



CPSIA Quick Facts

Tracking Labels - 7/24/09 Update

Section 103, 14(a)(5)

Purpose: To enhance the effectiveness of recalls by allowing for better identification of hazardous and recalled products.

Scope: All children's products (consumer products intended **primarily** for children 12 and under).

Effective Date: Products manufactured after August 14, 2009

Requirement: The manufacturer of a children's product shall place **permanent**, distinguishing marks on the product and its packaging, **to the extent practicable**, that will enable—

(A) the *manufacturer* to ascertain the **location and date of production** of the product, **cohort information** (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and

(B) the *ultimate purchaser* to ascertain the **manufacturer or private labeler, location and date of production** of the product, and **cohort information** (including the batch, run number, or other identifying characteristic).

Trickiest issues: There are many. Here are just a few:

- *Who is the product "manufacturer?" Does this apply to require labels from the component or intermediate producer or only the final manufacturer of the finished item?*

Statute says a "Manufacturer" means any person who manufactures or imports a consumer product. (Section 3(a)(11) of the CPSA.) "Manufactured" means to manufacture, produce, or assemble. (Section 3(a)(10) of the CPSA). The importer or assembler of the final product to be sold to consumers is the manufacturer.

- *What is a tracking label?*

It can be a combination of words, numbers, and/or symbols. The CPSC said it will look at the entire product. If the manufacturer's or private labeler's name is in one place, and lot and other required information in another, that is acceptable.

- *What does "to the extent practicable" mean?* Congress in the Conference Committee report recognized that some items are shipped without individual packaging and said the packaging of the bulk shipment must be labeled. Commission guidance on this issue does not really define the term but suggests flexibility. Some examples: CPSC would allow games to be labeled on the game board or box, rather than on every game piece, and similar approaches for kits and other collections of small items. You need not add markings that damage the product physically or aesthetically, or where materials do not allow it.
- *What is "permanent?"*

A permanent marking is one that can be reasonably expected to last the life of the product. Markings on packaging that is intended to be discarded need only last until the package is discarded.

- *Are there requirements for the size, location, and format of the label?*

The CPSC only asks that the information be **visible** and **legible**. Manufacturers have wide latitude regarding location and format. (Of course, if your lot code relates to a particular supplier, or if you have only one supplier at any given time, nothing else may be necessary to identify the supplier.) Symbols or alphanumeric codes should be acceptable except for the manufacturer (including importer) or private labeler identity that should be spelled out. You should be prepared to interpret the markings you use for your customers as necessary.

- *What is the date of production?*

The date or date range of manufacture of the product. In the case of packaging of multiple components, it may be the packaging date.

- *What "location" information is necessary?*

The city, state or administrative area, and country.

- *Do I have to "give away" my supplier? I consider that information to be confidential.*

Your tracking label may use a code that only you can understand for your supplier's identity. CPSC may insist that your supplier's identity be revealed in the course of a recall, however.

- *What if I don't use lot numbers, batch numbers, or date codes?*

CPSC has given plenty of leeway—particularly to small businesses and crafters—to devise a system that works for them. You do not necessarily need to create a new system. The key thing to remember is that you should keep good enough records and have a good enough "label" to allow you to identify problem lots or production periods of your products and identify those that must be recalled.

Resources:

"CPSC Statement of Policy: Interpretation and Enforcement of Section 103(a) of the Consumer Product Safety Act."

CPSC "FAQs for Section 103: Tracking Labels for Children's Products."

Both of these are available on the CPSC web site, www.cpsc.gov.

Prepared for NSSEA by Eric Stone, K&L Gates, LLP – 7/24/09