

accompanied by non-postage prepaid cards. The return rate for postage prepaid cards accompanying “mowers sold through mass retail outlets,”<sup>8</sup> is 35%.

The Briefing Package appears to report only partial data from the Toro registration card program. The data that are reported indicate that the many variables in Toro’s program were not isolated from each other. It is therefore impossible to know which, if any, of these variables contributed to the different return rates. For example, since postage was prepaid only for the registration cards used with the larger (and presumably more expensive and durable) items, but was not prepaid for the smaller items, it is impossible to know which, if any, of these variables (i.e., postage, expensiveness, size, durability) may have contributed to the lower response rates for the smaller, less expensive, less durable products. While prepaying postage may have been a factor, it is equally likely based on the reported data that the expensiveness of the product, its size, or its durability, were more influential. Indeed, the sketchy figures cited in the Briefing Package suggest that several factors other than the format of the card and whether the postage is paid or not may have been particularly influential factors. It appears that the single most influential factor in percentage terms affecting reported return rates had nothing to do with the format of the card but was rather the type of establishment from which the product was bought (i.e., specialty store vs. mass-market retailer). This variable alone appears to have caused return rates to drop by more than half, from 85% to 35%-40%, for mowers sold through “mass retail outlets.” If sales through mass retail

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<sup>8</sup> The Briefing Package does not define either what types of establishments are considered “mass retail outlets” as opposed to “power equipment dealers,” or what percentage of sales of the products are made through the respective types of retailers.

outlets are particularly unlikely to result in returned registration cards, as the data from the Toro study suggests, then registration cards for children's apparel and footwear are likely to have very low return rates because large numbers of these products are sold through mass retail outlets.

The Briefing Package also cites data concerning recalls of products sold through mail-order catalogues to substantiate the claim that product registration cards would enhance recall effectiveness. But this information is of little or no use in assessing whether product registration cards are likely to be a cost effective means of improving recall effectiveness for children's apparel and footwear for sales made in stores. There is no valid reason to assume that data indicating higher recall effectiveness for recalls of products sold through mail-order catalogues would be reasonably predictive of heightened recall effectiveness for store sales of products accompanied by product registration cards. Obviously, catalogue sales occur only if there has been a successful transfer of contact data from purchaser to manufacturer. If the purchaser does not supply accurate contact data, he or she will not receive the product. Alternatives to the mandatory use of product registration cards – for example, the comprehensive database apparently being considered by an independent task force that plans to report to the CPSC in October 2001, see n.6 supra (provided sufficient consumer privacy protections could be established) – could ultimately prove to be a more effective way of bringing recall effectiveness levels closer to those experienced with products sold through mail-order catalogues. The Commission should therefore refrain from beginning a rulemaking until it has sufficient data from this and other ongoing studies to allow it to tailor the rule to

specific product categories that pose particular risks to children, and for which the use of product registration cards is likely to be most effective.

2. Children's Apparel and Footwear Products Are Particularly Ill-Suited to a One-Size-Fits-All Rule

The proposed rule is particularly unlikely to have any significant impact on recall rates for children's apparel and footwear. Return rates for registration cards for these products are likely to be a significant problem. While there is currently no firm basis for predicting what return rates for registration cards with children's apparel and footwear would be, the evidence strongly suggests it would be lower than the results that have been achieved in the few studies that are available.

Most notably, the Toro program only achieved a return rate of 35-40% for postage prepaid cards on "mowers sold through mass retail outlets." Briefing Package, Tab B at 5. Children's apparel and footwear are sold in vast quantities through such outlets. Thus, the Toro data appear to predict markedly low return rates for registration cards used with children's apparel and footwear.

An additional reason why return rates for apparel and footwear products are unlikely to be any higher -- and quite likely to be lower -- than in the Toro and Whirlpool programs is because recall effectiveness is generally far lower for less expensive products with perceived shorter product lifespans.<sup>9</sup> Previous Commission studies have concluded

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<sup>9</sup> The Whirlpool program has apparently achieved a return rate of only 25-30% for warranty registration cards. Draft ANPR at 10. And although the data from the Brandstamp on-line registration service remains sketchy, it suggests there may be a "ceiling" to the number of responses that can realistically be obtained. According to a study apparently commissioned by Brandstamp, only 80% of respondents said they would complete an on-line registration process if given the option to register immediately on-line without having to input any additional information (perhaps the most convenient form of registration imaginable for consumers). Briefing Package, Tab B at 6.

that product price and product life span are among the variables that “exhibit strong relationships” with recall effectiveness. See 1978 Study at 2-3 (noting that recalls of televisions sets, lawnmowers/garden tractors, and major household appliances had been particularly effective). These same factors that influence recall effectiveness may also influence return rates for product registration cards. If so, then the response rate for registration cards mandated for inexpensive products with comparatively shorter life spans may turn out to be substantially lower than in the few pilot programs conducted to date.

Even if significant numbers of product registration cards are returned by consumers of apparel and footwear products, several factors will cause the data collected from such cards to be less useful – and to degrade more quickly -- than with other classes of products. First, there is – in the CPSC’s words -- a “rate of extinction” at which consumer products are discarded, and this rate is higher with less expensive goods. See 1980 Study, Tab C at 4. Children’s apparel and footwear have particularly high “rates of extinction” because they are far more likely than other classes of consumer products to be outgrown and to be discarded due to excessive wear. Thus, a high percentage of first purchasers of children’s apparel and footwear are likely to have discarded the product by the time a recall is announced. A second factor causing degradation of the data is that consumer contact information (including street addresses, telephone numbers, e-mail addresses) is likely to change frequently as people change addresses.<sup>10</sup> Thus, the contact

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<sup>10</sup> According to the Census Bureau, approximately *43.4 million* Americans changed residences during the one-year period from March 1999 to March 2000. That constitutes well in excess of 10% of the nation’s total population. U.S. Census Bureau. “Geographical Mobility: Population Characteristics” (May 2001).

information will frequently be outdated by the time of a recall. A recent study by RecallZ indicates the consumers themselves recognize outdated contact data as a serious problem with product registration cards. See “Study Questions Registration Cards’ Recall Effectiveness,” 30 Product Safety Letter, No. 30 at 3 (August 6, 2001). Thirdly, children’s products are frequently shared or given as “hand-me downs” and gifts to parents and children by friends and relatives, further complicating the collection and maintenance of contact data for first purchasers. As a result, registration cards will frequently be unable to identify the current user – as opposed to the purchaser – of a product. Id.

The Commission should also bear in mind that existing RN numbers or other manufacturer identification required by federal law to appear on textiles (usually on the labels) already provides an effective means of identifying the manufacturer of apparel products. Most footwear items contain clear information identifying the manufacturer or retailer. As the Petition points out, the need to identify product manufacturers is a significant safety concern. The inclusion of identifying information on products has at least three advantages: (1) it allows consumers to determine if they have a product that is the subject of a recall; (2) it allows consumers to participate in recalls; and (3) it enables the CPSC and others to investigate and recall unsafe products. Pet. at 4. Since children’s apparel and footwear already have such identifying information, there is less of a need for

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It is unclear whether internet users are any more likely to retain their e-mail addresses (a potential alternative means of contacting consumers) for long periods of time than citizens are to remain at the same mailing address.

additional regulations geared towards enabling consumers to participate in recalls, through product registration cards.

As the Commission searches for more accurate methods of monitoring recall effectiveness, it should bear in mind that many satisfactory outcomes exist other than the product's being returned to the manufacturer. 1980 Study Tab B at 1-2, 4-5. Many consumers respond to recall notices by simply discarding or discontinuing use of the product. *Id.* These satisfactory but unreported outcomes are more likely to occur for products, such as children's apparel and footwear, where the cost of returning the product to the manufacturer will in many cases be a substantial percentage of the retail price of the product itself. In order to be accurate, recall effectiveness studies must find a way to take satisfactory but unreported outcomes into account.

B. There Is No Reason To Believe That Recall Effectiveness Is A Cause For Concern For Children's Apparel And Footwear.

The Petition disregards any distinctions between different categories of children's products. However, there is no reason to believe that recall effectiveness is currently a problem for products such as children's apparel and footwear. These products are not inherently dangerous. The overwhelming majority do not contain risks. In those rare occasions where a potentially unsafe clothing product or defect (because, for example, of a small part) does appear in the marketplace, manufacturers and retailers swiftly take those steps necessary to recall the product at the various stages of the distribution chain. Children's clothing and shoes that are involved in such recall actions represent a very, very small fraction of the apparel and footwear sold for children each year.

Apparel and footwear companies do their utmost to ensure compliance with all pertinent safety regulations. For example, apparel is already regulated for flammability concerns (for example, if ignited by a child playing with matches) and children's sleepwear is subject to even stricter requirements. However, any potential safety concerns presented are largely alleviated because these products are already subject to specific federal safety standards that help ensure a baseline of safety before manufacturers ever distribute their products to consumers. As a result, the recall remedy for these products is not as important a method of removing unsafe products from consumers' homes as it is for inherently dangerous products that are not as tightly regulated.

Moreover, the Petition cites no data addressing whether or not recall effectiveness tends to be more of a problem for particular categories of products. The Petition refers to recall rates for FY 1996 and FY 1997, but does not break those rates down by the categories of products involved.<sup>11</sup> Pet. at 1-2 n.1. The Commission has previously noted -- and common sense confirms -- that recall effectiveness tends to vary widely across different categories of consumer products. See 1978 CPSC Study; 1980 CPSC Study. But these studies in which the Commission examined that tendency are now more than twenty years old. They were conducted in an era before the internet, before the prevalence of junk-mail, and before the vast new array of demands on consumers' time. As a result, there is no way to know whether the results of these studies have any meaningful relationship to how consumers behave today.

C. The Rule Would Impose Significant Costs On Consumers And Manufacturers

The proposed Rule would impose significant costs upon consumers. A trip to the mall with a child demonstrates what a burden the proposed Rule would place upon parents. Product registration cards would be attached to each and every children's product purchased, and parents would be faced with filling out and returning dozens of cards. Even more significantly, a requirement that the cards be attached to *all* children's products – rather than a few carefully chosen categories of children's products that pose inherent danger to children – would desensitize parents to the importance of returning the cards, and would dilute the effectiveness of the registration cards for all product categories. It is also unclear to what extent the collection and maintenance of such data would threaten consumers' personal privacy, as there is a risk of unauthorized access even for well-protected computer databases.<sup>12</sup>

Moreover, garments already carry a number of hang tags and other labels that convey important consumer, safety, care, and origin information that is deemed important by Congress or federal agencies, including the CPSC. The addition of a product registration card to each garment would interfere with these federal markings, including safety markings for children's snug fitting sleepwear, increasing the likelihood that none of these messages is read or understood at the point of purchase.

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<sup>11</sup> The Petition does refer to the dramatic improvement in recall rates that has resulted from the Commission's recently implemented Fast Track recall program. Pet. at 1-2 n.1.

<sup>12</sup> As noted above, an independent task force plans to report to the Commission in October 2001 on whether and how a database of consumer contact information can be maintained with due regard to consumers' personal privacy.

There must be more cost effective, less time-consuming, and less potentially intrusive means of publicizing important safety information than filling out a product registration card for each individual product purchased for use by a child. If such cards are to be used at all, their use should be focused on products that pose inherent safety risks to children.

The Commission estimates that the proposed Rule would increase the cost of children's products by anywhere from 32 cents to 80 cents per product, Briefing Package, Tab A, at 3, but this estimate significantly understates some costs and fails to take others into account. For instance, the estimate ignores the expense of maintaining and storing the data for the required period of time. The Petition requests that product registration data be maintained for the longer of twenty (20) years or the useful life of the product. The Draft NPR suggests six (6) years as a reasonable figure. AAFA estimates that maintenance of the required database would cost each manufacturer at least \$20,000 per year. The Commission's estimate also fails to include the cost of contacting each consumer individually in the event of a recall. AAFA projects this cost to be roughly \$5 per consumer contacted. In addition, AAFA projects the data entry for returned cards will cost approximately 80 cents per card, not 10-20 cents as the Commission estimates. Because return rates are unknown, it is currently impossible to come up with accurate "per card" estimates of cost, but it is certain to be far more than the Commission's analysis predicts because the Commission's analysis excludes several costs and underestimates others.

Even using the Commission's incomplete estimates, it is clear that the cost per card would constitute a high percentage of the total cost of the product for inexpensive items such as children's apparel and footwear. The percentage impact of a \$1-\$2 dollar price increase for a pair of socks is obviously far greater than for an expensive toy or piece of children's furniture.

While the benefits of mandatory product registration cards are likely to be especially low for children's apparel and footwear, the costs to consumers and manufacturers of including the product registration cards on such products would be especially high relative to other kinds of products. Thus, children's apparel and footwear should not be included within any rulemaking that could lead to a product registration card requirement.

## II. THERE IS SERIOUS DOUBT AS TO THE COMMISSION'S AUTHORITY TO ENACT THE PROPOSED RULE

The CPSC's August 1, 2001 Notice rejects Petitioner's suggestion that section 10 of the Federal Hazardous Substances Act, 15 U.S.C. 1269(a) confers the necessary authority upon the Commission to enact the proposed rule. Instead, the Notice points out, "the General Counsel believes that the . . . appropriate authority for product registration cards is section 16(b) of the Consumer Product Safety Act [15 U.S.C. § 2065(b).]"

Section 16(b) of the Act provides as follows:

Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as

reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter.

15 U.S.C. § 2065(b) (emphasis added). Since its enactment nearly thirty years ago, the Commission consistently has interpreted Section 16(b) as authorizing the agency to require by regulation that manufacturers establish and maintain records in only three types of instances: (1) to confirm that products comply with specific safety standards (see, e.g., 16 C.F.R. §§ 1210.11, 1210.17 (cigarette lighters), 16 C.F.R. § 1211.1 et seq. (residential garage-door openers), 16 C.F.R. § 1205.34 (walk-behind power lawn mowers)); (2) to make detailed reports regarding products that are the subject of Section 15(b) notifications (see 16 C.F.R. §1115.14); and (3) to notify the Commission of settlements or judgments under Section 37 of the CPSA.

There is no precedent for interpreting Section 16(b) as authorizing the Commission to require manufacturers to acquire and maintain data from retail purchasers of their products. The language of Section 16(b) does not expressly grant any such authority. When Congress intends to grant such authority to federal agencies, it does so in express terms. For example, the Electronic Product Radiation Control Act expressly authorizes the Food and Drug Administration to require *dealers and distributors* (not manufacturers) to obtain such information as is needed to locate the first purchasers of certain electronic products (i.e., products selling at retail for at least \$50). The statutory language granting such authority states in part as follows:

The Secretary may by regulation (1) require dealers and distributors of electronic products, to which there are applicable standards prescribed under this part and the retail prices of which is not less than \$50, to furnish manufacturers of such products such information as may be necessary to identify and locate, for purposes of section 3601l of this title, the first

purchasers of such products for purposes other than resale, and (2) to require manufacturers to preserve such information.

21 U.S.C.A. § 360nn(f).

Similarly, Congress expressly mandated that the Department of Transportation issue regulations requiring automobile and tire manufacturers to maintain records sufficient to identify the first purchasers of their products. See 49 U.S.C. § 30117 (“A manufacturer of a motor vehicle or tire (except a retread tire) shall cause to be maintained a record of the name and address of the first purchaser of each vehicle or tire it produces[.]”)

Section 16(b) of the CPSA confers no comparable authority. Indeed, the legislative history of the Act confirms that Congress expressly considered, and ultimately rejected, statutory language requiring manufacturers to maintain the names and addresses of first purchasers. Such language was included in the Senate version of the bill,<sup>13</sup> but not in the House version. The House version prevailed. H.R. Conf. Report 92-1593. It is well-established that Congress’s choice of one chamber’s version of a bill over another is presumed to have been deliberate. See Tanner v. U.S., 483 U.S. 107, 125, 107 S. Ct. 2739, 2750 (1987). The Commission cannot disregard Congress’s deliberate decision not to enact to Senate’s proposed version of Section 16(b).

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<sup>13</sup> Additionally according to the legislative history, the Senate version provided that “In determining whether to require the maintenance of the names and addresses of the first purchasers, the Commissioner was to consider the *severity of the injury* that could have resulted if a consumer product had not been manufactured in compliance with an applicable consumer product safety standard, the *likelihood that a particular type or class of consumer products would not have been manufactured in compliance with an applicable consumer product safety standard*, and the *burden imposed upon the manufacturer or importer*

### III. CONCLUSION

AAFA shares the Commission's interest in improving recall effectiveness. As discussed above, however, there is no reason to believe that the Rule requested by the Petition would achieve that result. There are many resources other than mandatory product registration cards that can be utilized in any attempt to improve recall effectiveness. Businesses have intimate knowledge of their own industries and an incentive to find ways to improve recall rates. Third-parties in the private sector may develop innovative methods of collecting and publicizing recall and other product safety information. The Internet company referred to in the Briefing Package is one such example.<sup>1</sup> The cooperative efforts of responsible manufacturers and federal safety regulators should be encouraged in order to devise methods to ensure effective recalls. In order to be most effective, these methods should be tailored to the particularities of different industries and types of children's products.

As the CFA acknowledges (Pet. at 1, n. 1), the Fast Track Recall Program has achieved notable success in increasing recall effectiveness by removing many products from commerce before they ever reach consumers. The Commission in turn has "rewarded" manufacturers who choose to participate in the Program by making no preliminary determination as to whether the product contains a reportable "defect" under Section 15(b) of the Act. See 62 Fed. Reg. 39,827-39,828 (July 24, 1997). Similar

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*by requiring the maintenance of the names and addresses of the first purchasers (including the cost to consumers of the maintenance).*" H.R. Conf. Report 92-1593 (emphasis added).

incentives to those offered under the Fast Track Recall Program could be developed in an effort to stimulate even greater recall rates.

Our conclusion is that, if this proposal is accepted by the Commission, apparel and footwear companies would incur enormous costs to produce and distribute accurate product registration cards, the vast majority of which will end up in the trash ten minutes after the consumer has reached home. At the same time, they will be asked to maintain an accurate product registration database of a small subset of their customers with information that is mostly useless and which holds no benefit for improving consumer safety.

Product registration cards are only one of the many possible ways to address recall effectiveness. If the Commission wishes to begin a rulemaking concerning product registration cards, it should focus on the products for which such cards are more likely to have an impact – products that are relatively high-priced, long-lasting, inherently dangerous, and often unregulated. The Commission should not initiate rulemaking for children's apparel and footwear, which shares none of these characteristics. Now is **not** the time for the one-size-fits-all Rule requested in the Petition.

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David H. Baker  
Barbara E. Parisi

**BEFORE THE  
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

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**PETITION REQUESTING RULE REQUIRING  
PRODUCT REGISTRATION CARDS FOR PRODUCTS  
INTENDED FOR CHILDREN  
CP 01-01**

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**COMMENTS OF  
WRITING INSTRUMENT MANUFACTURERS  
ASSOCIATION, INC.**

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(202) 331-8800**

**October 1, 2001**

**Counsel for the Writing Instrument  
Manufacturers Association, Inc.**

**BEFORE THE  
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

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**PETITION REQUESTING RULE REQUIRING  
PRODUCT REGISTRATION CARDS FOR PRODUCTS  
INTENDED FOR CHILDREN  
CP 01-01**

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**COMMENTS OF  
WRITING INSTRUMENT MANUFACTURERS  
ASSOCIATION, INC.**

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**I. Identification of Commentor**

The Writing Instrument Manufacturers Association, Inc. ("WIMA"), is the U.S. trade association for the pen, pencil, eraser and marker industry. Founded in 1943, WIMA currently represents 75% of the manufacture and distribution of writing instrument products in the United States.

WIMA has regularly appeared before this agency in rulemakings involving small parts, art materials labeling and child-resistant packaging. WIMA thanks the Commission for this

opportunity to comment on the Consumer Federation of America Petition requesting issuance of a rule requiring product registration cards for products intended for children.

## **II. Position of Commentor**

WIMA supports the general concept of product registration cards for toys, i.e., products intended for use by children. Recall effectiveness is important, particularly when very young children are at risk. However, WIMA respectfully submits that writing instruments are not toys and should not be included in any regulation requiring registration cards. Writing instruments are very inexpensive products (often valued at less than ten cents a product) and can not bear any additional cost increases to include product registration cards. Second, writing instruments are very small products and often sold singly at store checkout counters. It would be very difficult to include product registration cards with these products. Third, there is little risk of injury from a writing instrument. Indeed, in recent memory, there have been no recalls of pens, pencils, erasers, or markers. Finally, historically, the Commission has exempted writing instruments from the labeling requirements of the Federal Hazardous Substances Act and the proposed child-resistant closure requirements for products containing hydrocarbons under the Poison Prevention Packaging Act. See 16 C.F.R. Part 1500.83(a)(7), (9), (12), (38) and proposed 16 C.F.R. Part 1700 at 65 Fed. Reg. 93, 95 (2000). If this regulation goes forward, WIMA respectfully requests a similar exemption, presumably in a CPSA regulation.

## **III. Summary**

In summary, WIMA respectfully requests that writing instruments be exempted from any product registration card rulemaking.

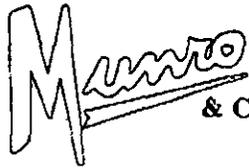
Respectfully submitted,

A handwritten signature in black ink, appearing to read "David H. Baker", written over a horizontal line.

David H. Baker  
Barbara E. Parisi  
Counsel for Writing Instrument  
Manufacturers Association, Inc.

Dated: October 1, 2001

Prod card 14  
14  
conrad



&amp; COMPANY, INC.

P.O. BOX 1157 • HOT SPRINGS, ARKANSAS 71902

501-262-6000

September 21, 2001

Office of the Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207

RE: Petition CP 01-01 Petition for Product Registration Cards

On behalf of Munro & Company I am writing to express strong opposition to the proposal of Consumer Federation of America to require a Consumer Registration Card for Products Intended for Children.

Our Children's Division, Munro Kids, sells over one million pair of infants and children's shoes annually. The line consists of 175 different stock numbers of which approximately 30% are replaced each season.

We oppose this proposal for the simple reason that it would have a negligible impact in promoting safety or providing for more efficient recalls at enormous expense on the part of manufacturers, importers and retailers. We believe this proposal fails any cost/benefit analysis by delivering marginal benefit to consumers at significant costs.

Product recalls for apparel and footwear are already handled in a fairly effective manner. First and foremost, apparel and footwear companies do their utmost to ensure compliance with the pertinent regulations, including flammability, small parts, sharp edges (primarily on shoes), drawstrings, and lead paint in components like buttons and zippers. In those rare occasions where a potentially unsafe clothing product or defect does appear in the marketplace, manufacturers and retailers swiftly take those steps necessary to recall the product at the various stages of the distribution chain.

Garments already carry a number of hang tags and other labels that convey important consumer, safety, care, and origin information that is deemed important by Congress or federal agencies, including the CPSC. The addition of a product registration card to each garment would interfere with these federal markings, including safety

markings for children's snug fitting sleepwear, increasing the likelihood that none of these messages is read or understood at the point of purchase.

Customers, especially for clothing and footwear items, are generally not interested in returning product registration cards for such products, primarily because of the perception that many of these products will be short lived or because they are relatively inexpensive. Even though the cards would be postage paid, customers are still not likely to go through the hassle involved in filling out and returning such cards. Similarly, even though the cards would state that the information would be used only in the event of a recall, customers are not likely to risk what many will no doubt perceive to be a loss of privacy to provide such information to the retailer or manufacturer.

The apparel and footwear industries generally do not use product registration cards. However, experience with similar exercises, which often carry an inducement for the customer to return the requested information, yields extremely low return rates. Given the concerns noted in the preceding paragraph, we would expect this product registration scheme to achieve even lower return rates.

The proposal requires, for the small percentage of cards actually returned, that the manufacturer retain the cards on file for 20 years or the useful life of the product, whichever is longer. For many of our products, it is impossible to know when the useful life of the product ends. Many of the children's items our members produce and sell are durable enough to be passed down to siblings or other children. At the same time, other clothing and shoe items may be discarded after only one user. In addition, children's clothing and shoes that are involved in recall actions represent a very, very small fraction of the apparel and footwear sold for children each year. Consequently, firms will be maintaining information for decades relating to good that will never be subject to a recall.

Even if consumers do return these cards at a reasonable rate, we are unsure how this will significantly improve recalls. Currently, consumers find out about recalls through a variety of information sources. Typically, they may see something in USA Today or hear the CPSC Chair speak about a product on The Today Show and examine whether the similar product they use is covered by the recall alert. Supplementing those sources with the product registration card system will not necessarily reach more consumers than these existing and relatively effective channels.

For example, over the minimum 20-year period, many of the cards will become outdated as people move from one place to another. According to the U.S. Census, 16-17 percent of the U.S. population moves every year. Given the mobility of the U.S. population, over a 20-year period, the freshness of the information in the database will be greatly reduced.

In addition, many apparel and footwear items for children are purchased as gifts by relatives and friends or passed on through thrift shops, garage sales, and church

bazaars. In each of these cases, the initial purchaser of the item is not the end user of the item so the effectiveness of the product registration database would be greatly diluted.

The CPSC should also exercise caution in weaning the public away from the traditional methods of recall alerts that it has worked so hard over the past few years to develop. Individuals who fill out a registration card may start to "tune out" existing types of recall alerts unless the company specifically notifies them (even if the recall covers the product they have purchased). Then, if the recall notice generated by the product registration database fails (because the data was lost, the card was never received, etc.), the consumer may never receive the information.

While it is unclear if there would be benefits, it is clear that there would be substantial costs associated with this program. These include:

- \* The costs of pre-paid postage of the product registration cards that are returned;
- \* The costs of designing and printing the product registration cards. (Because the petition requires that each card carry the name and model number of the product purchased, a new set of cards would be required for each of the thousands of stock keeping units manufactured by each company. This would eliminate any possible economies of scale that might otherwise be achieved.);
- \* The costs of logistics and tagging to ensure that each garment is sold with the correct tag.
- \* The costs associated with reporting to the CPSC the return rates of the product registration cards.
- \* The costs associated with developing and maintaining a record retention system for these cards.

Our estimated costs of complying with such a program are well over \$150,000 per year and may be as much as \$250,000 the first year and increase each year:

Our conclusion is that, if this proposal is accepted by the CPSC, apparel and footwear companies would incur enormous costs to product and distribute accurate product registration cards, the vast majority of which will end up in the trash ten minutes after the consumer has reached home. At the same time, they will be asked to maintain

an accurate product registration database of a small subset of their customers with information that is most useless and which holds no benefit for improving customer safety.

We strongly object to this proposal and urge the CPSC to dismiss the petition.

Sincerely,



Michael J. Hennessey  
President & CEO

MJH/jb



NATIONAL COUNCIL OF CHAIN RESTAURANTS  
of the > NATIONAL RETAIL FEDERATION

*Prod Regs Comm 15*

1 October 2001

*Comments of the National Council of Chain Restaurants*

Consumer Product Safety Commission

Petition CP 01 - 01

Petition for Product Registration Cards

66 Fed. Reg. 39737

**I National Council of Chain Restaurants**

The National Council of Chain Restaurants (hereinafter the "Council") is a national trade industry group representing the interests of forty of the nation's largest multi-unit, multi-state chain restaurant companies. Collectively, these forty companies own and operate in excess of 50,000 restaurant facilities. Additionally, through franchise and licensing agreements, another 70,000 facilities are operated under their trademarks. In the aggregate, the Council's member companies and their franchisees employ in excess of 3 million individuals.

Many of the Council's member companies frequently engage in promotional activities, which involve both product giveaways and very low priced product sales of items intended for children. Often these are joint promotional activities where, for example, a member company of the Council and a company producing a motion picture intended for children, contract to run a joint promotional campaign featuring characters from the motion picture. Sometimes the promotional products are motion picture characters and sometimes they are simply children's toys, which may or may not be related to any particular promotional campaign. The products are often "giveaways" which are not purchased separately. Occasionally, the products are sold separately, however, the purchase price is normally extremely low, i.e., less than five dollars.

## **II Consumer Federation of America Petition**

The notice published by the Commission advises that the Consumer Federation of America has filed a petition requesting a system to facilitate registration of product purchaser contact information in the event of a product recall. Among other things, the petition requests a system that would require manufacturers, distributors, retailers or importers of “products intended for children” to provide with every product a postage prepaid Consumer Registration Card (“CRC”) that would allow the purchaser to register contact information, e.g., name and address or email address, either through the mail or electronically. The petition also seeks the establishment of a rule that would require manufacturers, distributors, retailers or importers of such products to maintain the information collected via the CRC’s for a minimum of 20 years, or the useful life of the product, whichever is longer. The petition also seeks the imposition of mandatory reporting requirements on manufacturers, distributors, retailers and importers concerning the return rate of the CRC’s.

## **III Rule Is Unnecessary and Would Be Largely Ineffective**

The likely return rate of the CRC’s would be very, very low. This is particularly true with low priced and promotional giveaway products, where the return rate may be almost negligible. Consumer privacy concerns alone would likely result in the non-return of the vast majority of the CRC’s. This, coupled with the fact that most products intended for children are relatively low priced items, would surely cause most consumers to simply discard the CRC, rather than disclose their private identifying information by completing and returning the cards. Thus, it is questionable whether any significant database of product purchasers would be developed as a result of the CRC’s.

Additionally, the useful life of most products intended for children is relatively short. For promotional giveaways and very low priced products such as those typically distributed by the Council’s member companies, the useful life of the product can be measured in days or weeks, Liberty Place ♦ 325 7<sup>th</sup> Street, NW, Suite 1100 ♦ Washington, DC 20004 ♦ (202) 626-8183 ♦ (202) 626-8185 2  
♦ www.nccr.net

but certainly not years. Thus, the petition, in seeking a rule that mandates a minimum retention period of 20 years for any information that may be collected through the CRC's, grossly overreaches when the realistic useful life of a typical product intended for children is considered. Indeed, the 20-year minimum retention period becomes absurd when applied to the types of promotional giveaways and extremely low priced items that are distributed by the Council's members. The 20-year retention period also appears to ignore the reality that most citizens on average move or otherwise change addresses approximately every 7 years. Even with U.S. Postal Service rules for forwarding of mail, which is of very limited duration, the accuracy of any data base that might be developed would quickly be lost well short of 20 years.

Most product safety recall information is disseminated quite effectively through means of mass media publication, such as television, radio, newspapers, magazines and company Internet web sites. Additionally, toll-free telephone numbers are usually established to enable consumers to obtain more detailed information concerning safety issues and product returns or repairs. These methods have generally been very effective in quickly alerting consumers to product safety information.

#### **IV Cost-Benefit Analysis**

Without significantly more detail than is currently available through the Notice published by the Commission, it is difficult to provide meaningful comment on the relationship between the cost of compliance and the benefits to be obtained from any proposed rule likely to be developed in response to the petition. It appears clear, based on the information that is available, that the total cost of compliance to all manufacturers, distributors, retailers or importers of "products intended for children" would be in the hundreds of millions of dollars, annually. Moreover, costs associated with data base management for a minimum period of 20 years would be very substantial.

At this time, it is unclear how the rule's obligations would be applied as between manufacturers, distributors, retailers and importers. For any given product there would be a

manufacturer, possibly an importer, one or more distributors, and perhaps thousands or tens of thousands of retailers. Obviously, it would be duplicable and wasteful to require more than one entity to furnish CRC's and maintain a purchaser database on any given product. Without knowing how the rule would be applied as between manufacturers, distributors, retailers and importers, it is impossible to estimate the cost of compliance with any level of accuracy. To the extent that duplicable obligations are imposed, the costs would simply be multiplied without any corresponding increase in benefit.

The benefits, if any, of the rule requested in the petition appear to be extremely limited. Obviously, the overwhelming majority of products intended for children are extremely safe when used as directed, and are never involved in any form of safety recall. Thus, the benefits, if any, of the rule requested by the petition would be limited to the very small number of products where a safety issue is discovered after the product is released to the public. In these limited number of instances, most safety issues are discovered within 30 to 90 days of a product's release. In such a brief period of time it is highly questionable whether any meaningful database of "registered" purchasers could be developed, and this problem is magnified significantly when the very low return rate of CRC's is considered.

## **V Exemption Considerations**

The Council believes strongly that no matter how well intended the petition may be, the proposed rule it suggests is deeply flawed in terms of its potential to have any meaningful beneficial impact. For this reason, the Council believes the Commission should reject the proposal. However, if the Commission moves forward with the proposal or some variation thereof, the Council strongly urges the Commission to consider exempting low priced items and promotional giveaways from the scope of application. The reality is that almost no consumer will take the time or be willing to disclose personal identifying information to "register" themselves as owners of a product that they paid little or nothing to obtain for their child. Under such circumstances, the costs associated with compliance would be grossly disproportionate to

any possible benefit that could result from including within the scope of any rule products intended for children that were low priced or promotional giveaway items. Therefore, the Council urges the Commission to exempt such products from any proposal that may receive further consideration.

## **VI CONCLUSION**

For all of the foregoing reasons, the Council believes that the concept proposed in the Consumer Federation of America petition is ill conceived and would not offer any significant benefit to the increase of consumer safety concerning products intended for children. As such, the Council urges the Commission not to proceed further on the petition. In the alternative, if the Commission is going to proceed with further consideration of the petition, then the Council strongly endorses consideration of an exemption for low priced and promotional giveaway products.

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James M. Coleman  
General Counsel

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M. Scott Vinson  
Director, Government Relations  
(202) 661-3059

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## Consumer Federation of America

October 1, 2001

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

### Comments of Consumer Federation of America (CFA) on the CFA Petition CP 01-01, Petition for Product Registration Cards for Products Intended for Children (66. Fed. Reg. 39737)

This past June, Consumer Federation of America (CFA) petitioned the Consumer Product Safety Commission (CPSC) asking for several regulations to improve the effectiveness of recalls of children's products.<sup>1</sup> CFA submits these additional comments in support of the portion of its petition CPSC has agreed to examine—a proposed requirement that all manufacturers (or distributors, retailers or importers) of products intended for children provide along with every product a Consumer Registration Card that allows the purchaser to register information, through the mail or electronically. The purpose of this rule would be to facilitate direct contact to consumers in the event of a recall or other need to convey important safety information.

Requiring companies that manufacture, distribute, import or sell products intended for children to take additional measures to assure the effectiveness of recalls is needed for the following reasons:

- children are a vulnerable population who deserve additional protections;
- the risks of death or serious injury associated with children's product recalls are substantial. These recalls often occur because of choking, strangulation, suffocation, burns or serious fall hazards. All of these

<sup>1</sup> By "children's products" we mean any product intended for children (including products intended for both children and adults). In some cases, CPSC refers to toys and children's products separately. However, in these comments, as well as in our petition, we intend the scope of the regulation sought to include toys and any children's product (under the general rubric of "children's products").

can easily result in death to the child or serious injury—all of which the child has no capacity to prevent;

- the majority of CPSC recalls involve products for children. In Fiscal Year 2000, CPSC instituted recall actions involving 130 toy and children's products, involving more than 60 million product units. This represents two-thirds of all product units recalled and 45% of all CPSC recalls; and
- return rates for CPSC-recalled products are very low and additional measures are needed to boost the return rates, particularly for children's products.

The agency has determined that the more appropriate authority for product registration cards is section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)). CFA does not object to this decision and we believe that should the program be extended in the future to encompass other products (in addition to those intended for children), proceeding under the CPSA now is an appropriate course of action that will allow for other additions later to this program.

We reiterate our request that a regulation be developed that expressly delineates what may be included on the cards and specific obligations of manufacturers. Such a rule should require registration cards that:

- (1) collect only information needed to contact the purchaser (e.g., name and address or email address);
- (2) have the postage paid by the manufacturer (distributor, retailer, or importer);
- (3) provide the name and model number of the product purchased; and
- (4) state that the information collected will only be used to advise the purchaser of a recall or other important safety information.

Without these express requirements, we fear that manufacturers (or distributors, retailers or importers) may devise systems that make it more difficult or undesirable for consumers to participate, thereby decreasing the effectiveness of the program.

The maintenance of the data obtained via the Consumer Registration cards is another important requirement that should be encompassed in the rule. As we requested in our petition, we believe that this information should be kept by the companies for a minimum of 20 years, or the useful life of the product, whichever is longer.

CFA also requests that the regulation on Consumer Registration cards include the authority of CPSC to require use of the information obtained from these cards

in non-recall situations as well.<sup>2</sup> For example, when a hazard associated with a product manufactured by more than one company is identified, the cards could be used to alert registered consumers about this risk regardless of which manufacturer's product they purchased. This would be particularly helpful in addressing emerging hazards where the number and/or scope of injury or deaths is increasing quickly or where science has identified a new risk to children. This direct contact with the purchaser is a more effective means of communicating the hazard than relying on mass media and the hope that those who bought the product will see or read that message.

Finally, we strongly urge CPSC to include a provision requiring reports by manufacturers (or distributors, retailers, or importers) on the return rate of these cards –both initially (at the time when a corrective action is being discussed) and after the company has used the card to notify the purchaser. Providing this information to CPSC will assist the agency when devising corrective action plans in the first place. How many cards the company has received back may affect what steps CPSC may require the company to take to provide effective notice. We do not mean to imply that merely contacting those consumers who returned their cards would ever be sufficient by itself. Rather the notification of consumers who have returned cards should be one of a package of actions taken to provide notice. What those other components are will depend upon the breadth of customers the company can potentially reach through Consumer Registration card information. After the recall has been carried out, the manufacturer should also be required to report to CPSC how many corrective actions taken were associated with the return of the Consumer Registration cards and subsequent notice to those purchasers. This will enable CPSC to determine if the recall notice needs to be issued again and if the consumers in the Consumer Registration card database who haven't responded should be contacted again.

We are very pleased that the CPSC is seeking comment on this proposal and we strongly urge the Commission to vote to start a rulemaking to address this issue. Thank you for your attention to these comments.

Submitted by:

Mary Ellen R. Fise  
General Counsel  
Consumer Federation of America

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<sup>2</sup> In our petition we referred to use of the cards both for recalls or if the product otherwise posed a safety hazard.

*Children  
Cards  
Committee  
16a*

October 1, 2001

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Comments of State and Local Consumer Organizations on the Consumer Federation of America (CFA) Petition CP 01-01, Petition for Product Registration Cards for Products Intended for Children (66. Fed. Reg. 39737)**

The undersigned consumer groups strongly urge the Consumer Product Safety Commission (CPSC) to grant Consumer Federation of America's petition requesting a rule requiring that manufacturers (or distributors, retailers or importers) of products intended for children provide along with every product a Consumer Registration Card that allows the purchaser to register information, through the mail or electronically, facilitating notice to consumers in the event of a recall.

Learning about recalls of consumer products is often difficult for consumers. In addition to the fact that not all CPSC recalls are announced uniformly by the media across the country, keeping track of which products are affected by the recall and following through to determine if the products they actually own are included in the recall is often a time-consuming and complicated endeavor for many families. That compounded by the fact that children's products often have a long use period (as consumers store products for second and third use by younger siblings or sell or loan products to friends, family and neighbors) makes it all the more important that notification about children's products be mandated.

In addition, the "marketing" or "warranty" cards currently provided with certain consumer products are ineffective as a safety communication tool because of the irrelevant and intrusive information they require from consumers. Consumers either are turned off by the number and scope of the questions or they know that these cards are used for marketing rather than safety purposes, and thus many consumers decide to forgo filling out these cards. Consumers need a mechanism, such as the Consumer Registration Card, that will not only be effective as a safety alert mechanism, but that also will be used solely for this important purpose.

Recall return rates are under 20% for CPSC recalled products indicating a clear need for new and innovative methods to reach consumers. Because the hazards associated with many of the children's products that are recalled can result in serious injury or death, it is important that CPSC use all available means to reach consumers with this vital safety information. We strongly urge the

Comments on CP 01-01  
Page two

Commission to initiate a rulemaking to promulgate requirements for Consumer Registration cards.

Sincerely,

Arizona Consumers Council  
Consumer Action (CA)  
Consumer Federation of California  
CALPIRG (CA)  
CoPIRG (CO)  
Connecticut PIRG  
Florida PIRG  
Chicago Consumer Coalition (IL)  
Coalition for Consumer Rights (IL)  
Illinois PIRG  
Indiana PIRG  
Iowa PIRG  
Maryland Consumer Rights Coalition  
MaryPIRG (MD)  
Massachusetts Consumers' Coalition  
Mass PIRG (MA)  
Michigan Consumer Federation  
PIRG in Michigan  
Missouri PIRG  
New Hampshire PIRG  
New Jersey PIRG  
New Mexico PIRG  
Empire State Consumer Association (NY)  
Niagara Frontier Consumers Association (NY)  
North Carolina Consumers Council, Inc.  
North Carolina PIRG  
Ohio PIRG  
Oregon State PIRG (OSPIRG)  
PennPIRG (PA)  
Columbia Consumer Education Council (SC)  
Vermont PIRG  
Virginia Citizens Consumer Council  
WashPIRG (WA)  
Wisconsin PIRG  
The Center for Public Representation (WI)

**Stevenson, Todd A.**

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**From:** Mary Ellen R. Fise [merf@home.com]

**Sent:** Monday, October 01, 2001 12:43 PM

**To:** cpsc-os@cpsc.gov

**Subject:** Comments for filing

Attached for filing are two comment letters from 25 state and local consumer organizations on the Bath Seat ANPR and the Consumer Registration Card proposal. Copies have also been faxed.

Please let me know if you experience any trouble in opening these documents.

Thank you.  
Mary Ellen Fise

10/1/01

# NAM CPSC Coalition

*Paul  
Newlands  
Comments  
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October 1, 2001

Ms. Todd A. Stevenson  
Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway, Room 502  
Bethesda, MD 20814  
Fax: (301) 504-0127

**Re: Petition CP 01-01 – Petition for Product Registration Cards**

Dear Mr. Stevenson:

The CPSC Coalition (“the Coalition”) of the National Association of Manufacturers (“NAM”) submits this letter in response to the Consumer Product Safety Commission’s solicitation for written comments concerning the above petition. Fed. Reg. 39737 (August 1, 2001).

While child safety and recall effectiveness are issues of great importance to the business community, the Coalition opposes the Consumer Federation of America’s (“CFA”) petition on product registration cards for children’s products. CFA’s petition requests that the Commission undertake a complicated regulatory approach to require manufacturers, distributors, retailers and importers of products intended for children to provide a consumer safety registration card with every product sold. If the ultimate goal is to improve recall effectiveness for children’s products, the CFA proposal falls far short. The issue of how best to increase public awareness about potential product recalls is fairly complex, but there is one aspect that is clear: The regulatory approach proposed by CFA, which increases the burden on business while doing little to actually improve businesses’ ability to recall products, is not warranted. Indeed, more progress could be made by simply opening up discussions between the business community and federal regulators on this issue.

The Coalition comprises trade associations and corporations large and small that manufacture or sell consumer products. The Coalition welcomes the opportunity to discuss this important subject with the Commission.

Sincerely,

Stephen Gold  
Executive Director, Associations Council  
For the NAM CPSC Coalition

**Stevenson, Todd A.**

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**From:** Stephen Gold [SGold@nam.org]  
**Sent:** Monday, October 01, 2001 12:30 PM  
**To:** 'cpsc-os@cpsc.gov'  
**Subject:** Petition CP 01-01 - Petition for Product Registration Cards

**Associations Council**

*of the National Association of Manufacturers*

1331 Pennsylvania Avenue, NW, Washington, D.C. 20004 • (202) 637-3102 • [sgold@nam.org](mailto:sgold@nam.org)

*Stephen Gold*  
*Executive Director*

Please find attached a letter in response to the Consumer Federation of America petition for product registration cards for children's products.

*Prod Reg comment 18*

1 October 2001

Mr. Todd Stevenson,  
Acting Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: Petition CP 01-01: Requesting Rule Requiring Product Registration Cards for Products Intended for Children**

**Request for Comments**

Dear Mr. Stevenson:

On 1 August 2001 the Commission published in the Federal Register a request for public comments on the Consumer Federation of America's petition to require product registration cards in all products intended for children.

LEGO Systems, Inc. is the division of the LEGO Group responsible for manufacturing and marketing LEGO® and DUPLO® brand construction toys in the United States. LEGO and DUPLO brand products are widely regarded as "market leaders" in the construction toy category in the United States and throughout the world. LEGO Group products have always been designed and manufactured to meet or exceed all national and international safety requirements. Since 1975, we have participated on a domestic and international level in the development of safety standards for toys. Based on the aforementioned, we believe we are uniquely qualified to submit comments relative to this request.

**Background Information: LEGO and DUPLO Brand Elements**

Worldwide, the LEGO and DUPLO product assortments consist of approximately 1300 different injection molded elements. Approximately 5700 molds are utilized to manufacture these elements. Thus, individual LEGO and DUPLO sets sold to consumers are an assortment of various elements differing in shape, size, or function, which are designed to provide free style construction or allow building of a specific model. These individual sets may consist of as few as five to over a thousand elements. In addition to molded elements, these products also may contain assembled and/or decorated elements, and other components such as decals, fabric, and string. The assembled elements may be comprised of two to six individually molded components assembled into a final element – such as a human figure.

Billions of LEGO and DUPLO elements are molded annually and stored in warehouses as a commodity until they are needed to produce specific sets to be sold anywhere in the world. They are identified only by part number and no attempt is made to use inventory on a production date basis.

Therefore, in our final packing operations, a completed retail product will consist of elements molded, assembled and/or decorated at various times. These individual element production dates will have no relation to the final packing date. Only the retail package and master/shipping container are marked with a production code indicating the final pack date. Our inventory tracking systems are not designed to gather and track the dates of production of elements. Redesigning our inventory control systems to keep track of this data would be very costly and would not serve any business purpose.

#### **Section A of the Petition – Recall Remedy be in effect indefinitely.**

This section of the petition would require a company to notify the CPSC of changes of telephone number or any other contact information; it would have to report these changes to the CPSC so that new contact information can be made available to the public.

If such a requirement is adopted, we believe it should be clarified to indicate that the company would only be required to notify the agency when product recall telephone numbers or other relevant contact information is changed. Companies should not be required to issue press releases, advertisements, etc. if such changes are made.

#### **Section B of the Petition – Manufacturer’s Name and Contact Information**

This section of the petition would require every manufacturer (or distributor, dealer, retailer, or importer) to have the following information on every product or product part (if the individual part could be used separately by a consumer) that is greater than 1 square inch intended for use by children:

1. Name, address and telephone number; or
2. Name, telephone number, and web address.

In addition, this section also requires that the manufacturer (or distributor, dealer, retailer, or importer) shall have a means of identifying the manufacturing period (if applicable) that can be placed on the product for identification purposes.

As stated earlier, our retail products are composed of components manufactured at various times. Furthermore, our products/components are designed to satisfy global safety requirements so that these can be sold anywhere in the world. Only the retail package may be customized for local market needs.

Under the Petition requirements, our Company’s name and contact information would have to appear on products/parts of products greater than one square inch. Because company contact information would be different in each country, under the proposal the LEGO Company would have to establish separate component inventories for the U.S. market versus the rest of the world. Direct costs associated with this include the duplication of all molds, substantial expansion of

our European component storage facilities to accommodate a separate inventory and the added costs associated with managing a separate inventory. We also would experience a significant loss of flexibility due to limitations placed on our ability to move/ use parts in any of our factories for any market, resulting in substantial waste of material that cannot be utilized across markets.

The second requirement of this section would mandate production date coding on all products. We have investigated this to determine the impact on our current mold inventory. While it may be technologically feasible to modify these molds to include a changeable insert, the initial cost and ongoing costs would be extremely high. We estimate an initial cost of approximately \$5,000 per mold. Based on our current product assortment, the initial cost would be over \$22,000,000 to modify molds capable of accepting modification.

In addition to the above initial cost, there are other recurring costs, which we would anticipate:

- **Mold Life Expectancy** would decrease, as molds become more complex as well as structurally weakened with the addition of an insert rather than a “solid” wall. Consequently, shortened life expectancy would necessitate an accelerated replacement schedule, again raising costs.
- **New Mold Construction** would become more costly as engineering and fabrication costs increase for new complex molds.
- **Operating Costs** would increase substantially due to higher maintenance/repair cost (labor and spare parts) resulting from increased complexity and the associated downtime while molds are out of production to change the production code. At this time, we are unable to estimate these costs accurately, but we believe they will be very high.

Alternatively, we have investigated the feasibility of printing a date on each of our elements just after they are molded. While technologically feasible, our calculations indicate that the investment to equip all of our molding machines with printing equipment and the required feeding systems would total over \$107,000,000. Aside from this investment, we estimate that the additional operating costs for such things as reduced operating efficiency, increased maintenance, and downtime would exceed \$19,000,000 for the first year. This would only increase with increases in our production volume and also with inflation. It also should be noted that printing on line at the molding machine would not work for all of our element designs, thus, other “printing” methods would have to be implemented. This would only further increase costs above our current estimates. The reason why these costs are so high is that the LEGO Company  
. . . . .  
year.

### **Section C of the Petition – Product Registration Cards**

This section of the petition would require every manufacturer (or distributor, dealer, retailer, or importer) of products intended for children to provide along with every product a Consumer Safety Registration Card that allows the purchaser to register through the mail or electronically. Furthermore, such information should be maintained by the manufacturer (or distributor, dealer, retailer, or importer) for a minimum of twenty (20) years or the useful life of the product, whichever is longer.

In general, the Petition if adopted as written would include all products intended for children – potentially hundreds of product categories (clothes, toys, video games, personal hygiene products, sports equipment, school supplies, etc.) and billions of units.

Furthermore, it potentially could require significant changes to or even the elimination of bulk sales of products.

With respect to the LEGO Company, significant costs and operational limitations would be incurred if this petition were adopted as written.

Based on the year 2001, the LEGO Company will introduce approximate 86,000,000 retail units into commerce. We estimate that the product registration cards themselves for this volume of products would cost \$400,000. This cost could be expected to increase as both product shipment volume and post card costs increase over time. Additionally, new equipment would have to be purchased and installed to insert these cards into the products during manufacture. At this time, we do not have estimates for the initial investments as well as annual operating costs.

Furthermore, it will be necessary to change (increase in size) product packaging of many of our smaller items to accommodate the registration card. This will also increase product costs as well as increase use of resources (paper or plastic materials), in conflict with environmental goals of reducing package sizes and conserving natural resources.

Our IT department has estimated that it would cost approximately \$75,000 to initially set-up a database to manage the consumer data. We would also incur annual operating/maintenance/upgrade costs for the database, estimated at \$20,000 per year, rising annually with increases in the data base size as well as with inflation.

Our Direct Marketing Department estimates that it would cost between \$0.15 - \$0.20/card to handle and to transfer the data from the postcards into the database – this allows for either optical scanning or manual entry. Costs associated with consumers entering data via web would be negligible – essentially creation of the form on our Company web site.

Based on our estimates, the first year minimum costs to implement the requirements of this section if the petition would be over \$25,000,000. These costs, which would only increase over time, are itemized as follows:

Database set up	\$75,000
Purchase of postcards	\$400,000
75% Mail return (postage and business reply service - \$0.23/card)	\$14,835,000

Data Entry

75% Mail cards (@ \$0.15/card)	\$9,675,000
25% Electronic Registration <sup>1</sup>	0
Annual Data base maintenance	<u>\$20,000</u>
TOTAL	\$25,005,000 <sup>2</sup>

The Petition requires data be maintained for 20 years or useful life of the product. Our products have almost an infinite life as they are either kept within the family, given away or sold at tag sales. Thus, we would be maintaining this data essentially forever. However, at the same time we must recognize that a percentage of the U.S. population moves and changes their address annually. The US Postal Service estimates "that 40 million Americans change addresses annually, which creates formidable obstacles in maintaining a high quality mailing list." Consequently, we would expect that substantial portion of the first year's data would be useless after 10 years, let alone 20 years.

Beyond directly quantifiable costs, the petition as written would significantly reduce our Company's ability to move products around the world to take advantage of sales opportunities. For example, products initially packed for the European market, would require not only external labeling, but also the opening of each package to insert the registration card in order to make them saleable in the U.S.

SUMMARY

LEGO Systems, Inc. believes that the petition, as written, is poorly conceived. The substantial costs to implement all the requirements of the petition would result in significant increases in consumer prices, result in substantial wasted effort and resources, and would do little to enhance the safety of consumer products.

Thank you for the opportunity to provide comment to this petition. We are confident that after giving full considerations to the very heavy burdens that would result from the granting of this petition, and the minimal benefit that would be provided to U.S. consumers, the Commission will wisely disregard this ill-conceived proposal.

Sincerely,

Andrew K. Black  
President, LEGO Systems, Inc.

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<sup>1</sup> Given ease of completing a pre paid postcard, we believe 25% electronic response rate is an overly optimistic estimate.

<sup>2</sup> Costs do not include purchase cost of post card insertion equipment and annual operating costs or labor costs if not possible to automatically pack into product as well as any increases in packaging costs to allow for post cards in packages.

cc: Peter Arakas, LEGO Systems, Inc.  
Francis Olbrych, LEGO Systems, Inc.  
Jan Klejs Pedersen, LEGO System A/S

PA/FO/jls/CFApetitionSep01.doc

*PMJ  
NO comment  
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**THE ART & CREATIVE MATERIALS INSTITUTE, INC.**

1280 Main St., P. O. Box 479  
Hanson, MA 02341 USA  
Tel. (781) 293-4100  
Fax (781) 294-0808  
www.acminet.org  
e-mail: debbief@acminet.org

September 28, 2001

Office of the Secretary  
Consumer Product Safety Commission  
Room 501  
4330 East-West Highway  
Bethesda, MD 20814

**RE: PETITION CP 01-01, PETITION FOR PRODUCT REGISTRATION CARDS  
(66 Federal Register 148) (August 1, 2001)**

*In response to the Notice of Petition for a rule requiring product registration cards for products intended for children, The Art and Creative Materials Institute, Inc. (ACMI) is pleased to submit the following comments. ACMI is an international non-profit association of manufacturers of art and creative materials who are committed to providing non-toxic products to children and products that have been evaluated for toxicity risks, and, if any, labeled with cautionary warnings and safe use instructions for adult consumers. ACMI's certification program began evaluating children's art materials as non-toxic in 1940 and continues to this day. Its program was expanded in 1982 to evaluate and properly label adult art materials as well. No art material product certified by ACMI under the Labeling of Hazardous Art Materials Act of 1988 (LHAMA) has ever had to be recalled since the law was enacted. Nevertheless, we share CPSC's concerns for improving recall effectiveness.*

The Notice of Petition explains that the Commission is considering the petition of the Consumer Federation of America to issue a rule requiring manufacturers (or distributors, retailers, or importers) of products intended for children to provide along with every product a Consumer Registration Card that allows the purchaser to register information, through the mail or electronically. The petitioner stated that a registration card system would improve the effectiveness of product recalls.

#### Scope of the Proposal

ACMI urges CPSC, in its consideration of this subject matter, to better define the scope of products to be covered under this rule or to include exemptions for products intended for children that would address the following issues:

- 1.) Products, such as most art and craft materials meant for children, that are not expensive should be exempted from this requirement, since very few consumers would bother to complete product registration cards for inexpensive items. Costs of implementation could very well double the price of the items.
- 2.) Products, such as chalk, finger paints and other art and craft materials, that have a very short expected usage, i.e. that are consumed over a limited time span, such as one year or less, should be exempted from this requirement for the same reasons as stated above.
- 3.) Products, such as children's art materials that conform to LHAMA and ASTM D 4236, should be exempted from this requirement, since they have been evaluated pre-market for non-toxicity and are unlikely to be involved in recalls. Art and craft materials in the certification program of ACMI are thoroughly evaluated and tested for any acute or chronic hazards under FHSA, including LHAMA. These evaluations are based on conservative risk and exposure assessments, which were developed by ACMI's consulting toxicologist at Duke University Medical Center and which meet or exceed requirements of LHAMA and FHSA.

For these reasons, ACMI would not see any health-related need to require product registration cards for children's art and craft materials.

#### Requirements of the Proposal

ACMI believes that the proposed system requirements of collecting only consumer contact information for use only to advise the purchaser of recall and other safety information is a costly duplication of effort whenever product registration cards are presently used for other reasons. Current

product registration cards could be modified to collect any desired information, provided: (1) the purchaser is advised why each type of information is being requested and what information is optional, and (2) appropriate priority is given to the reasons for safety information. However, it is unreasonable to expect consumers to complete these cards for items that are low in cost and are consumed in a short time. It would constitute a colossal record-keeping burden for companies selling literally millions upon millions of art materials (e.g., crayons) per year.

#### Conclusion

As a major contributor to the development of ASTM D-4236, the pioneering chronic hazard labeling standard for art materials, the development of LHAMA, and a member of the Poison Prevention Week Council, ACMI is committed to the provision of safe products and information to consumers of its members' products and is pleased to submit these comments for consideration by CPSC.

Respectfully submitted,

Deborah M. Fanning, CAE  
Executive Vice President

Of Counsel: Neville, Peterson & Williams  
80 Broad Street, 34th Floor  
New York, NY 10004

cc: Woodhall Stopford, M.D.

*Prod reg comm 20*

# THE CHILDREN'S PLACE

**Via Facsimile**  
**301-504-0127**

October 1, 2001

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

**Re: Petition CP 01-01 Petition for Product Registration Cards**

Dear Sir or Madam:

On behalf of The Children's Place Retail Stores, Inc. ("The Children's Place") I am writing to express our strong opposition to the proposal of Consumer Federation of America to require a Consumer Registration Card for Products Intended for Children.

The Children's Place is a specialty retailer of high quality, value-priced apparel and accessories for children, newborn to age twelve. The Company designs, contracts to manufacture and sells its products under "The Children's Place" brand name. As of August 2001, the Company operated 490 stores in 42 states and also sells its merchandise through its World Wide Website located at [www.childrensplace.com](http://www.childrensplace.com).

The Children's Place opposes this proposal because we believe that it would have a negligible impact in promoting safety or providing for more efficient recalls. Not only does this proposal have marginal benefits to consumers, but it also comes at an enormous expense on the part of manufacturers, importers and retailers.

Statistics show that, unlike products such as household appliances and toys which have been subjected to many recalls, recall actions of children's clothing and shoes represent a very small fraction of the apparel and footwear sold for children each year. The Children's Place believes that if this proposal is accepted by the CPSC, we would incur enormous costs to produce, distribute and maintain information relating to goods that will never be subject to a recall. At the same time, we will be asked to maintain an accurate registration database with information that will most likely be outdated within a short period of time and which holds no obvious benefit for improving consumer safety.

For retailers, importers and manufacturers, such as The Children's Place, a product registration card for each garment and footwear comes at a substantial cost, including: the costs of pre-paid postage on product registration cards that are returned; the costs of designing and printing the product registration cards for each name and style number of all products; the costs of logistics and tagging to ensure that each garment is sold with the correct tag; the costs associated with complying with the CPSC reporting requirements regarding return rates of the registration cards;

Consumer Product Safety Commission

October 1, 2001

Page 2

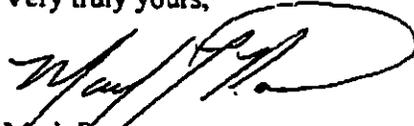
and the costs associated with developing and maintaining a record retention system for these registration cards.

Not only does the proposal require registration cards for each garment but it also requires the manufacturer to retain the cards on file for 20 years or the useful life to the product, whichever is longer. For many of our products, it is impossible to know when the useful life of the product ends. Many of our garments are durable enough to be passed down to siblings or other children; while other garments may be discarded after only one user. Likewise, there are many instances where our apparel and footwear items are purchased by relatives and friends. In those cases, the initial purchaser of the item is not the end user of the item. Moreover, census data has shown that the U.S. population is increasingly mobile. Over the minimum 20-year retention period, many of the address cards will become outdated as people move from one place to another. Consequently, the effectiveness of the product registration database would be greatly diluted.

Product recalls for apparel and footwear are already handled in a fairly effective manner. Firstly, apparel and footwear companies do their utmost to ensure compliance with the pertinent regulations (including flammability, small parts, sharp edges, drawstrings and lead paint). Secondly, garments already carry hang tags and other labels that convey important consumer, safety, care and origin information that is deemed important and necessary by federal agencies, including the CPSC. The addition of a product registration card to each garment would interfere with the required federal markings (including safety hangtags for children's tight-fitting sleepwear), increasing the likelihood that none of the safety, consumer and care markings is read or understood by the consumer at the point of purchase. Thirdly, in those rare instances where a potentially unsafe clothing product or defect does appear in the marketplace, manufacturers and retailers promptly take the necessary steps to recall the product at various stages of the distribution chain. Customers for clothing and footwear items, are generally not interested in returning product registration cards for clothing and footwear primarily because of the perception that many of these products will be short lived or because they are relatively inexpensive. Furthermore, many customers are not likely to risk what will no doubt be perceived to be a loss of privacy to provide such information to the retailer or manufacturer despite the fact that the cards would state that the information would be used only in the event of a recall. Given these concerns, we would expect this proposal to achieve even lower return rates and we do not see how this will significantly improve recalls.

For the foregoing reasons, The Children's Place strongly objects to this proposal and urges the CPSC to dismiss the petition.

Very truly yours,



Mark Rose

Vice President - Manufacturing



*Product Registration Cards  
10/1/01*

October 1, 2001

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Comments of U.S. Public Interest Research Group on Petition CP 01-01, Petition for Product Registration Cards (66. Fed. Reg. 39737)**

The U.S. Public Interest Research Group (U.S. PIRG) respectfully asks that you accept our comments on Petition CP 01-01, Petition for Product Registration Cards. We urge the Consumer Product Safety Commission (CPSC) to grant Consumer Federation of America's petition requesting a rule requiring that Consumer Registration Cards be provided with products intended for children. U.S. PIRG agrees with CFA that the Consumer Registration Cards should be used for the sole purpose of facilitating notice to consumers in the event of a recall or other important safety information.

U.S. PIRG urges CPSC to begin rulemaking on Consumer Registration Cards for the following reasons: 1) most consumers do not find out about recalls of consumer products due to public information campaigns (rather than individual notification); 2) even consumers who are informed of product recalls find it difficult to determine if they own the product, due to the long useful life of children's products and the use of one product by many children; and 3) the "marketing" or "warranty" cards currently used by some manufactures are lengthy, intrusive, and are so clearly used for marketing purposes, that consumers do not fill them out.

Most consumers are not informed of most product recalls. Less than 20% of consumers who purchase recalled products ultimately find out about the recall. Consumers' lack of critical product recall information leads to dangerous consequences for consumers. The impact of this lack of information particularly affects children. Despite the fact that CPSC occasionally announces recalls publicly, through national television and through programs coordinated with national toy stores and pediatricians offices, many consumers do not find out about recalled products. Most consumers remain uninformed about the dangers that may remain in their homes.

No recall more effectively demonstrates the dire need for Consumer Registration Cards and the inadequacy of the current public recall notification "system" than that of Burger King's recall of the Pokemon case. In December 1999 Burger King recalled 25 million Pokemon cases that it had distributed as a toy premium. The Pokemon cases posed severe suffocation dangers to young children. CPSC and Burger King announced this recall widely. As part of the recall:

- More than 8,100 Burger King restaurants posted recall notices in both English and Spanish;
- Burger King placed an ad in USA Today;
- CPSC broadcast a video news release and announced the recall on the Today Show reaching millions of viewers;
- Burger King worked with the CPSC to send recall notices to 56,000 pediatricians' offices, 10,000 emergency room directors and 25,000 emergency health care clinics across the country;
- Notices were posted on the CPSC and Burger King web sites, and on web sites frequented by Pokemon fans and parents; and
- Recall notices were posted on tray liners, carry-out bags and french fry bags as well.

Despite this extensive public outreach, which is more the exception than the rule for recalled products, an additional child died after suffocating on the Pokemon case. The care-giver of this child said that they had not heard about the product recall nor the dangers associated with the product. The fact that extensive public outreach was ineffective in preventing further deaths, supports the need for a recall notification system that is personalized. The vast benefit of Consumer Registration Cards will be that every person who actually purchases and registers the product will be notified of the recall or other safety information.

Many consumers who are informed of the recall through public means find it difficult to determine if they actually own the product subject to the recall. This difficulty often results in stressful and time-consuming uncertainty until the determination of ownership of the recalled product is made. The use of many children's products by numerous children, as well as the potentially dangerous consequences of this lack of safety information makes direct to consumer notification of recalled products all the more critical.

PIRG believes that the "marketing" or "warranty" cards currently provided with certain consumer products are ineffective as a safety communication tool because of the irrelevant and intrusive information they require from consumers. The consequence is that consumers don't fill out these cards because the long litany of questions about their purchasing histories and future expected purchases leads them to believe that these cards are used for marketing rather than safety purposes. Consumers need a mechanism, such as the Consumer Registration Card, that will not only be effective as a safety alert mechanism, but that also will be used solely for this important purpose.

As the petition asserts, a Consumer Registration Card should 1) collect only information needed to contact the purchaser (e.g., name and address or email address; 2) have the postage paid by the manufacturer (distributor, retailer, or importer); 3) provide the name and model number of the product purchased; and 4) state that the information collected will only be used to advise the purchaser of a recall or other safety information. U.S. PIRG supports these four elements of the Consumer Registration Card.

U.S. PIRG also urges the CPSC to promulgate a rule that would require the manufacturer (distributor, retailer, or importer) to maintain this information for a minimum of 20 years, or the useful life of the product. The fact that many different children, sometimes in different generations, may use a juvenile product compels this maintenance of safety information for at least 20 years. In addition, U.S. PIRG supports the petitioner's request for the rule to require manufacturers (distributor, retailer, or importer) to provide reports to CPSC on the return rates of these Consumer Registration Cards.

In conclusion, the hazards associated with many of the children's products that are recalled can result in serious injury or death. The current public information efforts used to communicate vital safety information are not reaching enough consumers. Consumers need to be informed individually about product safety recalls and must be assured that their private information be used solely for product safety information. We strongly support Petition CP 01-01, Petition for Product Registration Cards (66 Fed. Reg. 39737) and we urge the CPSC to initiate a rulemaking to promulgate requirements for Consumer Registration Cards.

Sincerely,

Rachel Weintraub  
Staff Attorney

Stevenson, Todd A.

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From: Rachel Weintraub [rweintraub@pirg.org]  
Sent: Monday, October 01, 2001 12:29 PM  
To: cpsc-os@cpsc.gov  
Subject: U.S. PIRG Comments on Petition CP- 0101, Petition for Product Registration Cards



CPSA Comments-  
consumer regist... U.S. PIRG respectfully submits the attached Comments on CP- 0101, Petition  
for Product Registration Cards.  
Thank You.

-Rachel Weintraub

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Rachel Weintraub  
Staff Attorney

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