



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 4330 EAST WEST HIGHWAY
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Memorandum

Date: **OCT 1 2009**

TO : The Commission
 Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *RC/CAF*
for Maruta Z. Budetti, Executive Director *MB*

FROM : Robert J. Howell, Assistant Executive Director, Office of Hazard Identification
 and Reduction *RJH*
for Celestine T. Kiss, Engineering Psychologist, Division of Human Factors,
 Directorate for Engineering Sciences *CK*

SUBJECT : Summary of Comments in Response to Notice of Proposed Rulemaking
 regarding Section 104 of the Consumer Product Safety Improvement Act of
 2008.

Introduction

The Consumer Product Safety Commission (CPSC) issued a Notice of Proposed Rulemaking (NPR) in the Federal Register (FR) on June 29, 2009 as directed by section 104(d) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). This proposed rule pertains to consumer registration of durable infant or toddler products. CPSC requested comments on the proposed rule. Below is a summary of the comments received.

Summary of Comments

Staff received 19 comments on a number of specific topics. Below is a summary of the comments in no particular order.

Exempt Businesses That Demonstrate They Already Collect Contact Information

Commenters stated that if a small business can demonstrate that they already have all the contact information needed in case of a recall or safety alert, which is the intent of the law, then they should not have to include a registration card. In addition, commenters want companies that already capture consumer contact data by direct to consumer sales transactions or that provide web based registration to be exempted.

CPSA 6(b)(1) CLEARED for PUBLIC
 NO MFERS/PRVTLBLRS OR
 PRODUCTS IDENTIFIED *10/1/09*
 EXCEPTED BY: PETITION
 RULEMAKING ADMIN. PROCDS
 WITH PORTIONS REMOVED: _____

Allow Flexibility for Product Identification

Commenters wanted CPSC to allow flexibility for identifying products. They stated that some companies may not use “Model Name and Model Number” but instead use unique product numbers to identify a product, and others may use the “Product Identification Number” (PIN) instead of “Model Number.” Commenters requested that CPSC allow manufacturers to preprint the model name OR the model number, but not require both on the registration card.

Harmonize with NHTSA’s Car Seat Registration Form

Manufacturers of children’s car seats are already required by the National Highway Traffic Safety Administration (NHTSA) to include a registration card with their product. These manufacturers commented that they should be exempt from including another registration card with their product. These same manufacturers also make other durable infant and toddler products and they would like more flexibility in the CPSIA required form. NHTSA specifies what information needs to be on the card but is flexible in terms of font, format, and text. Also, as currently specified, the CPSC and NHTSA forms are different sizes.

Format of Form

Several commenters supported the specificity of the proposal. They stated that uniform or standard information on the form will help consumers understand its importance and recognize the card. They noted that by stipulating the content and language on the form, the CPSC will ensure that information related to foreign made products will not suffer from a lack of clarity due to translation issues, and that no information will be inadvertently omitted as a result of manufacturer/importer designed form. One commenter indicated that CPSC should post an electronic template for easy download to ensure consistency.

Several comments indicated that CPSC does not need to be so specific with the font, format, and text of the registration card. They stated that they need some flexibility because of how they identify their products, stating that they may not use “Model Name” or “Model Number” and would be in violation of the law if they don’t put those two items on the card and product. The commenters would like to be able to use whatever product identification they currently use. In addition, they indicated that NHTSA allows for “free style” data entry and recommended CPSC do the same.

One commenter asked for flexibility in terms of where the form is placed on the product. The commenter indicated that they currently place their instruction manual in a prominent place on the product and they would like to be able to put the registration card on top of the instruction manual.

One commenter requested that small businesses be exempt from pre-printing the product information on the card, but rather let consumers write the model information on the card. The person indicated it was too costly for small businesses to pre-print the card.

Most of the individuals who commented on the two-part card with the product information on one half for the consumer to keep were in support of this idea. However, one individual indicated he did not think consumers would keep the card and suggested that the information be printed in the instruction manual instead.

One commenter indicated that clarification was needed in terms of the actual size of the postcard. The commenter noted that the preamble suggests that the bottom part of the card (portion returned) should be a standard postcard size, but the text of proposed section 1130.6(a) specifies that the entire form must be 6" x 4.25".

Define "Durable Infant and Toddler Products"

Commenters requested the Commission specifically define what constitutes "durable infant and toddler products." Some requested that CPSC strictly use the 12 products listed in section 104 of the CPSIA, while others want the Commission to include more products. Still others indicated they were concerned that "non-nursery" products such as folding chairs would be included and they felt they should not be. Others suggested that the final rule recognize a definitive list of currently available product classes, but also provide criteria and a process to allow for inclusion of new product items. One commenter indicated that the Commission needs to clarify that replacements parts, spare parts or service parts for durable infant and toddler products are not independently subject to the registration cards and product identification requirements of section 104. One commenter stated that it is unacceptable for the Commission to leave open the definition of durable infant or toddler product in the regulation and then develop the definition through noncompliance or penalty proceedings against manufacturers who reasonably believed that their product was not a durable infant or toddler product.

Define "Durability"

Commenters requested that the Commission clarify what may constitute "durable" in the context of nursery equipment in order to be consistent in the application and understanding of the program. They requested that the Commission clearly identify those products that require registration, and that such guidance be based heavily on, if not entirely limited to, the listing of products set forth in the statute. Others indicated that while the average life of three years is a good bench mark, it cannot be a regulatory standard because it is not objective. Others pointed out that infant and toddler products are typically used for the first year of a child's life and can be disposed of or handed down to another, so how do you determine the "life" of the product - by user or total years in use? One commenter indicated that the price paid by the consumer should be considered when determining if it is a durable nursery product and suggested that items with less than a \$20 suggested retail price should not be considered durable nursery items. Others stated that clothing, blankets, and such textile products should not be considered durable infant or toddler products.

Allow One Year for Implementation

Several commenters stated that six months may not be enough time to implement this rule. They indicated that because of the manufacturing process, printing process for the cards, and

coordination of both, they would need more time, possibly a year from date of final rule publication. They also stated that requirements should only apply to products manufactured after a certain date once the final rule is published.

Responsible Party for Registration Cards and Database

The comments received indicate that there is support for a variety of different responsible parties:

Manufacturer

Those commenters who stated that the manufacturer rather than the importer should place the registration card with the product supported this by indicating that the manufacturer is the only entity that has direct contact with the product through the manufacturing and packaging process.

Some indicated that the importer may not be the final seller of the merchandise. In addition, they noted that private labelers and retailers will have a customer relationship but will not have the ability to impact design or product corrections. They suggested that foreign manufacturers could be required to use a U.S. based entity or service provider. Others suggested that the rule provide flexibility for the manufacturer outside the U.S. to provide the consumer registration card with the product at the time of manufacture, and permit an importer, private labeler, or retailer, rather than the manufacturer, to maintain the registration card information.

Importer

Commenters who suggested that the importer of a product manufactured outside the U.S. should be responsible stated that the importer should be able to put its name and contact information on the registration cards rather than the name of the foreign manufacturer, and to put its name on the product rather than the name of the foreign manufacturer. Several comments indicated that there are confidentiality concerns arising out of registration requirements and that disclosure of foreign manufacturers and/or suppliers can pose a significant competitive disadvantage to a company. One commenter stated that CPSC should support the guidance adopted with respect to section 103 that permits the importer of a foreign-made product to identify itself as the manufacturer and urged that the same guidance be adopted for section 104.

Private Labeler

Comments suggested that private labelers should be able to assume responsibility to register products through contractual agreement with the foreign manufacturer.

Retailers

One comment stated that when a retailer is the importer of record and the retailer is the only contact with the U.S., then the foreign manufacturer should be allowed to insert the registration cards at the time of manufacture, and the retailer should be the party that collects and maintains

the consumers' information. Another commenter suggested that retailers should be given the option to accept product registration cards.

Coding Date of Manufacture

Some manufacturers have requested flexibility when identifying dates of manufacture and would like to use Juvenile Products Manufacturers Association (JPMA) certification requirements for the date code.

Retaining Registration Card Information

Commenters requested that CPSC clarify that the registration cards do not need to be retained as long as the information contained therein is retained. One commenter stated that CPSC should have the authority to require manufacturers to keep the information longer than six years if they have reason to believe a recall may be pending.

Section 103 Tracking Label

The section 103 tracking label and the section 104 durable infant or toddler labels require overlapping identifying information and at the same time, require additional distinct information. Most of the comments received requested that CPSC harmonize the two labels. It was suggested that reconciling the differences in the labeling language requirements in sections 103 and 104 would ensure that the greatest amount of identifying information appears on the product labels and the item itself.

Electronic/E-Mail Registration

Almost all of the commenters on electronic registration supported this requirement as long as CPSC would allow flexibility in how a manufacturer sets up the page. Most indicated that steps should be taken to ensure the security of the provided contact information. Some commenters stated it was acceptable to allow consumers to navigate to other pages of a company's website after registering; while others indicated that navigation on the web page should be restricted.

Commenters agreed that smaller businesses that do not have websites should be allowed to include an email address for consumers to send their product registration information. Two commenters suggested that an automatic response email should be sent to the consumer when their email registration is received.

One commenter suggested that CPSC should not insist that each product come with a postage paid consumer registration form if both the retail outlet and the consumer will accept an alternative-non-intrusive and protected, method of electronic, web based registration instead. The commenter noted that electronic registration does not pose nearly so much of a practical or economic burden on the manufacturer or consumer as the "mail-in" or paper form.