



April 14, 2009

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Hwy.
Bethesda, MD 20814

Re: Request for Comments on Tracking Label Requirement

The National School Supply and Equipment Association (NSSEA) is an organization of 1,500 businesses who sell educational products and supplies to schools and through other retail outlets. We care deeply about the safety of children. At the same time, most of our manufacturing members are relatively small businesses that have already been greatly affected by the Consumer Product Safety Improvement Act of 2008 (CPSIA). NSSEA appreciates this opportunity to comment on the tracking label requirement on behalf of its members. To prepare our comments, we have obtained comments and insights from some of our members.

According to the limited legislative history, the tracking label requirement is intended to enhance the effectiveness of recalls. In truth, before the passage of the CPSIA the Consumer Product Safety Commission (CPSC) required recalls to be broad enough to encompass all non-complying or defective products. Products that could not be identified in any way were rare. If anything, the tracking labels are most likely to narrow the scope of future recalls. Yet Congress has not left it to manufacturers to judge what would be in their own best interests based on their products and the relative risk, but has imposed these across the board requirements—and costs—on everyone, regardless of the practicalities and whether they can be justified.

We would also like to point out that the tracking label provision seems to have been written with large manufacturers in mind. Its requirements anticipate multiple factories, and many lots of products, possibly being manufactured during the same time. As you will see from the comments below, like other parts of the CPSIA, this provision is not a good fit for many of our members who are small businesses and have much smaller operations.

In our comments below, we will respond to the questions specifically asked by the CPSC in the *Federal Register* notice of February 26, 2009 (74 FR 8781-8782). In doing so, we will try to provide some sense of the experiences, concerns, and practical problems raised by our members.

Here are our responses to CPSC's questions:

1. *The conditions and circumstances that should be considered in determining whether it is "practicable" to have tracking labels on children's products and the extent to which different factors apply to including labels on packaging.*

Our members manufacture a broad range of learning and education products, in different shapes and sizes, manufactured out of a range of materials using numerous processes. All of these factors affect the practicality of labeling the product.

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For example, many educational products, toys, and games have numerous small components. Marking each of these items in some way may not only be difficult, but in some cases may impair the ability of the product to function. Obviously, getting all of the required information on a very small component in some readable form could be almost impossible. It could also be very expensive. Besides, many small components might come from different batches, be intermixed with items from other sources or production periods, and only become part of a final product upon packaging. For this reason, marking of small components with the packaging date could not only be very expensive, it also may not greatly help identify a defective component that could have been manufactured months before.

Another issue affecting the practicality of labeling is the definition of “permanent.” Products are made out of various materials including metals, woods, plastics, fabrics, rock, and other materials of varying hardness and textures. While sticker or tag labeling is relatively easy and might work with some materials, would this be accepted as a “permanent” solution? In some molded parts, a permanent marking might be achieved by altering the molds to mold in distinguishing information, but that is very expensive. Even making date or production “cohort” tags for each new lot and sewing them into soft goods could be very expensive.

For some products, it should be sufficient to label the packaging and perhaps a container the parts are kept in (the package might be kept for games or other items) or otherwise). On other products, labeling the packaging and a larger component, could assist identification.

Of course, some products are packaged in bulk and sold in bins or sold without significant packaging. There is sometimes no “package” to label, and depending on the size of the item, a permanent marking may be nearly impossible. For some of these items, labeling the shipping carton or the product itself may be the only alternative. Insisting on doing both would require further packaging costs and also create more waste to feed into our landfills.

2. How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect:

- a. Manufacturers' ability to ascertain the location and date of production of the product; and*
- b. Other business considerations relevant to tracking label policy.*

The apparent goal of this provision is to make it possible for people to identify a product that should be, or is being recalled. To do so, there needs to be some way for people who know how to do so, to identify particular products, or production periods that are of concern. Ironically, by insisting on both date codes and “cohort” or lot information, the legislation may be requiring many small manufacturers who only have occasional runs of products, to do this twice. (Many of our members currently use date codes and a few use some type of lot or production identifier. Very few have manufacturer, date, and lot or “cohort” information.) As written, the tracking provision seems to apply more to larger manufacturers with fairly regular production and possibly multiple manufacturing locations for whom having both a date and lot information might be more useful.

Standardized nomenclature is not necessary to allow either manufacturers or consumers to identify products as long as there is some internal consistency in the labeling approach and the symbols or codes can be interpreted easily with minimal explanation. Standardizing date codes is easier than standardizing other markings. Many firms use different approaches to production and, therefore, to identifying production. For example, among small businesses, production date is often all that is required to identify products. Some of our manufacturers do not produce many lots or use more than one factory for a particular product. Other manufacturers make products to order only.

While giving clear guidance as to what might be acceptable is useful, flexibility is beneficial because every product and production scheme is different. Particularly with products manufactured in other

countries, our members may have little control over the manufacturing approaches. Any labeling scheme, therefore, needs to adapt to a wide range of products, manufacturers, and practices.

3. How consumers' ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

As long as consumers can relatively easily identify a product as being involved in a recall, it does not matter what system a manufacturer uses. Manufacturers need only create a system that includes either a date or lot-based identifier for each unique production period, maintain a record of such identifiers, and be able to describe where to find the information and in the event of a recall and how to determine if the product is part of the corrective action program.

4. How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

It is hard to generalize, but most of our members label their products in English. Some use numerical systems for date codes. Beyond those simple requirements, providing labels in other languages, or using a system of symbols, could be too complex and costly for our members.

5. Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases this would be most beneficial and in which electronic form.

At this point, we see little value to providing the information in electronically readable form. This would be very costly for our members and of almost no value to consumers who lack the equipment to read them. A limited number of sophisticated distributors and retailers might have the technology to track products electronically, but currently, even that ability is limited and there is insufficient uniformity of systems beyond the UPC code system. Such a system would be extraordinarily expensive to start, and these costs are especially significant to our members who do not benefit from the economies of scale of larger firms.

6. In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: Electronically via Internet, or toll-free number, or at point of sale.

If the product is private labeled, and the lot and/or date information is sufficient to identify the product, why is there a need to identify a manufacturer? From a recall perspective, this information seems to have no additional value and just makes labeling or other systems more complex. If for policy reasons having nothing to do with identification of products in recalls the CPSC wishes to institute such a labeling scheme, this information potentially impacts on confidential commercial information. Many private labelers and importers as well consider their manufacturers to be proprietary information. Absent some real benefit to consumers, there is no reason to make this information public.

7. The amount of lead time needed to comply with marking requirements if the format is prescribed.

It would be useful to give firms a **year** in which to bring products into compliance with these requirements once they have been published. Many of our members' products are manufactured in foreign countries. Some products have a fairly extended development and manufacturing cycle. Changing systems requires educating suppliers about the changes and giving them sufficient time to implement them. However, we re-emphasize that while providing clear guidance to our members on

what they need to do is a good thing, a one-size fits all approach is likely to put many of our members at a competitive disadvantage and to favor larger firms that have greater capabilities and systems in place.

8. Whether successful models for adequate tracking labels already exist in other jurisdictions.

We are unaware of any systems we could recommend.

Other Comments:

As noted above, the statutory requirement seems to have been created with only large manufacturers in mind. Our members are smaller, may not manufacture products in batches, are likely to have less control over their source of supply (unless they manufacture items themselves here in the United States), and do not have the economies of scale of larger manufacturers. (This labeling scheme could be cost prohibitive for smaller volumes of low cost, competitively priced products. Our members do not have the option of amortizing the cost over millions of products.) CPSC should give more flexibility to smaller manufacturers, or perhaps decide not to enforce the requirements against such small manufacturers at all.

The CPSC should also consider exempting lower risk products, or products that historically are rarely involved in recalls, or providing more flexibility for labeling of such products. This too would help bring the costs down and create a system that is more “risk based.” While imposing costs on the marketplace can be justified in some cases, where there is very little safety pay-off, the agency should hesitate to impose unnecessary costs.

The CPSC should also consider allowing the use of stickers or other less permanent methods of labeling for certain kinds of products or materials, and for smaller manufacturers for whom another more “permanent” process might be too expensive. For plastic parts and other materials with uneven or other challenging textures, permanently labeling products is difficult and probably unfeasible economically. Labeling only the box might be the only viable option for some products. Labeling only the product, might work for others.

We do not have to reiterate the many ways the CPSIA has created challenges for our members. We request that the CPSC provide some flexibility in crafting these regulations, and show understanding of the vast range of firms and products regulated so the ultimate requirement minimizes disruption and costs to our members that cannot be justified based on the benefits of tracking labels. Further, we request that the agency provide a reasonable amount of time for firms to comply with these requirements after they are published. To do otherwise, would only further damage our businesses with no real improvement of public safety.

Cordially,



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