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FMC Finalizes New Demurrage, Detention Billing Requirements

The Federal Maritime Commission issued its long-awaited final rule for new demurrage and detention billing requirements, describing the information carriers and marine terminal operators must include in their invoices, clarifying which parties can be billed and under what time frames, outlining the processes for disputing charges, and more.

The 115-page rule, released Feb. 23 and effective May 28, will help contribute to "supply chain fluidity" by clarifying the responsibilities and requirements of each party when picking up or returning cargo and equipment, the FMC said. If billing parties don't include certain required fee information in their invoices, they will void "any obligation" by the billed party to pay the charge, the commission said. "The new rule will provide relief to parties who should never have received a bill for detention or demurrage."

The final rule solidifies a host of changes the FMC has been considering since it proposed the requirements in October 2022 (see ITT 10/07/2022), including one that will force ocean carriers and MTOs to issue detention and demurrage invoices within 30 calendar days from when the charges were last incurred. Similarly, non-vessel-operating carriers will need to issue those invoices within 30 days from the "issuance date" of the invoice they received. Billed parties will have 30 days to request a refund or waiver, and the billing party must try to resolve the issue within 30 days.

Several shipping trade groups had praised the proposed time-frames, although carrier representatives, including the World Shipping Council, pushed back on the 30-day deadline. The FMC said carriers asked the commission to "prove why other deadlines are unreasonable."

The FMC "declines this invitation to try to prove a negative," it said. Carriers "did not offer concrete examples of why billing parties could not comply with a 30-day deadline, and instead made reference to delays caused by third parties without offering specifics of the types of delays they routinely face or how long they take to resolve."

The rule also clarifies who may be billed for detention and demurrage charges, a topic that polarized portions of the ocean cargo transportation industry during the FMC's rulemaking process (see ITT 12/13/2022 and ITT 12/23/2022). The FMC said invoices can only be issued to either the consignee, or "the person for whose account the billing party provided ocean transportation or storage" of the cargo and who contracted with the billing party for cargo transportation or storage.

The FMC said a "primary purpose" of the rule is to stop detention and demurrage invoices from being sent to parties who didn't negotiate contract terms with the billing party. It also noted that it included consignees as a party "to whom an invoice can be properly billed" after commenters supported the idea.

"After careful analysis, the Commission has determined that prohibiting billing parties from issuing demurrage and detention invoices to persons with whom they do not have a contractual relationship will best benefit the supply chain," the commission said. "If the billed party has firsthand knowledge of the terms of its contract, then they are in a better position to ensure that both they and the billing party are abiding by those terms."

Although the FMC said other parties, in some circumstances, may have more influence on whether demurrage or detention actually accrues, they're not always the party that best understands the contract and that should be disputing the charges. "The Commission understands that some regulated parties will need to change their business practices in order to comply with this rule," the FMC said.

It also rejected suggestions by some trade groups for "bright-line rules" that would establish which party should be receiving an invoice in specific scenarios. The FMC specifically pointed to a recommendation from the National Retail Fed-

eration, which said drayage motor carriers should potentially be the responsible billed party under "certain conditions."

That suggestion "fails to account for situations where a motor carrier's delay is the result of no action of their own, but rather the result of the actions of others," including terminal operators canceling appointments without notice to the motor carrier, the FMC said.

The rule also finalizes a range of information that must be included in detention and demurrage invoices, including the date the container was made available, the port of discharge, the container number, the start date and end date of the free time, and more. The FMC said any bills that don't have all this information "would not constitute having just and reasonable practices relating to or connected with receiving, handling, storing or delivering property."

Several commenters raised concerns about the minimum information that must be included on invoices, including a requirement that they include the bill of lading number along with the container number. Publishing those numbers could lead to cargo theft and other security risks "by allowing for false pick-up appointments," commenters said, and could "require significant and costly upgrades" to some companies' information technology systems.

The FMC disagreed that listing the bill of lading and container number is a security risk, saying that bill of lading numbers are publicly available through "import and export data systems," and container numbers also aren't protected because they're written on the outside of the container.

"Including an already publicly available number on an invoice does not increase security concerns," the FMC said. It also said "the commenters' claims also do not consider the multiple levels of security at the port that deter an incorrect party from taking the cargo."

FMC Commissioner Carl Bentzel said one of the rule's "more contentious" issues revolved around whether to include both ocean carriers and marine terminal operators, but he said the decision to make MTOs subject to the billing requirements was the "correct" one. "To waive MTO participation would create such a large-scale exemption, it would eviscerate the protective intent of the rule," he said. "That would not be good precedent."

In the rule, the FMC said it's "confident that the strong commercial relationships" between carriers and MTOs is "enough to ensure that the proper information is shared and that the party who ultimately receives the invoice is receiving accurate information." But Bentzel said he didn't necessarily agree.

"I am not as confident in the existence of such a strong commercial bond, but I encourage both common carriers and MTOs to quickly work toward those ends," he said. "This rule does not regulate the billing practices between MTOs and VOCCs. This may need to be looked at further."

The FMC addressed a host of other comments in the final rule and made certain tweaks from the proposed version, including new language that adds a definition for "person" in the terms for "billed party" and "billing party." Notably, the commission declined a request from USDA and at least two trade groups to require billing parties to also include in their invoices the "transportation history information," such as the date and time a container was loaded on or off a vessel along with the vessel used to transport the cargo. Although this information "may be helpful in some circumstances," the FMC said it's not sure those benefits would outweigh the extra burden this would place on billing parties.

But the FMC said that could change. "The Commission will continue to monitor detention and demurrage billing trends and retains the authority to revise non-statutorily mandated detention and demurrage invoice data elements in the future if it determines there is a need to do so."

The final rule was applauded by some in the shipping industry, including the Agriculture Transportation Coalition, which called it a "major step" toward reforming detention and demurrage billing practices. In a Feb. 23 email to members, the group said it was "particularly pleased" to see the FMC establish that failure to provide certain required information in a bill "voids the obligation" to pay the invoice.

"This addresses one of the major motivations for [the Ocean Shipping Reform Act]—the shipper was not informed why and how it was being assessed these charges, and all too frequently, the ocean carrier wasn't able to provide this information either. It seemed 'the computer' was to blame for spitting out these charges," AgTC said. Now

"all parties will know the basis for each charge, which will allow them to review and determine if justified."

It also called the 30-day invoicing requirement "a major improvement." Although it's "unfortunate that it took an Act of Congress," AgTC said "we are glad that thus far, most carriers say they are able to comply."

A spokesperson for the World Shipping Council, which represents many major carriers, said it's still "closely reviewing" the final rule and isn't yet ready to comment. — ***Ian Cohen***

Shippers Report Constantly Fluctuating Rate Changes From Red Sea Disruptions

Exporters are reporting container costs changing from week to week due to attacks by Houthi rebels on commercial cargo ships moving through the Red Sea, said Eric Bartsch, the secretary of the USA Dry Pea & Lentil Council and the American Pulse Association. Bartsch, speaking during a Feb. 7 Federal Maritime Commission hearing on Red Sea shipping disruptions (see ITT 02/07/2024), said many of pea, lentil and pulse exporters are small businesses, and 65% of their crops are exported.

Eric Byer, CEO of the Alliance for Chemical Distribution, said he understands why carriers need to hike rates but his members are worried about shipping costs. Since October, spot rates have increased by over 300% for Asia to Europe routes, over 100% for Asia to East Coast routes, and around 100% for Asia to West Coast routes, Byer said.

"With Pacific Ocean routes, our members are seeing an increase from $1,400 to about $4,500 for the average rate of shipping containers from China to North America," Byer said.

Byer also said he wants the FMC to more carefully make decisions about special permission requests for surcharges levied by carriers. Other industry officials have raised similar concerns (see ITT 02/07/2024). "Please do not let the ocean carrier community take advantage of what's transpired in the Red Sea as an opportunity to financially benefit on the backs of small businesses that are critical to the global supply chain."

The Red Sea situation may remain difficult for some time, according to Ian Ralby, CEO of I.R. Consilium. Houthi rebels attacking shipping do not care about the situation in Gaza and even if there were a "resolution satisfactory to everyone" involved, they would continue to attack ships heading into the Red Sea, Ralby said, adding that the rebels are using the conflict in Gaza to advance their agenda for greater land control of Yemen. — ***Noah Garfinkel***

Trade Subcommittee Chairman Says GSP Renewal Might Not Be Fully Retroactive

House Ways and Means Trade Subcommittee Chairman Rep. Adrian Smith, R-Neb., said both retroactivity and the length of renewal are being debated as lawmakers try to reach consensus on re-authorizing the Generalized System of Preferences benefits program.

Smith, who spoke earlier this week at a University of Nebraska annual lecture named for a former U.S. trade representative from Nebraska, said some are saying that by not making the GSP renewal retroactive, it would make it easier to cover the cost of the tax breaks to the Treasury. Others are arguing for partial retroactivity.

But Smith said GSP renewals have always been 100% retroactive, and if those who imported goods that used to be covered by GSP are not refunded the tariffs they paid over the last three years, they "would take a big hit." Smith, who noted many of those importers are small businesses, said he wants full retroactivity. "I believe that we will honor that," he said.

If refunds of tariffs are included, he said, "the question is, then, how far forward can we get?" He said because it has been so difficult to renew this time, he hopes the next term will be as many years as possible. He said the fact that GSP has usually been retroactive seems to remove urgency among lawmakers for renewing it.

Smith also spoke favorably of the Miscellaneous Tariff Bill, saying that many small businesses are looking for affordable inputs. "Why would we have a tariff on something a domestic producer needs ... that we can't get here domestically?"

Smith said that the discussions on how long the next GSP term can be are in the final stages, and he plans to introduce GSP renewal legislation "in the next few weeks."

He said the domestic impact of both MTB and GSP is significant to those who import under the tariff benefits programs. "It is absolutely vital that we pay attention to this and not dismiss it," he said.

Smith also addressed the controversy over de minimis, and as he did in an earlier interview with *International Trade Today* (see ITT 02/13/2024), cautioned that changes could bring unintended consequences.

"Some would say let's just get rid of de minimis altogether," he said. He criticized the Canadian de minimis policy, saying that while it was set to protect Canadian retailers, "I do know that it hits consumers, and we need to be mindful of that."

Smith opened his lecture by complaining that Mexico is not honoring its obligation to base agriculture import regulation on science. "I cannot emphasize enough that we [should] engage this [USMCA] enforcement mechanism," he said. "If we can't hold our trading partners to what we agreed upon, we should expect other countries to take advantage, break the rules." — ***Mara Lee***

North Korean Forced Labor Rife in Chinese Seafood Processing Plants, Report Says

Seafood processed by North Korean guest workers in China is finding its way into U.S. supply chains, despite U.S. laws that presume all goods made by North Korean nationals are made with forced labor, according to a report by the Outlaw Ocean Project published Feb. 25 in *The New Yorker*. Relying on government documents, social media, local news reports and local investigators, the journalism non-profit said it found 15 seafood processing plants that used over 1,000 North Korean laborers since 2017, 10 of which shipped seafood to over 70 U.S. importers. Chinese companies identified in the report as using North Korean labor include Dalian Haiqing Food, Dandong Galicia Seafood, Dandong Omeca Food, Dandong Taifeng Foodstuff, Dandong Yuanyi Refined Seafoods, Donggang Haimeng Foodstuff and Donggang Xinxin Foodstuff.

New CTPAT Portal Will Need a Few More Weeks to Get Up to Speed

The new Customs Trade Partnership Against Terrorism portal will only need a few more weeks before it can get back to where CTPAT was in terms of functionality before the creation of the new portal, said Mark Isaacson, CBP's CTPAT field director in Buffalo, New York. Isaacson said that CBP has a dedicated team working toward making the portal "very user-friendly," which has resulted in a lot of updates.

The portal will be a cloud-based format that can store a lot of information and will give CBP access to everything in their system, Isaacson said. There also is a more secure business entity identifier access and more paperwork reduction because the portal can house everything, he said.

The portal also will have access to the supply chain security specialists (SCSS) and the historical record repository, Isaacson said. — ***Noah Garfinkel***

AMS to Allow Grace Period for Importers to Certify as Organic as New Rule Takes Effect March 19

The Agricultural Marketing Service will begin with a period of soft "enforcement discretion" once its new regulations on organic import certificates take effect on March 19, but importers should nonetheless be working now to get their organic certifications as required under the rules, an AMS official said, speaking during a recent webinar.

The agency's January 2023 final rule on "Strengthening Organic Enforcement" will require importers to be certified entities under the National Organic Program by March 19 in order to receive and file new import certificates for their shipments at entry that will also be required as of that date (see ITT 01/18/2023), said Jennifer Tucker, deputy administrator of the National Organic Program at AMS.

However, AMS understands not all importers will be certified by March 19, and will initially let uncertified importers file organic certificates at entry, though the importer will get a warning, she said, speaking during a Feb. 26 webinar hosted by the National Customs Brokers & Forwarders Association of America.

Importer operational certifications are one of several initial priorities for AMS once the new regulations take effect. Tucker said AMS is seeing "a whole lot of questions, particularly from importers, who all the sudden are finding out" that they need to be certified. The process involves

several steps, including applying to a certifier, an application review, an on-site inspection and a "full review for compliance," she said, adding that the process "can take weeks or months."

Though it will begin with a policy of enforcement discretion on March 19, AMS will eventually "take staged enforcement" against importers without a working certification that are importing organic goods and filing organic import certificates, Tucker said. The rule has been out for over a year, she noted, and "many businesses have already started or have completed certification."

While not all import operations will complete the certification process before March 19, "we will consider the progress an operation has made against that goal when considering possible enforcement action," Tucker said. An importer that says it has applied and is awaiting an inspection is "a really different answer" than not knowing about the requirements at all, she said. "Now's the time," added Tucker.

Foreign organic exporters, said Tucker, will not benefit from the same level of enforcement discretion as importers, because only a certified organic exporter may generate an import certificate. However, when the final rule takes effect March 19, AMS will at first allow entities that may not be the "final exporter" to certify organic shipments, though eventually the agency will "get that handshake as close as we need it to be" by requiring the final exporter to generate the certificate.

Other initial enforcement priorities for AMS as the new regulations take effect are "flagging and investigating invalid import certificate numbers" and reviewing certifier control systems, Tucker said. Under the final rule, importers must validate import certificate numbers and verify that the client can actually produce the relevant commodity in "the volume and time frame being requested," she said.

Tucker clarified that, while the final rule takes effect March 19, shipments already in transit on that date may still enter the U.S. without a newly required import certificate. If the shipment is "on the water" but "not quite here by March 19, that's considered stream of commerce," she said. While those shipments won't need an import certificate, any shipments leaving the port of export after March 19 must have one, she said. — ***Brian Feito***

Subcommittee Chair: Lacey Act Wood Proposal Would Provide Certainty to Importers

For proponents of the Strengthen Wood Product Supply Chains Act, requiring the federal government to tell importers a specific reason the goods were detained and provide information that "may accelerate the disposition of the detention" would increase transparency and save importers money on demurrage fees. For the bipartisan bill's opponents, the bill's planks, including allowing importers to move the wood to a bonded warehouse after the first 15 days of detention, would undermine law enforcement.

The House Natural Resources Subcommittee on Water, Wildlife and Fisheries held a hearing Feb. 14, on four bills under consideration, including this one, introduced by Reps. John Duarte, R-Calif., and Jim Costa, D-Calif.

Subcommittee Chairman Cliff Bentz, R-Ore., said the changes to the Lacey Act Amendments would provide greater transparency and certainty for businesses subject to that act, and said they are "not designed to inhibit enforcement." But he said making these changes would make it so shipments 'cannot be detained indefinitely without a legitimate reason."

Witness Alan McIlvain, who's in the seventh generation of his family to run a Philadelphia-area lumber company, said that the changes Duarte and Costa propose "would make [the] Lacey Act more clear for American companies and still allow for the prosecution of bad actors."

McIlvain said he and colleagues who import hardwoods invest time and resources in due diligence in supply chain management, but still have had shipments held due to possible Lacey Act violations. He said officials rarely tell importers why the goods were detained, and are even less likely to say what information could help resolve the issue. "This bill will help me immeasurably," he said.

He said his firm had two detentions, one that lasted a month, that ended once what he called "minor paperwork issues" were fixed. When goods are held at a port, he told the subcommittee, demurrage costs between $500 and $1,000 a day. In one case, he paid $6,000 in demurrage, which was 20% the cost of the goods in the container. He said some firms relinquish without knowing what was wrong in their compliance practice, because demurrage had

become so costly. He told Duarte that he knew some firms had wood detained for two years.

Rep. Jared Huffman, D-Calif., the top Democrat on the panel, said, “By no means am I trying to malign Mr. McIlvain. We all want to cut red tape.” But, Huffman said, “I’m concerned about the unintended consequences of a sweeping bill like this."

He said that requiring officials to provide justification during an investigation, and allowing an importer to move the wood off-site seems to undermine law enforcement.

Rep. Garrett Graves, R-La., said that while he’s supportive of Lacey Act goals, he feels Duarte’s bill offers due process to importers. He said the way the Lacey Act detentions go now, it’s a “scenario where you are guilty until proven innocent."

Stephen Guertin, deputy director for program management and policy at the Fish and Wildlife Service, defended the efforts to facilitate trade, and mentioned that last year, a mobile tree lab deployed at the Mexican border allowed agents to analyze what species of wood was entering the U.S. within minutes.

In his opening statement, Guertin told the panel that the agency opposes the bill. He said they “believe it would interfere with our ability to facilitate legal and timely movement of commerce, combat the illegal wildlife trade, and prevent the introduction of injurious” species. “The deadlines under the designation would be difficult to meet, and result in shipments being unnecessarily detained or seized while inspectors obtain the information they need to evaluate the shipment.” He said a requirement to tell importers specific information about why the shipments were detained would impede or undermine investigations.

While much of the discussion of the bill during the hearing focused on the ability of importers to move wood after 15 days out into bonded warehouses, Guertin, in mentioning unnecessary seizures, was referring to a requirement that the agency seize goods held longer than 30 days if they were not ready to be released from detention at that time.

Rep. Val Hoyle, D-Ore., noted that Guertin said the changes would make it harder for the FWS to do its job of enforcing the Lacey Act. She noted that while the title of the bill mentioned wood, the text didn’t limit its scope, so as written, it could affect ivory or other goods.

"My concern is it’s too broadly written, covering all enforcement activities,” she said.

She said that the current Lacey Act enforcement approach reduces demand for illegally harvested materials. “Allowing illegally logged materials into our country would be bad for our domestic timber producers,” she said.

Duarte, when he had a turn in the hearing, said he would change the body of the bill to clarify that the changes only affect wood imports, not animal products.

He asked Alexander Von Bismarck, from the Environmental Investigation Agency that investigates illegal logging and other environmental crimes, why the deadlines for moving from detention to seizure and for moving to a bonded warehouse aren’t workable. “Why don’t these time frames work for these purposes?"

Von Bismarck said that importers could switch wood products once the goods were out of government control. He said making this change would give “great comfort to smugglers.” — ***Mara Lee***

CPSC Supplemental Notice Rushed, Commenters Say; Importer Definition Problematic

Trade groups are telling the Consumer Product Safety Commission that its supplemental notice of proposed rulemaking on new electronic filing procedures for certificates of compliance is premature, since the beta pilot for importers e-filing CPSC certificates and the CPSC Product Registry only began late last year.

When the agency does publish a final rule, they argue, 120 days is not nearly long enough to program systems to input the data elements, and manually entering data is not feasible. Many commenters said enforcement should begin a year after the rule is published; a joint comment by the National Foreign Trade Council and the U.S. Chamber of Commerce suggested a six-month period to prepare.

The supplemental notice of proposed rulemaking, issued by the CPSC Dec. 8, modifies a proposed rule on e-filing

the commission issued in 2013 that sparked controversy at the time and resulted in a series of CPSC pilot programs to develop the agency's long-awaited partner government agency (PGA) message set, including the ongoing "beta" pilot. A major change since the initial proposal is a new "product registry" approach that allows entry filers to refer to a certificate of compliance in a central registry, rather than filing all relevant data elements for each entry.

Among other changes, the supplemental proposal "broadens" the definition of importer to include any entity that CBP allows to be importer of record. It also makes changes to who is required to submit a certificate, and cuts the required data elements under the proposal from 10 to eight by eliminating two of the three new data elements required under the 2013 proposal. It said the new requirements would take effect 120 days after publication of any final rule.

The Retail Industry Leaders Association said this proposed rule is significantly better than the one proposed in 2013, and does a better job of coordinating with CBP.

Still, **RILA** wrote in a comment recently published on regulations.gov: "Beta testing as part of the CPSC e-filing Beta Pilot is currently ongoing and has identified significant early challenges that will take substantial time to address and resolve. RILA is concerned that the timing of this SNPR is premature and will not benefit from lessons learned from the ongoing pilot." One pilot participant has not been able to send a complete message set to their import broker or to CBP because of problems in ACE.

The group added: "Participation in the Beta Pilot is by nature an iterative process with course corrections along the way and potential pivots in response to real world experience and feedback that would allow CPSC and e-filing stakeholders to come up with alternative solutions or approaches."

RILA suggested that the effective date be 18 months after the final rule is published, calling the 120-day timeline "grossly inadequate."

In order to comply, RILA wrote that retailers would need to establish a way to upload information to the product registry and to file message data sets, either for all the data on the CPSC certificate or with an indicator number for the certificate. "The current databases do not contain all the fields requested by the CPSC. Beyond the importers themselves, self-testers (such as toy companies), labs and brokers will all have potential IT development to support the e-filing program."

However, RILA said for companies participating in the pilot, the preparatory work they did for that would allow a one-year period between publication and enforcement.

Many commenters, including RILA, said that the requirement to submit disclaims on products exempted from the need to file a certificate is burdensome. The group said CPSC should publish a list of products that are exempted.

RILA suggested that instead of requiring that each certificate include an attestation that it's accurate, there should be an attestation at time of log-in, or even once or twice a year. "Retailers and other larger importers will be using an [application programming interface] API solution to upload the data in bulk. To then have to go back and manually certify each of those entries would result in having to dedicate a full-time employee or invest in outsourcing the responsibility to a third party solely for the purpose of clicking checkboxes for hours on end."

RILA also said the term "up to 24 hours" for advance submission of certification seems to be a mistake, since the ACE portal allows transmission up to five days before arrival. Instead, the CPSC should say as late as 24 hours before arrival.

RILA and many other commenters reacted with alarm to how the new proposal defined "importer," which is different from both CPSC's definition in 2013 and from CBP's definition.

Importers could be brokers, owner, purchaser, consignee, importer of record or "party that has a financial interest in the product or substance being offered for import and effectively caused the product or substance to be imported into the United States."

The **American Apparel and Footwear Association** said on that issue: "With the proposed definition, CPSC is blurring the lines regarding who should provide the [General Certificate of Conformity] and leaving the interpretation up

to the individual parties and their contractual relationships. This may, in fact, result in less clarity and increased time to obtain certificates for agency review, when the agency is not aware of who the certificating party will be for a particular shipment. Alternatively, this lack of clarity could result in multiple certificates from multiple parties, resulting in confusion, duplicative data, and potential delays."

AAFA also expressed concern that CPSC was abandoning its testing exemption for most adult apparel.

The **National Association of Manufacturers** said this version of a proposed rule "was promulgated prior to completion of the Commission's own beta testing or analysis of such results. It also was proposed without consultation with CBP, which is required under [the] Consumer Product Safety Improvement Act. In addition, the proposal provides no record to establish that the current regulations are ineffective or not compliant with the CPSIA's statutory requirements. Finally, the cost estimates and time to implement are inadequately substantiated." It complained that CPSC said the cost to comply is negligible, and said there is no evidence to support that assertion. The group also said it "is concerned that the SNPR may create undue operational burdens for manufacturers, private labelers and importers when it comes to duplicative, non-correlated certifications for products."

NAM said the effective date should be at least a year after the final rule's publication.

NAM said the current de minimis carve-out for CPSC should continue, since individual consumers have no way to submit this sort of data, and it said the "financial and logistical burden" to the mail service and express carriers to share this data would require new tracking systems to be developed.

"The NAM respectfully requests that CPSC revise the proposed amendments to 16 CFR 1110 to reconsider the inclusion of consumer-based importation of individual or small-shipment numbers via international mail, and to expressly state a lowered de minimis level that allows a more limited small-shipment commercial number without triggering the provisions of the rule."

Likewise, the **Toy Association** in its comments highlighted the supplemental proposed rule's lack of any exception for de minimis shipments. Under the new proposal, CPSC noted the risk and increased volume of direct-to-consumer shipments, and said brokers could file the certificate data via entry type 86.

However, the way that the supplemental proposal is worded means consumers would be on the hook for entering data, without the capability of doing so. The rule creates an exception for goods purchased by a consumer for their own enjoyment, but does not exempt goods purchased by consumers as a gift, the Toy Association said. That would "negatively impact the purchase and importation of toys" because it "poses an imposition on the consumer for which they do not have access to or a means of determining the certification information," it said.

The trade group also noted the difficulties that could be posed for international mail shipments because of the lack of any de minimis provision. It said the additional burden for mail shipments wouldn't be justified by any meaningful safety improvements because "there would be no means of determining non-conformance to the certification requirement when the product is shipped to an individual address through a channel that does not have the means to verify compliance."

The Toy Association said the commission should create a new, CPSC-specific de minimis level that is lower than the $800 de minimis for other goods and "allows a more limited small-shipment commercial number than what is currently permitted, without triggering the provisions of the rule."

On the other hand, PeopleForBikes, which represents U.S. manufacturers, suppliers and distributors of bicycle products, praised the supplemental proposed rule's lack of a de minimis carve-out. "Too many low-quality and inadequately tested products are currently being imported into the U.S. under de minimis, creating unreasonable and unacceptable safety risks for consumers," it said. With mandatory standards anticipated for lithium-ion batteries, companies that import the batteries "will need to demonstrate their compliance, and the filing of certificates of compliance will enable effective enforcement of these requirements by the CPSC," **PeopleForBikes** said.

A joint comment from the **National Foreign Trade Council** and the **U.S. Chamber of Commerce** said the proposed

rule's broad definition of "importer" creates "an ambiguity regarding the ultimate responsibility for generating and filing the certificate. This ambiguity places an expansive range of entities at risk of being penalized if a certificate is not properly filed." The groups said the agency should use the definition of importer it proposed in the 2013 proposed rule.

"To the extent that the CPSC and others are concerned that the importer of record may not be in a position to actually issue a certification, there are better solutions to that problem than simply adopting a broad definition of 'importer,'" they wrote. "For example, CPSC could adopt an alternative solution specifying that (1) the importer of record must be the one to actually file the certificate, but (2) another specified entity is responsible for preparing the certificate, which could either be (i) an entity that by mutual agreement is responsible for preparing the certificate, or (ii) in the absence of agreement, a hierarchy of entities within the proposed definition of importer."

The groups said there should be at least six months between the rule's publication and effective date.

The **Consumer Technology Association** said that many products that aren't covered by CPSC would have to be submitted with disclaimer message sets that say that although some products of this kind have button cell or coin cell batteries, this shipment does not. That is an "enormous unnecessary burden" to importers, CTA argued, and asked CPSC to exclude products covered by 16 CFR Part 1263 (on button cell and coin cell batteries) from the rule.

UL Solutions praised CPSC for saying that a general certificate of conformity is only required for finished consumer products subject to a Consumer Product Safety Act rule or regulation enforced by CPSC. "We also support CPSC's efforts to make this process as efficient as possible for users by listing the applicable rules/requirements in the eFiling system in a way that allows users to easily select the relevant code for their certificate." — ***Mara Lee and Brian Feito***

Treasury Posts New FAQs on Russia Diamond Import Bans

The Treasury Department posted new FAQs to its website on recently announced, additional bans on imports of diamonds from Russia (see ITT 02/08/2024). One FAQ details a ban on imports of diamond jewelry and unsorted diamonds that originate or were exported from Russia that will take effect March 1. Another FAQ includes information on bans of non-industrial diamonds mined or produced in Russia that have been substantially transformed in other countries. That ban takes effect March 1 for diamonds with a weight of one carat or more, and Sept. 1 for smaller diamonds of 0.5 carat or more. A third FAQ details the actions Treasury has taken since 2022 to restrict imports of diamonds from Russia.

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