



Publisher of Consumer Reports

Paul  
won  
cards  
amount 23

Office of the Secretary  
Consumer Product Safety Commission  
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**Comments of  
Consumers Union of U.S. Inc.  
to the  
Consumer Product Safety Commission  
on  
Petition CP 01-01  
Petition for Product Registration Cards**

**Introduction**

Consumers Union<sup>1</sup>, (CU) publisher of *Consumer Reports*, believes strongly that the system currently in place by which manufacturers of children's products agree to recall products needs substantial improvement. We therefore welcome the opportunity to provide comments in support of: "Petition CP 01-01, Petition for Product Registration Cards" filed by the Consumer Federation of America (CFA) calling for product registration cards to accompany products intended for use by children.

Too often when a recall takes place, manufacturers are unable to identify the purchasers of their products. Experience at another federal agency with recall registration cards suggests that more effective recall notification systems will lead to

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<sup>1</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

higher rates of products returned for refund, repair or replacement. If this petition is granted, we believe it would result in improved safety for children, America's most vulnerable consumers.<sup>2</sup>

Among the serious problems with the current product registration system is the *warranty registration cards* that are widely distributed by product manufacturers. As currently utilized, these cards are not an adequate source of consumer data to work as a recall database. These cards typically ask a variety of questions that have no relationship to safety, including about such diverse topics as household income, profession, hobbies, marital status, number of children, whether one rents or owns a home – in short, the kind of information that sends a message to consumers that the manufacturer is seeking primarily marketing information and consumer data, rather than the ability to contact the consumer in the event of a safety recall. Indeed, these warranty cards have generally steered away from mentioning their usefulness should there be a recall, possibly for fear of scaring customers. It is likely that many consumers do not complete and mail the cards so as to avoid receiving marketing literature or compromising their privacy.

The low return rate on these warranty registration cards is predictable, and contributes to hampering the manufacturer's ability to contact customers when a product is recalled.

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<sup>2</sup> We would not support allowing a product registration program, however, to obviate the need for public notice of a recall since a significant number of products used by children are passed down from family to family or sold at garage sales, second hand stores, etc. These programs would instead supplement one another with the goal of informing as many consumers as possible about a safety recall.

## **Jurisdiction to Require More Stringent Product Registration provided under the Consumer Product Safety Act**

Under the Consumer Product Safety Act, Section 16 (b), the CPSC is authorized to require manufacturers, private labelers and other distributors of consumer products to "...establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this Act. Or to determine compliance with rules or orders prescribed under this Act..."

This section clearly indicates that CPSC has the jurisdiction to improve the product registration system and that the agency needs no additional legislation in order to carry out the petition's goals.

### **Purpose of Petition**

We support the petition's goal of requesting that the Consumer Product Safety Commission (CPSC) issue a rule "requiring 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." We also support the CFA's request that the CPSC issue rules requiring that:

- The remedy for recalls of products intended for children remain in effect as long as the affected company is in business, including operating under new corporate ownership, and
- Identification information be permanently provided on every product intended for children. We leave to the CPSC's discretion to decide when placing such product registration information on a product is not practical.

## Information CPSC Should Require Manufacturers and Others Relevant Parties to Maintain Under This Petition

The petition requests that the CPSC require registration cards do the following:

1. Collect only information needed to contact the petitioner, eg., name and address or email address.
2. Have postage paid by manufacturers.
3. Have the name and model number of the product purchased stamped on the cards.
4. State that the information gathered will be used only to advise the purchaser of a recall or important safety information.
5. Offer an incentive to register the product. For example, General Electric (GE) enters into a weekly drawing those consumers who register a GE microwave oven, enabling them to win a GE appliance each week and including a monthly drawing for \$1000 cash. We believe that this type of incentive program could be successfully replicated by child product manufacturers.

The petition also asks that electronic registration be made available. We agree that consumers should have the option to file their information on-line at a specially designated place within the manufacturer's website for product registration. The information gathered should again be limited to the information cited above, including the specific product information, and should be accompanied by guarantees that the privacy of the consumer's information will be protected.

In addition to the above recommendations for gathering recall information in this specific manner, CU offers the following additional recommendations:

1. We believe that the consumer's fax and cell phone numbers should be requested as well as the other more traditional contact numbers. If the information is only being used in the event of a recall, then having as many possible means of contact consumers makes sense.
2. CPSC should require the year of manufacture of the product be added to information stamped on recall registration card and the card be pre-addressed to the manufacturer.
3. We also suggest an addition/substitution to the message on the registration card: "Fill this card out immediately and mail it. Postage is paid. We can only contact you in the event of a recall only if you complete this card and mail it back to us."

Some commenters voicing the industry perspective have argued that consumers won't fill out these cards.<sup>3</sup> We would agree that such a system isn't likely to result in 100% registration, but the statistics we cite below describing registration of car seats does promise a great improvement in current numbers of consumers registering their products. As with child restraints, the products that are the focus of this petition affect children, and most parents have heightened concern about protecting their children from danger.

### **Child Restraint Regulations Provides Model for Registering Child Products**

#### **A. A good model for requiring registration of children's products exists.**

Since September of 1992, manufacturers of child restraint systems have been required under the National Highway Traffic Safety Administration (NHTSA)'s Standard

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<sup>3</sup> "...an old style registration card...is not necessarily or particularly going to be effective on a variety of product categories." Comments of Rick Locker, representing the Juvenile Product Manufacturers of America at a CPSC forum on Recall Effectiveness, March 23, 1999.

213 (49 CFR Parts 571 and 588, Docket No. 74-09; Notice 26, Fed. Reg. September 10, 1992) to provide postage-paid registration forms with each seat. NHTSA issued this rule in response to a petition from the Center for Auto Safety and Consumer Action of San Francisco.

According to NHTSA, from 1981 to 1991, almost 18 million child restraints were recalled. Only 13% of these restraints were remedied or removed from use. From 1990-1991, nearly 12 million restraints were recalled. Only 11% of those were remedied or removed from use.

According to NHTSA, the average completion rate for recalls of child restraints went from 25% to 50% after the child restraint registration system was put in place. This suggests that it is reasonable to expect that a more rigorous registration system will succeed in getting more products subject to recall under CPSC's jurisdiction repaired or out of circulation.

NHTSA noted when it issued the rule that consumers who did learn of child restraint recalls were very concerned; NHTSA's Auto Hot Line received 30,000 calls during a child restraint recall prior to the promulgation of the 1992 regulations. This led the agency to conclude that "...many owners are highly motivated and would return a recalled seat for a remedy, if they knew it had been recalled." The same undoubtedly holds true for other baby products. Consumers who have heightened concerns about safety when their children are using a product are more likely to respond when informed of a recall, and notification is critical to the success of any recall campaign.

Before finalizing this regulation, NHTSA conducted a study of consumer attitudes about the proposed registration program, with participants asked to evaluate five different registration forms. The focus group members preferred a postage paid pre-

addressed card with an uncluttered graphic design that clearly and succinctly communicated the benefits of registration in the event of a recall, that differentiated itself from a warranty registration card, and required minimal time and effort on the consumer's part.

**B. NHTSA's child restraint registration card requirements**

- NHTSA's regulation standardizes the text and layout of the registration form. Manufacturers must preprint their return address, along with information identifying the serial number, model name or number of the restraint. The form must be attached to the seat to insure the consumer will notice it.
- All registration cards for child restraints must include this motivational text:  
**Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to [insert address of manufacturer] or call [insert phone number of manufacturer]. For recall information, call the U.S. Government's Auto Safety Hotline at 1-800-424-9393 (202-366-0123 in DC area).**

We ask CPSC to use this or a substantially similar format. We recommend adding a statement that this information will be used only in the event of a product recall, and that the consumer's privacy rights will be fully protected by the manufacturer.

- Under NHTSA's rule, manufacturers must keep records of the names and addresses of persons who have returned the registration form for at least 6 years. As noted above, we support the petitioner's call for manufacturers to keep this information for an indefinite period of time because baby products are so

often handed down to younger children and to relatives within families. The result is that they may be in use for many more than 6 years.

In addition, NHTSA officials have discovered since the 1992 regulation went into effect that companies have been lax about keeping records of registered products by product category model and year. The failure of the regulations to spell out the obligation to maintain that information has meant less specific data is available about recalls. We suggest CPSC avoid that mistake by requiring both registration information before a recall and recall completion information after the recall be maintained by model and year by the manufacturer and reported annually to CPSC; this information should also be made available to the public.

- NHTSA also requires under its rule that the product be labeled with the address and telephone number of the manufacturer, a requirement we recommend to the CPSC.
- NHTSA specifies a minimum size for the registration form so that the part to be returned to the manufacturer would be mailable as a postcard, which we also support.

While CU strongly endorses this effort to improve the current recall system, we would be remiss if we didn't recognize that recalls fall far short of reaching the majority of owners once the products are purchased and the packaging discarded. An evaluation of CPSC's fast track recall program in 1998 estimated that manufacturers couldn't account for 70-90% of sold infant products after they have been recalled. Certainly we must improve the recall rates, and if this petition is granted and new rules put into effect, that will likely happen.

While improving the product registration rates for children's products must be the highest priority, CPSC's Annual Report for 2000 indicates there were 288 recalls in the previous year alone, involving more than 90 million consumer product units. Many of these are products used primarily by adults. Clearly getting recall information to those consumers needs to be a high priority too. After acting on this petition, we urge the CPSC to move quickly to improve the product registration system across the board, and help insure that consumers are made aware of all product dangers and can remedy them as quickly and effectively as possible.

### **Conclusion**

Consumers Union believes that increasing the success of the recall system is critically important. Recall effectiveness is literally a matter of life and death. That is why we strongly support the CFA petition to require a more effective, well-documented registration system for children's products. We urge the CPSC to grant this petition expeditiously, adopting the suggestions CU and others have made to strengthen the petition in specific areas.

October 1, 2001

Respectfully Submitted,

**CONSUMERS UNION OF U.S. INC.**

R. David Pittle  
Senior Vice President  
and Technical Director  
(914) 378-2000

Sally Greenberg  
Senior Product Safety Counsel  
(202) 462-6262

Stevenson, Todd A.

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From: Knox, Camille [KnoxCa@consumer.org]  
Sent: Monday, October 01, 2001 5:04 PM  
To: 'cpsc-os@cpsc.gov'  
Subject: Petition CP 0101-01, Petition for Product Registration Cards



1001Recall Petition to  
CPSC CU...

Attached in MS Word '97 format is Comments from Consumers Union.

Any problems, please contact Sally Greenberg or Camille Knox at (202)  
462-6262



October 1, 2001

VIA Email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

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

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

Dear Madam:

These comments are submitted on behalf of the Consumer Specialty Products Association (CSPA) regarding the Petition Requesting a Rule Requiring Product Registration Cards for Products Intended for Children, 66 Federal Register 39737. CSPA is voluntary trade association composed of 215 companies engaged in the manufacture, formulation, distribution and sale of non-agriculture pesticides, antimicrobials, detergents and cleaning compounds, industrial and automotive specialty chemicals and polishes and floor maintenance products for household, institutional and industrial uses.

While the petition would not extend to many products that CSPA represents, some of our member companies make products that are "intended for children" such as school supplies. Our sole concern with the petition is its scope. We understand that the primary interest of the petitioners is with juvenile products such as furniture and pacifiers. Therefore, we request that any forthcoming rule focus specifically on these types of products, and not cover all products that may be "intended for children."

CSPA appreciates the opportunity to comment on this petition.

Sincerely,

Brigid D. Klein  
Senior Counsel

Serving Makers of Formulated Products for Home and Commercial Use Since 1914.

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900 17<sup>th</sup> Street, NW • Washington, DC 20006 • T: 202.872.8110 • F: 202.872.8114 • [www.cspa.org](http://www.cspa.org)

Stevenson, Todd A.

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From: Brigid D. Klein [bklein@cspa.org]  
Sent: Monday, October 01, 2001 4:45 PM  
To: cpssc-os@cpssc.gov  
Subject: CSPA comments re Petition CP 01-01



cpsscpetition1.doc

Attached please find the comments of CSPA regarding the Petition CP 01-01, Petition Requesting Registration Cards. Thank you.

Brigid D. Klein  
CSPA  
Senior Counsel  
202-872-8110  
bklein@cspa.org



NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES

*Print  
New  
card  
comment 25*

October 1, 2001

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

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

Dear Mr. Stevenson:

On behalf of the National Association of Chain Drug Stores (NACDS) I submit the following comments on the recent petition to have the Consumer Product Safety Commission (CPSC) 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 allowing the purchaser to register information, through the mail or electronically." See 66 Fed. Reg. 39737 (August 1, 2001). NACDS opposes the petition, and urges CPSC to deny the petition. This proposal is unworkable and excessive, and would ultimately provide little or no benefit to consumers.

413 North Lee Street  
P.O. Box 1417-D49  
Alexandria, Virginia  
22313-1480

NACDS members are more than 180 retail chain community pharmacy companies. The NACDS membership base operates over 34,000 retail community pharmacies with annual sales totaling over \$400 billion. Additionally, NACDS membership includes over 1,300 suppliers of goods and services to chain community pharmacies.

It would be virtually impossible to define and identify the types of products covered by the requested regulation. An average chain drug stores stocks more than 25,000 products, and in the course of a year the number of products stocked may exceed 80,000. Many of these products are intended for use by children or both adults and children. It is not feasible to hold retailers responsible for determining the age of the intended consumers. For example, retailers should not be required to determine whether a candy bar, a comb, a toothbrush, or other similar household items are intended for children.

Moreover, providing registration cards for such products would be unduly burdensome and unhelpful. This is especially true for consumables and other products that are used quickly. For example, parents are unlikely to return a registration card with every package of disposable diapers they purchase for their children, and even if they did return the card the diapers would be used before the card would be used for any conceivable health or safety purpose. It is also unlikely that a registration card for a product purchased by a child would be completed and returned.

(703) 549-3001

Fax (703) 836-4869

www.nacds.org

The costs associated with providing a card, return postage and associated data storage would be significant. A separated database would be required to protect privacy, thus adding millions of dollars to the cost of the program. These costs would be passed to consumers, raising the retail prices of goods without any measurable benefit.

The proposed rule would have little benefit for product safety. The return rate for the cards would likely be very low, especially among consumers who have privacy concerns. In addition, during the proposed 20-year span that retailers would be required to retain the information, consumers addresses and circumstances would likely change. Finally, purchasers would be unlikely to return a registration card for an inexpensive product such as a plastic toy that might be discarded within days.

For these reasons we urge the Commission to reject the petition. Please contact me or David Lambert at (703) 549-3001 if you have any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Lawrence Kocot", written in a cursive style.

S. Lawrence Kocot  
Senior Vice President and General Counsel

**Stevenson, Todd A.**

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**From:** Lacy Dyer [LDyer@NACDS.org]  
**Sent:** Monday, October 01, 2001 4:12 PM  
**To:** 'cpsc-os@cpsc.gov'  
**Cc:** Don Bell  
**Subject:** Petition CP 01-01, Petition for Product Registration Cards

<<CPSC-10-01-01.doc>>

Lacy Dyer  
Administrative Assistant, Government Affairs  
National Association of Chain Drug Stores  
413 N. Lee Street  
Alexandria, VA 22313  
703-837-4223



**NATIONAL RETAIL FEDERATION**

*Paul  
Worland's  
Comment  
26*

October 1, 2001

Todd Stevenson, Acting Secretary

Office of the Secretary

Commission Product Safety Commission

Washington, D.C. 20207

**RE: Petition Requesting Rule Requiring Product  
Registration Cards (66 Fed. Reg. 39,737 (2001))**

Dear Mr. Stevenson,

The National Retail Federation respectfully submits these comments on behalf of its membership. The National Retail Federation (NRF) is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people -- about 1 in 5 American workers -- and registered 2000 sales of \$3.1 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF

*The World's Largest Retail Trade Association*

Liberty Place, 325 7th Street NW, Suite 1100  
Washington, DC 20004  
202.783.7871 Fax: 202.737.2848  
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also represents 32 national and 50 state associations in the U.S. as well as 36 international associations representing retailers abroad. NRF members sell millions of different items that might be affected by this petition and have a strong interest.

## I. INTRODUCTION

The Consumer Product Safety Commission (the "Commission") has requested comments regarding a petition filed by the Consumer Federation of America ("CFA").<sup>1</sup> In its petition CFA requests that the Commission 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 allowing the purchaser to register information, through the mail or electronically. NRF's comments provided below address this petition and also supplement its comments pertaining to a public forum concerning identification of purchasers of consumer products to enhance recall effectiveness, held by the Commission on March 23, 1999.<sup>2</sup>

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<sup>1</sup> Petition of Consumer Federation of America to U.S. Consumer Product Safety Commission, June 21, 2001, referenced in 66 Fed. Reg. 39,737 (2001).

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## II. SUMMARY

For the reasons discussed below, NRF opposes the CFA petition, as well as any similar action by the Commission to require retailers to distribute, collect, process, or maintain consumer registration of products "intended for children" or otherwise. In summary, our opposition is based on the following considerations:

- The Commission lacks legal authority to mandate such extensive record keeping requirements for U.S. retailers.
- Implementation of such a program is not reasonably feasible while at the same time protecting consumer privacy.
- The proposal raises serious concerns relating to its likely anti-competitive effect on the U.S. retail industry.
- The proposal would inevitably drive up the prices of many consumer products, particularly for young families who can least afford the increases.

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<sup>3</sup> Letter from Sarah P. Whitaker, National Retail Federation, to Chairman Ann Brown, Consumer Product Safety Commission, "Purchaser Identification,"

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- There is little supporting analysis demonstrating that the goal of increasing recall effectiveness would be achieved by imposing additional burdens on U.S. industry.

For these reasons, NRF urges the Commission to deny the petition.

### III. THE COMMISSION'S LEGAL AUTHORITY

The Commission's authority originates in the Consumer Product Safety Act ("CPSA") (15 U.S.C. § 2051 *et seq.*). As stated in the *Federal Register* notice for this proceeding, the General Counsel of the Commission believes that the appropriate authority for requiring product registration cards is section 16(b) of the CPSA (15 U.S.C. § 2065(b)). We disagree that the CPSA provides such authority.

Under Section 16(b), "[e]very 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 the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or

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March 5, 1999.

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to determine compliance with rules or orders prescribed under this chapter.”

[Emphasis added.] Retailers are nowhere mentioned in this section.

Section 2052(a)(5) defines “distributor” as “a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that *such term does not include a manufacturer or retailer of such product.*” [Emphasis added.] Section 2052(a)(6) defines “retailer” as “a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.” Congress was well aware of the definition of “retailer” and chose to exclude retailers from section 16(b), while referencing retailers in other sections of the Act. Thus, section 16(b) cannot be read to authorize the Commission to impose record keeping requirements, such as those proposed, upon retailers.

The legislative history in both the House and Senate during development of the CPSA demonstrates Congressional policy underlying the non-authorization of record keeping rules applicable to retailers. First, throughout the legislative process, Congress and the National Commission on Product Safety demonstrated continuing concern for the potential of adverse impact on retailers and small businesses (A substantial percentage of NRF members represent small

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businesses).<sup>3</sup> Second, the legislative history demonstrates a Congressional judgment to place primary compliance responsibility for unsafe products upon manufacturers who design and produce products. In this Congressional scheme of product safety regulation, retailers are conduits for selling products, not for implementing burdensome regulations.

The report of the Senate Commerce Committee concerning the Consumer Product Safety Act of 1972, discussing record keeping requirements, indicates that the Committee was concerned with the burden that would be imposed by such requirements on business, particularly on small business. The report states:

Subsection (b) of section 314 [of S.3419] authorizes the Commission to establish by regulation requirements for record keeping related to the safety of consumer products. This provision

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<sup>3</sup> See, e.g., 15 U.S.C. § 2056(c) (contribution by Commission to standard development costs); 15 U.S.C. § 2058(b) (reliance on voluntary standards); 15 U.S.C. § 2063(a) (certification of compliance to retailers); 15 U.S.C. § 2068(b) (exception for retailers holding certificate from manufacturer); and 15 U.S.C. § 2069 (b) and (c) (size of business must be considered in civil penalties).

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was expressly limited to safety related records by the Committee in order to avoid any undue hardship on small business.<sup>4</sup>

In the House debate, Congressman Broyhill of North Carolina (the Ranking Minority Member of the Consumer Subcommittee) stated that the "strongest concern is to make sure that when consumer legislation is clearly needed, such legislation provides an environment in which business can flourish under the free enterprise system while providing consumers the protection and information which is their right."<sup>5</sup>

As to the intent to exclude retailers from the record keeping requirements of the Act, the House Commerce Committee Report is directly on point:

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<sup>4</sup> Senate Commerce Comm., Consumer Safety Act of 1972, S. Rep. No. 92-749 (1972), *reprinted in* The Consumer Product Safety Act Text, Analysis, Legislative History, Bureau of National Affairs, Inc., Appendix C at 61, 97 (1973).

<sup>5</sup> Excerpts from Debate on Floor of House (from Cong. Rec. for Sept. 20, 1972, H 8565), *reprinted in* The Consumer Product Safety Act Text, Analysis, Legislative History, Bureau of National Affairs, Inc., Appendix H at 247, 259 (1973).

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Section 16(b) gives the Commission authority to require manufacturers, private labelers, or distributors of consumer products to establish and maintain such records, make such reports, and provide such information as the Commission may reasonably require for purposes of implementing this act or to determine compliance with applicable rules or orders. *It should be noted that this authority does not extend to retailers who are not also manufacturers, private labelers, or distributors (as defined in section 3 of the bill). Such persons have been excluded by the committee in the belief that mandatory customer record keeping requirements could prove unduly burdensome for a large number of small retailers and could materially add to the costs of consumer products. Manufacturers, of course, are free to develop such arrangements with their retailers as they may believe are necessary to facilitate the efficient and economic recall and remedy of defective and nonconforming consumer products. Such arrangements will remain a matter of private agreement (emphasis added).*<sup>6</sup>

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<sup>6</sup> House Commerce Comm., Consumer Product Safety Act, H.R. Rep. No. 92-1153 (1972), reprinted in *The Consumer Product Safety Act Text Analysis*.

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It is important to note that the House Bill (H.R. 15003) ultimately became the final version of the legislation and was accepted by the Conference Committee.<sup>7</sup>

The legislative history also indicates that the Senate considered providing the Commission with authority "to establish, by order at any time, procedures to be followed by manufacturers or importers, including procedures to be followed by distributors, dealers and consumers to assist manufacturers or importers in securing and maintaining the names and addresses of the first purchasers (other than dealers or distributors) of consumer products for which consumer product safety standards have been promulgated. . . . The Commission shall consider . . . the burden imposed upon the manufacturer or importer by requiring the maintenance of the names and addresses of the first purchasers (including the cost to consumers of such maintenance)."<sup>8</sup> These provisions were not included in the final CPSA. Deletion of these provisions is further persuasive

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Legislative History, Bureau of National Affairs, Inc., Appendix G at 211, 234 (1973).

<sup>7</sup> Conference Report, H.R. Rep. No. 92-1593 (1972), *reprinted in* The Consumer Product Safety Act Text, Analysis, Legislative History, Bureau of National Affairs, Inc., Appendix J at 311 (1973).

<sup>8</sup> S. 3419, § 309(b), *reprinted in* The Consumer Product Safety Act Text, Analysis, Legislative History, Bureau of National Affairs, Inc., Appendix F at 193, 205 (1973).

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evidence that Congress did not intend the Commission to have such general authority.

We conclude that the Commission has no legal authority to impose such a general record keeping requirement on retailers.

## IV. DEFINING PRODUCTS INTENDED FOR CHILDREN

Neither the CFA petition nor the Commission's regulations define "products intended for children."<sup>9</sup> Without a clear definition of the targeted products, the scope of any proposed rule would be excessively broad and ambiguous. It could encompass literally thousands of products from small toys that are included free in fast-food meals for children, to complete bedroom furnishings for a child's room, to all-terrain vehicles. In addition, many products that may generally be considered adult products (e.g., hair dryers) may be used by "children" at a certain age. Few existing product safety regulations specify an age group for the broad term "children." The CFA petition is not clear as to the

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<sup>9</sup> For example, the scope of the CFA petition appears broader than the products covered by the Federal Hazardous Substances Act (15 U.S.C. § 1261 *et seq.*), and the implementing regulations (16 C.F.R. § 1500.18), banning toys and other articles intended for *use by* children.

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specific set of products it purports to cover. Therefore, without a definition of the scope of the rule, the burden imposed on business in implementing such a sweeping program is entirely unreasonable.<sup>10</sup>

## V. THE COST BURDEN ON COMMERCE

The extent of the economic burden<sup>11</sup> imposed by the proposal would be significant, considering the number of affected products. One large retailer-member of NRF selling a variety of products and models, with hundreds of stores, estimates that it maintains a stock of over 1,000,000 stock-keeping units ("SKUs"). A mid-size retailer member estimates that its stores maintain approximately 3,500 SKUs that could fall within the scope of the proposed rule, with an additional 18,000 SKUs available through catalogues or the Internet.

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<sup>10</sup> We also note that the references CFA uses to support its position that registration cards would enhance recall effectiveness are dated (1974, 1980, 1982), well before the Commission began posting, and the public began accessing on a broad scale, recall notices on the Internet. It is not certain that any conclusions regarding registration cards in these references remain valid, given the current and potential use of the more technologically advanced means of notifying consumers of recalled products.

<sup>11</sup> In its regulations, the Office of Management and Budget defines a recordkeeping "burden" as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including various activities (listed in the regulations) associated with the recordkeeping requirements. 5 C.F.R. § 1320.3(b)(1).

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Establishing and maintaining a database for product registrations with currently available technology would be burdensome and is not justified, particularly for small retailers.

The cost burden of data entry of information included on product registration cards, and the pre-paid postage involved, could result in the sale or distribution of some products being eliminated altogether (such as the free toys given with fast-food meals). Data entry costs have been estimated as between \$0.10 to \$0.15 per card,<sup>12</sup> along with prepaid first class postage of \$0.32. These costs could add millions of dollars to the price of consumer products. Other major costs would be incurred to maintain the data in a separate database (because of the proposed prohibition on using the data for any other purpose).<sup>13</sup> Further, unless consumers provided updated information, or retailers incurred additional

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<sup>12</sup> Estimate provided by WHD Consulting, Inc. – Worldwide Data Entry Services, as the rate for “registration cards.” <http://www.whdconsulting.on.ca/rateusd.htm>.

<sup>13</sup> For most retailers, information currently collected from a consumer at the point of sale generally includes only the identity of products purchased, the form of tender and a credit/debit card or check number (for non-cash transactions). The consumer’s name and address are not generally collected. Even if consumer information is collected, the product data is not matched directly to a consumer. A separate database, containing massive amounts of data, would be required for matching products with purchasers. Thus, the practical effect of the CFA proposal would be that, for the majority of retailers, two separate databases would

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costs to maintain the data current, any such database would rapidly become outdated for the purposes of recall notification over the minimum (and unreasonable) 20-year period of retention proposed by the CFA.

The proposal to require reporting of return rates with respect to the registration cards is also burdensome, and the proposal is not clear whether the reports relate to the entire database, or only apply when a product is actually recalled (*see* CFA petition, p. 9). Return rates are dependent upon the consumer providing the information voluntarily. Registration card return has never been imposed as a legal requirement for purchasing a product.<sup>14</sup> Hence, return rate information reports appear to be of little added benefit in enhancing recall effectiveness.

Recall effectiveness has, however, increased with the wider use of the Internet, with a number of consumer websites targeted toward children's

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have to be established and maintained for up to 20 years at very substantial expense.

<sup>14</sup> See Magnuson-Moss Act (regarding consumer product warranties) codified at 15 U.S.C. § 2301 *et seq.*, which specifies that a warrantor shall not impose any duty other than notification upon any consumer as a condition of incurring remedy of any consumer product which malfunctions (*i.e.*, consumers are not required to return warranty or product registration cards to obtain warranty protection) 15 U.S.C. § 2304(b)(1).

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products, as well as the posting of recalls on the Commission's website. Widespread media campaigns, such as currently utilized by the Commission, target and reach most consumers of products in the U.S. marketplace. NRF believes that any cost/benefit analysis of the proposed regulatory requirement would demonstrate that the required inclusion of product registration cards would add little to recall effectiveness while vastly increasing burdens and costs to producers and consumers.

### VI. ANTI-COMPETITIVE EFFECTS

Retailers operate in a fiercely competitive environment. As NRF explained in its letter of March 5, 1999, the retail industry is continually exploring ways to decrease the time a consumer spends in purchasing products. Consumers already resist efforts by retailers who request telephone numbers or addresses when purchasing products. Thus, consumer resistance to retailers collecting information for product registration cards can be expected.

Further, if retailers provided this information to manufacturers, the retailers would be disclosing traditionally confidential business information. This would provide manufacturers with a database of consumers that could be targeted

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for direct purchase, contributing further to direct competition against their own retailers.

Most important, the rule would have a disparate effect on small retailers who are less likely to have the type of sophisticated data collection and maintenance systems to effectively implement such requirements. The fixed costs to initially establish the means for implementing the proposed process would be essentially the same for all retailers. Larger entities could better afford to absorb these costs than small retailers. The result would be that many small businesses would be injured, thereby narrowing retailing choices for consumers. At the same time, if the Commission was compelled to enforce any such requirements only upon large retailers, the results would be unequal and disproportionate treatment within the retail industry.

In general, the requirements create an anti-competitive environment despite the fact that the need for the requirements and the probable benefits to consumers have not been established. In any event, before proposing any record keeping rule, we believe the Commission must publish a Regulatory Flexibility Act analysis (see below) and should consider all the factors enumerated in the CPSA (see references to Section 2058(f) regarding consumer

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product safety rules) because of the broad impact such a proposal could have on retailers and small businesses. We believe that such analysis and consideration would establish that any such rule is not cost-beneficial and should not be applied to retailers.

### VII. PRIVACY ISSUES

In its petition, the CFA discussed the results of its sampling of 17 cards included with new products and concluded that "consumer privacy is generally not protected by companies using registration cards" (CFA Petition, p. 7). From its sampling, the CFA asserts that "[p]rotection of consumer privacy is a major concern to consumers and failure to protect personally identifiable information is an incentive for consumers not to participate in any registration." *Id.* If the CFA is correct, then there is no reason to believe that consumers will be any more apt to complete product registration cards. As Congress has recognized, there may be serious privacy issues associated with the collection of personal information.<sup>15</sup> If consumers, as a group, are concerned about privacy, then a more

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<sup>15</sup> For example, Section 501 of the Gramm-Leach-Bliley Act (Pub. L. 106-102), which provides requirements governing the treatment of nonpublic personal information about consumers by financial institutions, states: "It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and

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public means of notification of recalls (e.g., Internet, newspapers, television) would appear to be preferable to most consumers.

### VIII. LIMITED BENEFITS TO SAFETY

The proposal in the CFA petition would be of limited benefit to consumers for the majority of products covered by any proposed rule, for the following reasons:

- Filling in a registration card (either electronically or manually) requires an affirmative action by consumers, many of whom would not wish to comply with for reasons of privacy, among others.
- The passage of time would erode any benefit of a rule because most consumers will move to a new location before the expiration of the suggested 20-year period. (We note that mail is not typically forwarded for period beyond one year.)

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confidentiality of those customers' nonpublic personal information." (Emphasis added). See also implementing regulations at 16 C.F.R. Part 313. The Act restricts the use of data collection by retailer financial institutions, which might involve, for example, credit card transaction data to track purchases of consumer products.

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- In many cases, recalls occur within the first few weeks or months of the introduction of a product into the marketplace. It is not realistic to assume that any proposed registration cards will have been returned by consumers, collected, and organized, and the data made accessible within this period. The effectiveness and safety benefits of any proposed rule is likely, therefore, to be overstated..
- Products intended for children have a limited useful life. Once a consumer no longer has a use for the product (e.g., as a child ages), the products may be sold or given away to another family. Over the suggested period of 20 years, the original consumer will likely no longer have the product and not know who, if anyone, may have the product in the event it is recalled.
- Many of the affected products are inexpensive and a recall for these products may be ignored by the consumer, or a product may be discarded if it is still being used. The less expensive a product, the less likely that a consumer will expend time and resources to submit a registration card.

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- In the case of free products covered by the proposal (e.g., free toys in fast-food meals), the added cost burden (see above at page 11) could induce merchants to discontinue the use of such toys and gifts.

For these reasons, we recommend that, in the event it elects to proceed with the proposal, the Commission carefully analyze the costs versus the benefits to consumers. We believe that a carefully-considered analysis will demonstrate that the burdens to consumers weighed against the increased costs of products will not support imposition of the rule generally, or in any case a rule applicable to retailers.

## IX. PROCEDURAL REQUIREMENTS

The Commission is required by CPSA provisions specifying the procedure for "consumer product safety rules" to consider a number of factors associated with the burden of a final rule. 15 U.S.C. § 2058(f). While this requirement may not directly apply to the proposed record keeping rule, because of the significant impact of the proposed rule, the Commission should apply similar criteria. They are certainly relevant in considering the feasibility and reasonableness of this proposal. Section 2058(f) requires that, prior to

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promulgating a final rule, the Commission consider and make appropriate findings *inter alia* as to:

... the need of the public for the subject products and the effect on the utility and costs that would result from the rule; and any means of achieving the object of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with public health and safety.

15 U.S.C. § 2058(f)(1).<sup>16</sup> The Commission has not published information in the public record as to whether it has considered such factors for any proposed record keeping rule that would address the petition.<sup>17</sup>

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<sup>16</sup> Also relevant are the requirements of Section 2058(f)(2). While not directly applicable to the proceeding, the Commission may not promulgate a "consumer product safety rule" unless it has prepared a regulatory analysis on the basis of the findings under paragraph (1) that contains, for example, information that describes potential benefits and potential costs and any alternatives to the final rule that the Commission considered. 15 U.S.C. § 2058(f)(2). Similarly, under Section 2058(f)(3), the Commission must show that, *inter alia*, benefits expected from the rule bear a reasonable relationship to its costs; and the rule imposes the least burdensome requirement to accomplish its purpose. 15 U.S.C. § 2058(f)(3).

<sup>17</sup> The Commission is also subject to the Regulatory Flexibility Act of 1980, codified in the Administrative Procedure Act (5 U.S.C. § 601 *et seq.*). These provisions require that, when publishing a general notice of proposed rulemaking for any proposed rule, the Commission prepare and make available for public

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## X. CONCLUSION

The NRF commends the Commission for its concern with the effectiveness of recalls of children products as evidenced by its publication of CFA's petition.

Nonetheless, we believe the proposal cannot and should not apply to retailers, and is not appropriate or necessary in several other respects:

- The CPSA was drafted carefully to eliminate any possible application to retailers of record keeping requirements such as those proposed by the Petition.
- The costs of retailer involvement in any rule would be very substantial.
- The proposal would have a dramatic anti-competitive effect on retailers and, particularly small retailers, by increasing overhead and impacting some retailers disproportionately.

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comment an initial regulatory flexibility analysis, describing the cost impact of the proposed rule on small entities such as the many small retailers doing business in the U.S. marketplace. 5 U.S.C. § 603.

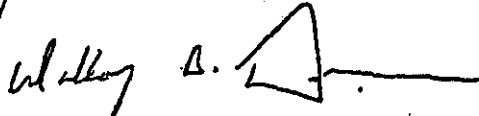
**NATIONAL RETAIL FEDERATION**

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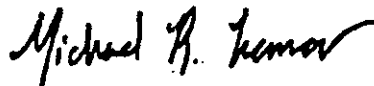
- The proposal would be likely to drive up prices for a broad variety of children's products, impacting young families who can least afford higher costs.
- The proposal raises serious privacy concerns for all consumers.
- It is questionable whether the proposal would achieve the desired improvements in recall effectiveness.

For these reasons, NRF urges the Commission to deny the Petition.

Respectfully submitted,  
NATIONAL RETAIL FEDERATION  
By



Mallory B. Duncan  
Senior Vice President and General Counsel



Michael R. Lemov  
Patricia L. Campbell  
WINSTON & STRAWN  
Counsel to the National Retail Federation

*Paul and  
M. L. ...  
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INTERNATIONAL MASS RETAIL ASSOCIATION

The world's leading alliance of retailers and suppliers.

Robert J. Verdisco, *President*Transmitted by facsimile and mail

October 1, 2001

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

RE: Petition of the Consumer Federation of America Seeking  
Rulemaking to Require "Product Registration Cards"

The International Mass Retail Association (IMRA) appreciates this opportunity to comment in opposition to the petition filed by the Consumer Federation of America seeking rulemaking by the CPSC to require manufacturers and others to provide a "Product Registration Card" (hereinafter "PRC") with every product sold that is "intended for children." CPSC invited public comment on the petition in an August 1 *Federal Register* notice (66 *Fed. Reg.* 39737).

No matter how well-intentioned this petition may be, if granted it would impose a vast, unspecified burden of dubious legality, that would in practice do little or nothing to improve safety or recall effectiveness.

The International Mass Retail Association--the world's leading alliance of retailers and their product and service suppliers--is committed to bringing price-competitive value to the world's consumers. IMRA improves its members' businesses by providing industry research and education, government advocacy, and a unique forum for its members to establish relationships, solve problems, and work together for the benefit of the consumer and the mass retail industry. IMRA represents many of the best-known and most successful retailers in the world, who operate thousands of stores worldwide. IMRA equally values among its members hundreds of the world's top-tier product and service suppliers, working with their retailer partners to further the growth of the mass retail industry.

The CFA petition asks CPSC to issue rulemaking to require that a postage-paid CSRC accompany every such product, pre-labeled with the product's name and model number. Further, the petition asks that the PRC be used solely to collect only that information (e.g., name and postal or e-mail address) necessary for notifying the purchaser of recalls or other significant safety information, and that information on the PRC be used only to

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www.imra.org

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convey safety information (and thus could not be used for marketing or other business purposes).

As detailed below, the CFA petition is premised on an erroneous concept of what constitutes recall effectiveness and overlooks proper limits on the agency's rulemaking authority. While the petition is overly prescriptive and unduly burdensome, even more important is that it would do little or nothing to achieve greater safety, despite the significant costs and burdens it asks to be imposed. CPSC should reject the petition, and any similar proposals to impose unwieldy, extravagantly expensive and ultimately unworkable proposals to revise safety recalls.

### Coverage

At the outset, the petition is far too broad and ill-defined. It does not indicate what products should be viewed as "intended for children," but the term would almost certainly exceed the range of products within the agency's statutory jurisdiction.

It is unclear whether the petition intends the term would apply to household products that both adults and children may use, or for which children are not the intended users but to which they may have access--although under those interpretations, it would be difficult to impute any meaning in the term "intended for children."

It is also unclear whether either the petition or a CPSC staff briefing package (dated June 19, 2001 and available in the "Library" section of the agency's website at [www.cpsc.gov/library/foia/foia01/brief/purchase.pdf](http://www.cpsc.gov/library/foia/foia01/brief/purchase.pdf)) intend to bring under their proposed new restrictions many products commonly used by children, but ill-suited to the proposed new regime. Should it cover children's coloring books and storybooks? Must crayons and squirt guns be accompanied by postage-paid PRCs? A child's shoes and socks? A dollhouse, frisbee or other common toys?

It is far more common for children's products than for most other consumer lines to find that the original purchaser does not use the product. Anyone who has ever raised kids should know that many children's items are in fact received as gifts, handed down by relatives, neighbors or acquaintances; purchased at a yard sale, second-hand shop or charity bazaar or otherwise obtained indirectly. In all these cases, the PRC is almost sure to miss the intended target.

The above-mentioned CPSC staff briefing package supported rulemaking to prescribe a highly regimented "Product Safety Owner Card" for counter top appliances and juvenile products (without defining either of those terms more fully). As noted above, that terminology embodies a flawed assumption, since in many instances, especially with inexpensive children's products that do not present serious-seeming safety hazards, the purchaser (who would receive any card that the CPSC would mandate) is frequently not the end user.

Whatever the definition, it seems clear that many millions, perhaps billions, of products could be swept up. Under the petition, each of these products would have to be accompanied by a postage-paid card, even before any showing that safety will be enhanced materially.

### Methodology

The CFA petition appears to believe that only the methodology that it is proposing (a postage-paid, pre-labeled PRC, with severe limits on the information which may be requested and no other uses permitted) can provide consumers with adequate notice of safety-related recalls. This is needlessly restrictive and backward-looking.

Consumer products vary widely not only in the hazards they may present, but also in the most effective ways for those hazards to be communicated. In potentially dangerous, high-value products, consumers are far more likely to respond to manufacturer warnings, or to return a warranty or safety card, than they are in the case of an inexpensive product presenting no more than a minimal hazard.

While the petition attempts to draw support from far-distant studies on the desirability of product registration cards (the most recent study cited dates back to 1982), it seriously slights the newer, fast-growing medium of the internet as a vehicle by which consumers receive and deliver information on safety-related topics.

The petition also would require that PRC information be maintained for the longer of 20 years or the product's useful life, but apparently overlooks the fact that a 20-year-old mailing list would be of virtually no value (direct-mail experts say that as much as 10% of the population change addresses each year, and families with young children move more often than average).

The point of mandating a 20-year period of record retention for a transient plastic toy included decades ago in a fast-food meal is at best elusive. Perhaps if petitioners updated their understanding of modern communication and information methods, they would be less fixated on a one-size-fits-all postcard system and more alive to the variety of methods that may work for different firms and different product hazards.

Manufacturers, importers, distributors and retailers should be encouraged to provide safety information, and many in fact do so, in imaginative and diverse ways, as the CPSC briefing package notes. Similarly, CPSC has noted that the agency has in recent years made greater use of video news releases, other media and the internet. The staff briefing package refers favorably to studies and experiments now underway at other agencies by manufacturers.

The CFA petition would, however, hinder rather than advance such efforts. Its insistence that product makers may only convey the message in one particular way may well

remove incentives for manufacturers to provide such information (such as the opportunity to convey further product information or receive marketing information).

It may also rule out incentives (for example, premiums, coupons, sweepstakes entries and the like) that product makers might otherwise be able to provide consumers for returning warranty or product safety information. Since neither the product maker nor seller (nor, for that matter, the CPSC) can compel consumers to provide the desired information, does it make any sense to remove incentives for consumers to do so voluntarily?

The CPSC staff briefing package appears at least in part to fall into the same "there's-only-one-way-to-do-this" fallacy. Perhaps revealingly, its main citation on an agency study of methodologies affecting consumer recall effectiveness dates back to 1978.

This suggests that the agency ought to consider updating its studies of how today's consumers gain information on product safety issues and recalls. The CPSC should certainly not entertain the CFA petition without more up-to-date information testing the petition's (and its own staff's) assumptions.

While the petition proposes to measure the effectiveness of a consumer recall by the rate of returns consumers make, that is overly simplistic. Especially with children's products, an item may have been outgrown, worn out or broken. Alerted to a potential safety hazard, the household is likely to respond, especially with a relatively inexpensive product, by discarding it, rather than going through the trouble of returning it. It is inaccurate and misleading to view recalls as effective only when they produce high rates of postcard or product returns.

Both the petition and the staff briefing package mention that the National Highway Traffic Safety Administration is now studying return rates of safety notification cards required to be provided with children's safety seats. Neither mentions, however, the same agency's decision to drop as needlessly burdensome and cost-ineffective a proposal to require consumer registration of automobile tires, nor the Food and Drug Administration's ending of consumer registration of household appliances--such as microwave ovens and television sets--that emit radiation.

If those agencies determined that consumer registration was not a workable, cost-effective way to deal with notifying consumers of potentially serious hazards in these relatively high-dollar products, how can CPSC entertain a rulemaking that could require a postage-paid registration card and attendant support network for almost every product sold in a dollar store?

The petition makes a basic error by presuming that all products and all hazards ought to be treated identically. Where a minor or attenuated hazard is thought to exist, the extraordinary administrative burden and expense of PRCs is clearly excessive.

When a large-scale threat to the consuming public presents itself, as it did in the criminal poisonings of over-the-counter medicines some years back, pharmaceutical makers

brought consumers needed information through the mass media and government agencies. Had purchaser lists been available, they would still not have been the best method of calling public attention to the threat.

### Legal Authority

CPSC chose to treat the CFA petition under section 16(b) of the Consumer Product Safety Act (CPSA). In our view, section 16(b) cannot support as sweeping and cost-ineffective proposal as that in the CFA petition.

In the first place, section 16(b) clearly excludes retailers other than private labelers from most record-keeping and reporting requirements. The legislative history of the CPSA makes clear that the statute does not authorize rulemaking to impose a new PRC requirement on retailers engaged in selling to the public products which they have neither manufactured nor imported.

In addition, under section 9(f) of the CPSA, the agency must undertake a cost-benefit analysis before issuing new consumer safety rules, examining whether the benefits expected from a rule are reasonably related to its costs, as well as whether less burdensome alternatives exist. Broader regulatory procedure laws, such as the Regulatory Flexibility Act, call for further analysis of rules that would impose significant costs or unduly burden small business, as this proposal surely would.

While it does not appear that CPSC has yet attempted any in-depth examination of this issue, its staff briefing package contains a cursory review of manufacturers' costs by an economist in the agency's Directorate for Economic Analysis. It concludes that the per-card cost will range between 32¢ and 80¢.

Whatever the accuracy of that estimate (admittedly based on "limited information provided by manufacturers that have experience with this type of card"), it should be clear that for many widely-sold inexpensive children's products, the CSRC cost will equal or exceed the price of the product itself. The CPSC estimate did not attempt to factor in other potential costs, such as the need with some products to provide new packaging to accommodate the CSRC.

Bearing in mind that the petition would affect untold millions of items, its cumulative impact must far exceed whatever benefit might arguably be derived, even if there were not so many other obstacles to such a regulation working as its proponents intend. The petition should be rejected.

### Retailer Capabilities

In another but related context, some have suggested that retailers could be required to use information they gather during the sale transaction to identify the purchasers of recalled

products. While mass retailers have an excellent record of assisting CPSC in its important mission, it is crucially important to recognize that, as a practical matter, point-of-sale information will rarely be a reliable source of information on which to base a new recall notification system.

Consider that when a customer buys an item, he or she will pay with cash, check, credit or debit card, or some sort of store currency such as a gift certificate or gift card. Generally, the only items of information captured at the time of the transaction are the identity of the items being purchased, the form of tender, and an identifying number is associated with that tender (e.g., a credit card number).

Even if the customer provides the store with some information about his or her name and address, that information is not captured by the point-of-sale terminal at the time of the sale. For example, a check will typically have the customer's address and phone number, but that information is not put into the retailer's computer during the sale transaction. The check itself goes into the drawer, and only the check number is put into the computer.

In order to use transaction information to obtain an address, some separate database must be accessed. In other words, it is necessary to take the information that is captured at the time of sale, i.e. an account number, and compare it to a separate database where account numbers are associated with addresses.

To match an address with the purchase of a particular item, it would be necessary first to associate an account number with the purchase, and then to associate the account number with an address. For mass retailers today, that process is typically incomplete in both steps.

Within the foreseeable future, retailers of sufficient size and sophistication may be able to associate the purchase of a particular item with an account number, but there is simply inadequate information at present to predict how many retailers will attain that capacity, or how quickly, or how long that information will be retained.

To track every item sold would be a massive task requiring substantial investment and generating massive amounts of data. While each company will have to make its own decisions on the resources it can devote to this task, it is unrealistic to expect uniformity in timing or capability. Many companies, particularly smaller ones, may well decide that it will never worth the investment to develop systems to track such data.

It would be a serious mistake for the CPSC to assume that it can merely piggyback onto systems that it may incorrectly believe are already in place universally. In any given recall involving multiple retailers, some will be able to provide account numbers associated with purchases of the recalled item and some--probably most--will not. Obviously, none will be able to provide that information for cash transactions.

In short, there is no logical reason to believe that asking or requiring retailers to identify purchasers will ordinarily yield reliable results, even if solutions are found to the array of

formidable legal problems involving personal privacy concerns under the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act and related state and local laws.

In some cases (for example, in a recall of catalog or website sales of product presenting a serious hazard, where the retailer has delivery information), the retailer may be able to retrieve useful information. That is very likely to prove the exception, not the rule, however. To avoid imposing useless expenses on well-intentioned retailers and to concentrate its focus on more productive and reliable means of communication, CPSC should not expect to routinely derive purchaser identifications from retail point-of-sale records.

IMRA appreciates this opportunity to share its views with the agency on the important issue of recall effectiveness. We look forward to continuing to work with the CPSC.

Sincerely,



Morrison Cain  
Senior Vice President,  
Government Affairs



*Prod  
card  
reg  
lawyer*

**The Danny Foundation**  
For Crib and Child Product Safety

September 26, 2001

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

RE: CFA Petition 66.Fed.Reg.39737

Dear Madame Secretary:

The Danny Foundation, advocates for crib and child product safety, strongly urges the Consumer Product Safety Commission (CPSC) to grant the Consumer Federation of America's (CFA) petition requesting a rule requiring that manufacturers 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.

We realize that most consumer registration cards are not returned. However, it is The Danny Foundation's position that most registration cards are not safety tools, but rather marketing tools. We are asking that registration cards be marketed primarily as safeguards for the consumer. We believe the consumer will respond to a safety first registration card. The return rate for these cards will be greatly enhanced.

Most of us involved in injury prevention know that recall return rates are under 20% for CPSC recalled products. This indicates that we must use every means possible to communicate to consumers when a product is recalled. We also must educate the consumer that their cooperation is necessary in the whole process of recalls. It is for this reason that The Danny Foundation strongly recommends that the Commission initiate their rule making to promulgate requirements for consumer registration product cards.

Thank you for your attention to this matter.

Sincerely yours,

*Jack Walsh*  
Jack Walsh  
Executive Director

JW/kf

## **Tab E**

Memorandum from Robert Franklin, Economist,  
Directorate for Economic Analysis, "Petition for  
Product Registration Cards (CP 01-1): Response  
to comments that Raised Economic Issues."  
November 14, 2002.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

**Memorandum**

Date: November 14, 2002

TO : Celestine Kiss  
Project Manager  
Registration Card Petition

THROUGH: Warren Prunella, AED, Directorate for Economic Analysis *WP*

FROM : Robert Franklin *RF*  
Economist  
Directorate for Economic Analysis

SUBJECT : Petition for Product Registration Cards (CP 01-01): Response to Comments that Raised Economic Issues.

**Background**

On 21 June 2001, the Consumer Federation of America (CFA) submitted a petition to the Consumer Product Safety Commission (CPSC) that, among other things, requested that the CPSC issue a rule to require "that manufacturers of products intended for children provide along with every product a consumer safety registration card." The information solicited on the card would be limited to that which would be needed for the manufacturer to contact the consumer in the event of a recall or potential product safety hazard. The manufacturer would pre-print the name and model number of the product on the card and would pay the postage for the return of the card. The manufacturer would be required to maintain the information collected through these cards for the useful life of the product or for 20 years, whichever is longer.

CPSC solicited public comments on the petition. The comment period closed 01 October 2001. Twenty-eight comments were received from individuals, product manufacturers, or trade associations. This memorandum addresses the economic issues that were raised in the comments.

**Response to Comments**

**Expected Impact of the Rule**

Several manufacturers or their representatives submitted comments that made general assertions that the proposed rule would have little impact in improving safety but would impose substantial costs on the manufacturers and consumers.

**Response:** CPSC staff has not conducted a study of the costs and benefits of the proposal. A CPSC memorandum, written in June, 2001,<sup>1</sup> only attempted to estimate the cost per card or item to manufacturers of including a product registration card (PRC) with their products. That memorandum was not intended to address other costs, such as the cost to consumers for completing and returning the cards or the impact on the markets for individual products. Therefore, the staff cannot respond to the general comments or assertions about the cost effectiveness of the proposal. The response of the CPSC staff to the more specific comments is below.

### **Cost to manufacturers of the registration cards**

Several comments provided estimates of the per unit cost of including a PRC with each item. Most of these estimates were in line with the CPSC staff's own estimates of between 2 and 30 cents each to produce and insert the cards in product packages and an additional 30 to 50 cents per returned card for postage and data entry.<sup>2</sup> For example, one manufacturer stated that it would cost approximately \$175,000 annually to produce registration cards for the estimated 2 million children's items that they sold annually, or about \$0.09 per item (2). A representative of the toy industry estimated the cost per card, including return postage and maintaining a database of the returned cards at about \$0.54 per card (8). Five other comments provided estimates within this range (5, 14, 18, 22, 26). However, one trade association asserted that the CPSC staff's estimates significantly understated some costs and failed to take others into account. Specifically, the commenter asserted that the data entry for returned cards would, by itself, cost approximately \$0.80 per card, or 4 to 8 times the cost of data entry estimated by the CPSC staff (12).

**Response:** CPSC staff believes that its original estimates are reasonable and appear to be consistent with the estimates of most manufacturers or trade associations that provided cost estimates. The latter commenter's estimate for the cost of data entry (\$0.80 cents per card) seems high. However, should interested parties with relevant information on the potential costs provide the staff with more information we will examine it.

### **Requirement to Pre-Label the Cards with Name and Model Number of the Product**

Several manufacturers asserted that a requirement that the manufacturer pre-label each card with the specific name and model number of the product would significantly add to the cost and eliminate some possible economies of scale. This may be especially true in some industries, such as apparel, where most manufacturers offer many different styles and models and where styles and models are changed frequently (1, 4, 5, 6, 7, 14, 22).

**Response:** CPSC staff agrees that the more restrictive the requirements for PRCs are, such as requiring manufacturers to pre-label the cards with name and model number of the

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<sup>1</sup> CPSC Memorandum from Robert Franklin, Directorate for Economic Analysis, to Marc Schoem, Office of Compliance, "Costs to Manufacturers of Product Registration Cards," (June 1, 2001).

<sup>2</sup> Ibid.

product, the greater the cost will be. However, there may also be potential benefits of pre-labeling this information on the cards. The benefits of pre-labeling the cards with the name and model of the product include more accurate product or model information. At this time, the staff does not have reliable estimates of the costs or benefits of this requirement.

### **Impact on Packaging and Modes of Selling**

Four manufacturers or trade associations stated that the proposal, if implemented, might have a substantial impact on the costs of items that are frequently sold without packaging or in bulk. Such items include some writing instruments, toys, and clothing. (8, 13, 18, 27)

**Response:** CPSC staff agrees that the cost of PRCs may vary due to factors such as product packaging or whether a product is typically sold in bulk or without packaging. At this time, we do not have any information on what the added costs of including PRCs with products now sold without packaging would be. In some cases it may be necessary to add packaging to the product. In other cases, a registration card may be included by means of a hangtag.

### **PRCs Would Significantly Increase Retail Prices of Some Products**

Several manufacturers and trade associations noted that the retail prices of many items intended for use by children, such as many toys, writing instruments, art supplies, infant apparel items, bibs, diapers, and so on are low, often less than \$1. The cost of PRCs would add significantly to the prices of these products. In some cases, the cost of the PRCs may exceed the retail price of the product. Moreover, the benefit to the consumer paying the higher prices would be low (4, 6, 10, 19, 27). The consumers that would be paying the higher prices are those families with children (26).

**Response:** CPSC staff generally agrees with these comments. We expect that the cost of adding PRCs will be passed on to the consumers in the form of higher retail prices. For some items the percentage increase in prices may be high. However, even if the inclusion of PRCs significantly increased the retail prices of some products, it may still be cost-effective to include PRCs with those products if the expected benefits of PRCs (i.e., more effective recalls resulting in a reduction in injuries) exceed the cost of the PRCs. At this time there is inadequate information to determine if this would be the case for any particular products or product categories.

### **Total Cost Will Be High**

Several manufacturers and trade associations commented that because the range of products included in the proposal (i.e., "all products intended for children") is so broad, the total cost of requiring PRCs would be high. For example, a trade association representing manufacturers of toys estimated that there were more than 3.365 billion individual toys sold annually (8). Another manufacturer stated that it sold over 150 million infant and toddler

garments annually (4). Other commenters provided less specific estimates, but noted that the proposal could apply to many millions of items, including such diverse products as coloring books, toys, children's apparel, children's furniture, and products that may not be thought of as children's products but that could be used by children, such as hair dryers (5, 19, 15, 26, 27).

The toy industry representative noted that using an average cost per card of \$0.54 (his estimate), the total cost annually to the toy industry would be over \$1.8 billion (3.365 toys x \$0.54). Another commenter was unable to provide specific estimates, but thought that the total costs to all manufacturers could be in the hundreds of millions of dollars annually (15).

**Response:** The CPSC staff agrees that, if the proposal is interpreted broadly to include all products that are intended for children or that are intended for both children and adults, the total cost of the proposal may very well be in the hundreds of millions of dollars annually. As the toy industry representative noted, the total cost estimate (\$0.54 per card) assumed that all PRCs were returned; the total cost would be lower if many cards were not returned. However, even assuming much lower per card costs the total cost could still easily exceed \$100 million. For example, assuming the estimate of 3.365 billion toys is accurate, the total cost to the toy industry alone would be \$100 million if the cost of the PRCs was only \$0.03 per card.

It may be possible to increase the net benefits (total benefits less total costs) of requiring PRCs if the scope of products covered were narrowed. For example, if it were possible to exempt categories of products that are seldom recalled, then the costs could be reduced with minimal impact on the benefit since the products are unlikely to be recalled. Likewise, if products for which consumers are unlikely to return the cards were exempted, the cost of the cards could be avoided with minimal impact on the benefits since few consumers would have returned the cards anyway.

#### **The Information on the Returned Cards Would Be Obsolete in Much Less than 20 Years.**

Several manufacturers and trade associations said that requiring manufacturers to maintain the data on the PRCs that are returned for at least 20 years is excessive because people change residences frequently and, therefore, information on PRCs would become obsolete much sooner than 20 years. They pointed out that approximately 15 percent of the population or 40 million people change address annually. Furthermore, many products have useful lives much shorter than 20 years. (1, 4, 5, 6, 7, 8, 10, 12, 14, 15, 18, 20, 22, 26, 27)

**Response:** The staff expects that the benefits of maintaining the data will decrease with each additional year due to factors such as the mobility of the population and consumers discarding products no longer needed or useful. The costs of storing the data are likely to increase with each additional year due to factors such as the need for additional storage capacity or changes in data processing equipment or software that may require conversion of the data to a new format. At this time the information is not available to determine what the optimum time for storing and maintaining the data would be.

## **The End User is Often Not the Purchaser**

Several manufacturers and trade associations pointed out that many children's products are purchased as gifts by friends and relatives. Children's products are also often sold by the original consumers at thrift stores, yard sales, and so on. Because the purchaser is often not the end-user, the use of PRCs would not be effective at reaching the end user. (4, 5, 6, 8, 10, 12, 14, 20, 22, 26, 27)

**Response:** When a product is given as a gift, one would expect that it would be given in its original packaging, including the PRC. Therefore, it could very well be up to the end-user to determine whether or not to register the product. Even if the person buying the gift is the person who registers the product they may be able to notify the person to whom they gave the gift if they were notified of a recall. The staff agrees that PRCs probably will not help in notifying people who bought products second-hand at a thrift store or yard sale.

## **Most Products Intended for Children Are Safe**

One trade association asserted that the benefits, if any, of the rule requested in response to the petition appear to be extremely limited. Most products intended for children are safe and are not involved in any form of a safety recall. The benefits, if any, of the rule requested would be limited to the small number of products where a safety issue is discovered after the product is released to the public. (15)

**Response:** The staff agrees that the benefits of PRCs will be limited to those products that are recalled and that products recalled are a small portion of all products produced. Unfortunately, we cannot identify the products that will be recalled in advance. However, it may be possible to minimize the costs, without much of an adverse impact on the benefits, if the scope could be limited to product categories that are more frequently involved in recalls or for which consumers are likely to return the PRCs.

## **Effect on International Trade**

One manufacturer said that before a product that was originally packaged for sale overseas could be sold in this country, a PRC would have to be inserted in, or attached to, the package. This would increase the cost of redirecting or diverting product shipments. (18)

**Response:** Staff accepts the assertion that the proposal could increase the cost of diverting or redirecting shipments of products originally packaged for sale in other countries for sale in this country. However, we do not have any information on how many products this would apply to or the extent of the cost increase and would welcome comments from the public on this point.

## **The Requirement Duplicates Other Efforts**

A trade association commented that the requirement that the data collected from the PRCs only be used to notify the consumers if the product is recalled would result in a duplication of effort where similar cards are currently being used for other reasons. The card currently being used by some manufacturers could be modified to inform the purchaser why each piece of data is being requested and what information is optional. (19)

**Response:** Many manufacturers now include some types of registration cards with their products. These cards often solicit more information than would be required to simply notify the consumer of a safety hazard or recall. For example, some cards request information on the household's income or hobbies and are used for marketing purposes.

It is possible, as the petitioner asserted, that more people would return these if consumers were only asked for the information required to contact them in the case of a recall and were assured that the data would only be used for that purpose. On the other hand, the commenter is correct that the cost could be reduced if manufacturers were able to adapt cards they were already using to serve the same purpose as the PRCs. At this time CPSC staff does not have enough information to determine the extent to which consumers do not return the cards now because of privacy concerns. Nor do we know the extent to which clearly marking which information was optional would increase consumer willingness to return the cards.

## **Effect on Retailers**

One trade association said that the CFA proposal could impose expensive record keeping burdens on retail establishments (26).

**Response:** This possible impact described by the commenter appears to be based on the premise that retailers would be responsible for collecting the consumer contact information. In general, retailers would not be responsible for collecting or maintaining the consumer contact information (except possibly where the retailer was also the manufacturer or importer). However, there may be some impacts on retailers. For example, manufacturers would be expected to pass the costs of the PRCs on to the retailers, who would then pass the costs on to their customers. Thus, between the time the retailers acquire the products for sale and the time the products are sold, the retailer would carry somewhat higher inventory costs due to the cost of the PRCs. As mentioned in earlier comments, there also may be some impacts on goods sold in bulk or on consumer demand for products where the cost of the PRC substantially increases the retail prices.