have until October 10, 2024, to submit comments.

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National Law Review, Volume XIV, Number 262

Source URL: <https://natlawreview.com/article/cpsc-extends-comment-period-expansion-efiling-beta-pilot-test>