

CPSC COALITION



March 24, 2009

VIA ELECTRONIC MAIL

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East-West Highway, Room 502
Bethesda, MD 20814-4408

Re: Request for Emergency Stay of Enforcement (CPSIA §103)

Dear Mr. Stevenson:

Section 103 of the Consumer Product Safety Improvement Act (CPSIA) requires a new tracking label for children's products made on or after August 14, 2009. With the quick deadline approaching and a lack of guidance from the Consumer Product Safety Commission ("Commission"), the undersigned respectfully request that the Commission stay enforcement of the tracking label provision of the CPSIA.

In a February 26, 2009 Federal Register notice, the Commission solicited comments on how the new tracking label requirement should be implemented. The National Association of Manufacturers (NAM) CPSC Coalition looks forward to providing input to this process and further engaging with the Commission and other product safety stakeholders on ways to ensure commonsense implementation of this important provision. Adopting thoughtful rules that can be implemented across a wide spectrum of businesses who make, import, distribute and sell children's products will require a careful analysis of options, issues and costs, an assessment of different technologies that might be used to deliver the required information (labels, codes, databases, RFID or EPC) and the associated costs, and an evaluation of how a tracking label system relates to existing labeling schemes required under other provisions of the CPSIA, such as Section 102, as well as other laws. In addition, we are mindful that we are in a global environment that requires close cooperation to develop a harmonized system that can be adopted across many regions.

Toward that end, we are concerned that there remains insufficient time before August 14, 2009 for this new regulation to be implemented in a predictable fashion. The comment period does not close until April 27, 2009. The Commission will no doubt need several

months to review comments, and develop and publish comprehensive guidelines and regulations for the many questions related to this provision. If past is prologue, regulations might not be finalized and published until shortly before the August 14, 2009 entry into force date. Such an outcome would prove extremely disruptive and costly to the business community. From that standpoint, it is vital that the Commission quickly make clear circumstances where it is not “practicable” to apply tracking labels. This would include, for example, situations where the children’s product is very small, such as many small toys, art materials like paint brushes or children’s jewelry, to name a few.

Even if the Commission were to publish guidance on this new provision today, there would still be insufficient time for companies to implement this provision properly. Changes in product processes, including changes in labeling requirements for packaging and products, usually take at least a year in many sectors in order to ensure smooth execution. This process must begin at the design phase of the product, well before production takes place. Implementation of the new tracking label provision will necessitate legal reviews, compliance clearance, and training of supply chain partners. Moreover, many companies are already now ordering, planning, and costing production of goods that will be made in fall 2009 or later, meaning they are already making guesses about how the new labeling provision will be implemented. Should those guesses prove to be wrong when the Commission publishes guidance shortly before the August 14, 2009 implementation date, companies will have to scramble to rework labeling and packaging at significant cost. Electronic databases may need to be developed and tested to facilitate effective tracking, another aspect that will require significant time and resources in many industries.

With this in mind, we are asking the Commission on an urgent basis to immediately vote to stay enforcement of the provision for a full year, until August 14, 2010. Taking such an action now will provide the Commission, industry, and other product safety stakeholders time to work together to develop an orderly approach to this new requirement, maximizing the prospects for a tracking label system to be both useful and cost-effective for all stakeholders. We believe the time between now and August 14, 2009 can best be spent working to develop and publish clear and understandable rules on how this requirement will be implemented and enforced. The period from August 14, 2009 until August 14, 2010 can be spent educating the various industry supply chains on implementing this new requirement. By the time full enforcement starts – on August 14, 2010 – the Commission, the business community, and consumers will have a common understanding of how this new provision is intended to work, as well as an understanding of the products or product categories to which the requirements do not apply.

Delaying the enforcement of the tracking label provisions would provide all product safety stakeholders the time to develop and implement this provision without any adverse impact on product safety or public health. In fact, such a delay would enable the Commission to strengthen the product safety system by ensuring a smooth and orderly implementation of this provision.

The new tracking label requirement can play an important role in facilitating recalls and creating greater transparency to help companies track product safety efforts. Our hope is that the Commission can use the next 18 months to create a pathway for compliance for the business community. Requesters hereby respectfully request that the Commission, on an emergency basis, use the discretion afforded it to issue an immediately effective stay of enforcement for twelve months from August 14, 2009 of the requirements for tracking labels in Section 103 of the CPSIA.

Respectfully submitted,

Alliance for Children's Product Safety
American Apparel & Footwear Association (AAFA)
American Fiber Manufacturers Association
Association for Safe Glass and Ceramicware
Coalition for Safe and Affordable Childrenswear, Inc.
Fashion Incubator Association
Fashion Jewelry Trade Association
Fashion Accessories Shippers Association (FASA)
Gift and Home Trade Association
Greeting Card Association
Handmade Toy Alliance
INDA, Association of the Nonwoven Fabrics Industry
International Sleep Products Association
Manufacturing Jewelers and Suppliers of America
National Association of Manufacturers
National Council of Textile Organizations (NCTO)
National Paint & Coatings Association, Inc.
National Retail Federation
National Textile Association
Promotional Products Association International
Retail Industry Leaders Association
Specialty Graphic Imaging Association
Society of Glass & Ceramic Decorated Products
The Art & Creative Materials Institute
The Hosiery Association
The Juvenile Products Manufacturers Association (JPMA)
The National Cotton Council
Toy Industry Association
Travel Goods Association (TGA)
U.S. Association of Importers of Textiles and Apparel
U.S. Chamber of Commerce