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September 14, 2009

Todd A. Stevenson, Secretary  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

Re: **Notice of Proposed Rulemaking – Requirements for Consumer Registration of Durable Infant or Toddler Products -- 74 FR 30983 (June 29, 2009)**

Dear Mr. Stevenson:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the Consumer Product Safety Commission (“Commission” or “CPSC”) Notice of Proposed Rulemaking (“NPR”) published on June 29, 2009 (74 FR 30983) regarding proposed 16 CFR Part 1130. This proposed rule addresses Requirements for Consumer Registration of Durable Infant or Toddler Products under Section 104(d) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). Section 104 of the CPSIA directs the Consumer Product Safety Commission (“Commission” or “CPSC”) to establish a rule requiring manufacturers of durable infant or toddler products to provide consumers with registration forms with each such product, to keep records of consumers’ contact information and to permanently mark their products with identifying information.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

### **Durable Infant or Toddler Products**

It is imperative that industry has definitive knowledge of which product types are within the scope of the Section 104(d) requirements. Because the registration and marking requirements for durable nursery products are intensive and require advance preparation in the product pipeline, it would be a hardship for a manufacturer to have to speculate about whether a product falls within scope. RILA respectfully requests the CPSC to issue a definitive list of products that are covered by the rule, and that list should be limited to the twelve categories of items listed in section 104 of the CPSIA. It is important to recognize that Congress intended the imposition of a product registration

scheme to apply to a narrow subset of juvenile products as a means to test and study the effectiveness of registrant databases in facilitating better response to product recalls. The registration of such products was not intended as an end unto itself. Thus, a definitive list that is limited to the 12 products specific enumerated by Congress would be appropriate.

If the CPSC determines in the future that additional products should be added to a definitive listing, the requirements should apply to products made after a reasonable period (at least one year) after publication of the newly-added products.

The NPR notes that the CPSIA does not define “durable,” but states that Webster’s dictionary defines “durable goods” as “goods usable for a relatively long time.” Both the Staff Briefing Package and the NPR discuss a definition of “durable goods found in the Bureau of Economic Analysis, Department of Commerce, Glossary as “tangible products that can be stored or inventories and that have an average life of at least three years.” The NPR reiterates that, using this type of definition as a guideline, clothing, blankets and such textile products would not be considered durable infant or toddler products.

While it is appropriate to refer to this definition as further support for interpreting CPSIA Section 104 to exclude textile products from the category of “durable infant or toddler products” to which this section applies, further guidance is needed as to what types of products should be included in this category and subject to the requirements. If the CPSC declines to provide a definitive listing, it should not necessarily follow that all infant and toddler care products that do have an average life of three years or greater should automatically be considered “durable infant and toddler products” for the purpose of CPSIA Section 104. If this definition of “durable infant and toddler products” is recommended as guidance, without further clarification, many products that would not customarily be considered “durable infant and toddler products” could unintentionally be construed to be subject to the requirements of Section 104, simply because they have an average life of three years or more. In the absence of clarification, reference to the Department of Commerce definition of “durable goods” may suggest that such items as sippy cups, teethers, bottles, plates, spoons, changing pads, toys and playground equipment, which may have an average life of three years or more but which are substantially unlike the nursery-type products listed in the statute, could unintentionally be considered to be “durable infant and toddler products,” for the sole reason that they have an average useful life of three years or greater. RILA requests that if the definition of “durable infant or toddler product” includes an “expected life” of the product, then the expected life should be longer than 3 years.

If the CPSC declines to provide a definitive listing, then the CPSC should provide detailed definitions and examples of products that are included. In this scenario, the CPSC should also provide illustrative examples of products that are NOT included (such as sippy cups, general purpose and non-nursery items such as chairs and tables, and products governed by the National Highway Traffic Safety Administration (NHTSA)).

### **Registration Card Format**

To allow consumers to quickly identify registration cards, their purpose, and what to do with the card with little instruction, the CPSC should prescribe the format for the registration cards to comply with section 104. The CPSC should also include an electronic template available for download to ensure consistency.

While RILA would normally advocate for flexibility in complying with a statute, in this instance, flexibility will only lead to consumer confusion and a reduced chance that consumers will return and complete the registration cards.

### **Section 104 Permanent Identification Marking vs. Section 103 Tracking Label**

RILA notes that sections 103 and 104 of the CPSIA require two common data elements (manufacturer name and date of production). The CPSC should allow manufacturers of durable infant or toddler products to simultaneously comply with section 103 and the requirement to provide this information as part of section 104 of the CPSIA with the information contained on a tracking label.

### **Registering Party**

RILA believes that in general, manufacturers--not retailers--are best suited to place registration cards with the product and to collect and maintain consumers' information. At the same time, there may be instances where it makes more sense for a retailer or private labeler to maintain this information. The rule should provide flexibility for a manufacturer outside the United States to provide the consumer registration card with the product at the time of manufacture, and permit (but not require) an importer, private labeler, or retailer, rather than the manufacturer, to maintain the registration card information received from consumers in the United States. When a retailer is the importer of record **and** the retailer is the only contact within the United States, then in that instance, the foreign manufacturer should be allowed to insert the registration cards at the time of manufacture, and the retailer should be the party that collects and maintains the consumers' information. Otherwise, the manufacturer should be required to maintain the database. RILA can easily envision a scenario in which several U.S. retailers import the same product from a foreign manufacturer. In that instance, to avoid consumer confusion and to provide consistency, RILA believes that a single party should collect and maintain the product registration cards--most likely the manufacturer.

The infrastructure requirements needed to run a registration program are such that many retailers could not handle it at present. Because the CPSIA definition of manufacturer includes the importer of record, some retailers have made the policy choice to **not** be the importer of record (or manufacturer) of durable nursery products.

RILA believes that many retailers would have a very difficult time in fulfilling the obligations under Section 104. A pure retailer could in theory attach a registration card to the juvenile products delivered to it for sale, but that retailer is not best placed to

permanently mark the product or to assure the permanent information on the product is consistent with the information on the registration card. And many retailers could not easily launch and maintain an online registration tracking system. If retailers are deemed to carry the burden, it will have a chilling effect on the number of retail sources for these kinds of products.

### **Proprietary Business Information**

The NPR requests comments on whether requiring the identification of a manufacturer on the registration card and on the product could result in the disclosure of confidential business information. Many retailers consider the identity of their suppliers or manufacturers of their products to be confidential proprietary business information.

As the NPR points out, the term “importer” is included in the definition of “manufacturer.” As a practical matter, if the importer will be the entity that collects and maintains the registration card information from consumers in the United States, and if the importer’s name and contact information is included on the registration card and on the product, it would be unnecessary and potentially confusing to require that the name and contact information for the manufacturer to also be included on the registration card and for the name of the manufacturer to be included on the product. In the case of a product manufactured outside the United States and imported by a U.S. retailer, the rule should be flexible to permit the importer’s name and contact information to be placed on the registration card, and the importer’s name to be placed on the product, without requiring that the manufacturer’s name and/or contact information be placed on the registration card or on the product to avoid consumer confusion and to prevent the potential disclosure of confidential business information.

### **Practical and Economic Impact of Perforated Registration Card**

The NPR has suggested that perforated registration cards be used, so that part of the registration card could be kept by the consumer. RILA believes the CPSC should consider whether consumers are likely to actually keep the perforated section of registration card in a place where they will remember it in the event of safety issues. RILA respectfully suggests that alternative solutions may be more practical—the information proposed by CPSC to be included on perforated section is either available on the product itself (because of section 104 requirement) or can be printed on the instruction manual, which most consumers are more likely to keep than the registration card.

### **Registration Cards Should Not Be Required When Company Already Has Purchaser Information**

Some retailers sell their products in a manner that they collect the name and full mailing address from the consumer as part of the sales transaction or through regular business operations (for example, online sales and membership warehouses). These companies can retain and store this data for the requisite period of time to comply with section 104.

As such, these companies should be exempt from including a registration card in product sent to such consumers, since inclusion of a registration card would only create redundant information.

### **E-Mail Registration**

While RILA advocates that the CPSC prescribe the format for the actual registration cards, RILA believes the CPSC should allow flexibility in how companies implement the registration requirement. For example, consumers should be allowed to e-mail registrations to manufacturers that do not have websites but that do have e-mail. Manufacturers that choose to use this option should be required to send a response to the consumer to let them know their registration has been accepted (can be automated response).

### **Proposed Effective Date**

Industry needs sufficient time to comply with any new rule, and the logistical and systems requirements set forth in section 104 are significant. RILA believes that one year after publication of the final rule in *Federal Register* is necessary for companies to establish all systems to fully comply with the new requirements.

### **Conclusion**

RILA members place the highest priority on ensuring the safety of their customers and the products sold to them. RILA appreciates this opportunity to comment on the Commission's Notice of Proposed Rulemaking published on June 29, 2009 (74 FR 30983) regarding proposed 16 CFR Part 1130. Should you have any questions about the comments as submitted, please don't hesitate to contact me by phone at (703) 600-2046 or by email at [stephanie.lester@rila.org](mailto:stephanie.lester@rila.org).

Sincerely,



Stephanie Lester  
Vice President, International Trade