



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE REQUEST FOR EMERGENCY STAY OF ENFORCEMENT OF THE
TRACKING LABEL REQUIREMENT UNDER SECTION 103 OF THE CPSIA

May 13, 2009

The section of the Consumer Product Safety Improvement Act of 2008 (CPSIA) that requires manufacturers of children's products to place tracking information on their products becomes effective on August 14, 2009, with no requirement for any action by the Commission. Unlike other provisions of the CPSIA, section 103 does not require the Commission to adopt regulations as an aid to compliance. It is a relatively brief section, but it does, like so many provisions of our laws, require manufacturers to exercise sound judgment in meeting its requirements.

The statute states the information that is to be on the product but it does not require it to be in any specific location or to be any particular size or format. The lack of detailed requirements may have been an acknowledgement that a one-size fits all approach may not be possible given the broad range of products covered by this provision, although there are certainly potential benefits of eventually moving to a standardized tracking system.

In developing their tracking marks manufacturers should consider the purposes behind the section. Among other purposes, the tracking information is to help the Commission and manufacturers distinguish with great specificity the products that are subject to a recall from those that are not and to help the consumer do the same by being able to look at our recall notices and match the tracking information in them to what is on their product. Some manufacturers already have tracking labels that would meet the CPSIA requirements or that are readily adaptable to it. As long as the tracking information required by the law is ascertainable from that tracking information, there is no need for the Commission to dictate a particular format. I do hope the Commission, after a review of all of the numerous comments that it has received on this issue, will issue some guidance to help small businesses such as the small home-based crafter, for example, devise simple ways to meet this requirement.

The Congress expected, and I also anticipate, that this provision will evolve over time as we learn more about the practices of various manufacturers and review the decisions they are making in complying with the statutory requirements. The Commission will facilitate a reasonable roll-out of this provision. The Commission does not contemplate mandating specific sizes or type fonts or a standard label that would be uniform for all of the products that fall under

this section in the near future and it may never be something the Commission feels is necessary. However, if we *were* to issue a regulation in this area in the future, it would have prospective application and would give manufacturers adequate time to adopt the requirements. For now, the “guesses” that the emergency request indicates manufacturers are making are not going to be “wrong” as long as they have the information required by the statute and do not take a cavalier approach to the “to the extent practicable” language in the statute. If we find manufacturers who have diligently tried to comply with the statute, but miss the mark on devising a complying tracking label, we will work with them (and learn from them) to make their marks comply with the law. This will be a learning process for all of us and not an excuse to punish an unwitting mistake.

I appreciate that manufacturers want complete certainty as to what they can or cannot do under this section, but I cannot vote to grant the request for a stay of enforcement of the entire section. While the Commission has stayed enforcement of a few sections of the CPSIA for certain products, it has not granted a blanket stay of enforcement from a provision for *every* affected product, which is what this request seeks. Granting such a request would amount to a postponement of a statutory effective date and that is something the Commission does not have the authority to do.