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EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

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Patricia M. Pollitzer
Office of the General Counsel
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Submitted electronically via www.regulations.gov

Re: Proposed Rulemaking for 16 CFR Part 1130; Requirements for Consumer Registration of Durable Infant or Toddler Products

Dear Ms. Pollitzer:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on the Consumer Product Safety Commission (CPSC) proposed rule making relating to requirements for consumer registration of durable infant or toddler products.

The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to policy development and the creation of informational and educational outreach programs to benefit consumers across New York State. As a CPSC state designee, we work closely with CPSC staff in conducting recall effectiveness checks in the marketplace and in raising product safety awareness. Additionally, the CPB produces its own educational materials on product safety, and posts recall notices on its website at www.nysconsumer.gov. To augment the CPB's efforts, New York State recently enacted the Children's Product Safety and Recall Effectiveness Act of 2008, giving the CPB and the State Attorney General more tools and powers to enhance marketplace safety. Currently, the CPB and the New York State Legislature are working to make this law comport with federal law.

Informing the public about a product hazard in an effective manner is a critical component of a successful recall program. Therefore, the CPB was encouraged to see the enactment of Section 104(d), which requires manufacturers to provide consumers of durable infant and toddler products with registration forms, in the Consumer Product Safety Improvement Act (CPSIA) of 2008. Requiring manufacturers of these products to keep records specifically for the purpose of notifying consumers in the event of a recall helps promote marketplace safety. However, ensuring the rapid dissemination of important recall information will require a coordinated approach among manufacturers, importers, retailers, and consumers. Therefore, the final rules promulgated by the CPSC must be clear and straightforward to afford manufacturers and importers the necessary guidance to help them comply with the new standards. Further, the registration card format and process should be uncomplicated to assure that consumers will understand the value of the instrument and participate. Additionally, providing for both paper and electronic formats of the product registration card will make the



process more accessible and easier for consumers to participate in this electronic age and increase the effectiveness of recall awareness given the expansion of the secondary market.

Against this backdrop, the CPB provides the following detailed comments and/or recommendations in response to the CPSC's request for comment:

Primary Responsibility for Registration Obligations under Section 104

The CPSC solicited comments on which party, the importer or manufacturer, should assume registration responsibilities.

The recently adopted rules for tracking labels, issued pursuant to Section 103 of the CPSIA of 2008, provide that the domestic manufacturer or importer is the responsible entity for ensuring the permanent labeling of products. The CPB urges the CPSC to be consistent and create the same standard of responsibility for the production and placement of registration forms.

In addition, to help ensure the integrity of the record keeping and to allow for timely dissemination of a recall notice to consumers, the final rule should require that recall notification records and registration databases for all durable infant and toddler products be maintained within the United States (U.S.). Thus, the requirement would exclude most foreign original equipment manufacturers (OEMs), leaving the responsibility of gathering the registration information and maintaining databases to the importer/distributor of record. Multi-national manufacturing companies with offices in the U.S. should be responsible for maintaining registration databases for products in their portfolio. In the case of "private label" items purchased under retail-owned brands, the retailer often assumes significant responsibility for the manufacture, marketing, sales, and distribution of these items, notwithstanding foreign production. Thus, it would be reasonable for the retailer or a retailer's agent in this case to assume responsibility for the recall registration program since it is the distributor of record for these goods.

Definitive List of Products

The Commission solicited comments on whether the final rule should contain a definitive listing of products requiring registration cards or any other comments that could help to clarify which products are covered by the registration card requirement when the final rule is published.

The list included in the CPSIA, which defines currently available product categories, is an excellent reference or guidepost for consumers. However, such a listing will not continue to be viable and valuable, unless there is a mechanism in place to adapt to product development and advancements in the marketplace. A process must be developed by the CPSC to expand upon the scope of the list to allow for new classes of products and to account for marketplace development and product innovation, where necessary. While changing the list will probably not occur often, a mechanism needs to be included in the final rules to ensure the relevancy of the list over time.

The CPB suggests that the final rule recognize a definitive list of currently available product classes, but also provide criteria and a process to allow for the inclusion of new product items. It should also prescribe a time period for the CPSC to update the product list. The CPSC could work with various trade groups and the ASTM to develop an ongoing and scheduled

review of new products to determine whether they meet the classification requirements of a durable infant and toddler product warranting inclusion on the list of products requiring registration cards. As most new durable infant and toddler items are tested at the prototype stage for durability and safety, adding a classification requirement to an existing testing standard should not be costly to the manufacturer because it would simply be part of the prototype evaluation process. Once an item is established as a durable infant or toddler good, thus requiring a registration card, the manufacturer, importer or retailer, as applicable, would ensure that the registration card is included with the product, and the CPSC would ensure such product is added administratively to the definitive product list.

Labeling Requirements under Sections 103 and 104

The CPSC has requested comments on the interplay between the tracking label requirements of Section 103 of the CPSIA, and the product identification markings on durable and toddler products in Section 104.

When placing consumer products in the marketplace, it is essential that pertinent information regarding the manufacturer, manufacturer's contact information, lot, batch and the date of manufacture be included on the product itself. While product labels and warranty and registration cards can be misplaced or removed and therefore not accompany an item for a possible secondary user, permanently affixed information can assist all types of users to determine if they may be in possession of a product actually subject to a recall. Thus, the differences in the labeling language requirements in Sections 103 and 104 must be reconciled to ensure that the greatest amount of identifying information appear on the product labels and the item itself. The CPB asserts that interpreting the provisions in Sections 103 and 104 consistently is necessary and appropriate for the industry and consumers of durable infant and toddler goods. Accordingly, it is the CPB's position that the rule must include both standards and the CPSC should interpret Section 104(d)(1)(C) to include the provisions in Section 103(a)(5)(B).

Confidentiality Concerns under Section 104

The Commission asked for comments on whether the issue of confidentiality is a concern for the product identification requirement in Section 104 of the CPSIA.

The CPB's experience conducting consumer product safety testing highlights the need for contact information on the physical product. When the results of product testing required further action by the CPB with the manufacturers or importers of the goods, the CPB encountered problems tracking down the suppliers simply because the manufacturer's or importer's contact information did not appear on the product or packaging. This lack of specific product information makes enforcement very difficult, and has resulted in delays in addressing possible hazards.

Given this context, the CPB reviewed the public comments regarding the tracking label, looking for instances where business confidentiality concerns were expressed. Many of the concerns noted in the comments are similar in nature. Small and large manufacturers alike are concerned that their competitors will know where items are being manufactured or what suppliers or component parts are involved based on label tracking information. While these concerns are understandable, they can be addressed in a reasonable fashion.

The CPSC “Statement of Policy: Interpretation and Enforcement of Section 103(a) of the CPSIA” issued on July 20, 2009, is a common sense approach that sets broad guidelines based on manufacturer size and the type of product being produced. However, it does not require manufacturers to reveal their suppliers, OEMs or any other pertinent information on the tracking label. Specifically, the policy statement notes compliance with Section 103(a), “generally will require that manufacturers have in place a reasonable means to ascertain detailed production information, including the means to distinguish products made from different factories, made with different components, at different times or have other material differences that make the product non-identical from previous products.” This position does not require divulging proprietary information including specific production facilities or suppliers. Instead, it simply states that if the manufacturer can determine where the product was made using lot, batch and date code, and the schema is also ascertainable by the end user in a recall situation, the schema should be acceptable.

Thus, the CPB recommends that manufacturers and importers provide permanent tracking labels for durable infant and toddler products that contain necessary information to afford those in the stream of commerce, governmental authorities and consumers the ability to easily ascertain name and location of manufacturer, lot, batch and date code, in case of a product recall. In the interest of safety, the CPB believes that a reasonably constructed, coded schema is acceptable for the tracking label and should not violate business confidentiality.

Registration Form Format

The CPSC solicited comments on whether it should prescribe the text of the registration form (including prescribing use of the English language and specific CPSC created text and formatting), or whether the final rule should allow manufacturers latitude in creating the registration form.

The CPB agrees that the CPSC should, with proper input and direction from stakeholders, prescribe the text of the registration form. The registration form format should clearly communicate the benefits of recall registration to encourage consumers to complete the form. It is the CPB’s position that uniform or standard information on the form will help consumers understand its importance and recognize the card. Indeed, uniform language can assist consumers in: (1) identifying the purpose of the form; (2) completing the registration correctly; and, (3) identifying which parts of the form to retain and which to return to the manufacturer.

A consumer is more likely to complete the registration process regardless of the manufacturer or brand of the product being registered if he/she can easily follow a standard format. By stipulating the content and language on the form, the CPSC will ensure that foreign made products will not suffer from a lack of clarity due to translation issues, and that no information is inadvertently omitted from a manufacturer/importer designed form.

Moreover, a prescribed form makes compliance easier for manufacturers and importers, and provides new firms entering the marketplace a good understanding of what is required. A CPSC prescribed form would also help allay consumer privacy concerns, as no additional information requests may be added to the form.



Given logistics, the CPB is of the opinion that it is entirely appropriate for the form to be printed in English. However, approved alternative language forms should be encouraged wherever possible, especially online, given the fact that many manufactures are making available product instructions in other languages.

In addition, the form should disclose the option of the consumer registering online in lieu of using the post card especially if he or she is concerned about identifying information being sent openly through the mail. Further, the consumer should be allowed to place the form in an envelope given any privacy concerns. As noted in the rule's provisions governing website registration, a telephone number and e-mail address should not be required by the consumer to submit the registration form. Thus, the form should advise the consumer of the required fields.

Two Part Registration Forms

The CPSC solicited comments on the practicality of pre-printing a two part registration form-- one section for consumers to send back to the manufacturer and another section for consumers to tear off and retain.

There is value to having the consumer retain a copy of the company contact and product information via a tear off registration stub. Conscientious consumers can keep all of the form stubs together in one location and have them available for easy reference. However, this should not be considered a substitute for placing the manufacturer contact and product identification information on the item itself, as noted above. This is especially important as these durable goods work their way into secondary markets, where the registration card stub may not accompany the product to a second- hand store or reseller.

Internet and E-mail Registration

The CPSC solicited comments on the practicality of allowing consumers to send registration via e-mail as an alternative to web based registration.

The CPB encourages electronic registration wherever possible to reach the largest number of consumers. Additionally, e-mail and Internet registration on a secure site is important where the consumer may have privacy concerns about sending the registration card with their contact information openly through the mail. Further, online and e-mail registration may allow for a secondary user to register as well if the form is no longer available.

Many, if not most, of the manufacturers or importers that create durable infant and toddler products maintain websites. For those that do not maintain a web presence, the option to send a registration via e-mail is a workable solution. However, if such method is employed, consumers must be offered clear and conspicuous instructions on how to effectuate registration via e-mail. Accordingly, the manufacturer or importer must provide clear instructions describing (1) precisely what information is required; (2) where the information will be sent; (3) what the information will be used for; and, (4) a guarantee that the information will not be used for any marketing purpose.

A manufacturer should be required to send a confirmation e-mail to the customer once the online registration process is complete.

Prohibit Marketing during Registration Process

The Commission solicited comments on whether there is a need to restrict navigation to other pages or websites during the online registration process.

In order to preserve the integrity and purpose of the registration process and build trust with customers, there must be a clear separation between the registration pages and any product marketing sections of a company's website. Separating the functions assures consumers that their personal information will be used only for the purpose of recall and safety notifications and reduces the risk that such information will be tracked or shared for marketing purposes. Consumers are thus more likely to complete the product registration process. To reassure consumers, the company's website privacy policy should include a reference to its product registration process. Accordingly, the CPB asserts that the best practice recommendations should include (1) a firewalled registration process; (2) a "force closing" of the browser window after the registration is complete or providing for a special message on the registration page advising consumers that the process has been completed ; and, (3) no product marketing, selling or promotion on the registration website.

Conclusion

As the primary agency in New York State engaging in consumer product recall compliance investigations and product safety education, the CPB has in-depth experience with recall issues. Given this experience, the CPB believes that the promulgation and implementation of the proposed rules, along with the aforementioned recommendations, will achieve its goal of enhancing marketplace safety. The rules will increase consumer product registration rates and raise awareness. They will also provide industry and others additional tools to effectively and efficiently issue and promote recalls to larger numbers of consumers. These rules will also enhance the oversight ability of governmental entities when faced with an unsafe durable infant or juvenile product. The CPB looks forward to the issuance of the final CPSC rules, and stands ready to assist the Agency in achieving a stronger societal and business culture of product safety for our children.

Sincerely,



Mindy A. Bockstein
Chairperson and Executive Director