

Tracking Labels Fact Sheet

The intent of this fact sheet is to provide guidance to SGIA members as they implement the provisions of the Consumer Product Safety Information Act (CPSIA), as administered by the Consumer Product Safety Commission (CPSC). The information contained in this document should not be construed as legal advice. As new information becomes available, this fact sheet will be updated. Currently, the CPSC has issued four proposed rules. SGIA is in the process of developing and submitting comments on the relevant proposals.

SEC. 103. TRACKING LABELS FOR CHILDREN'S PRODUCTS.

(a) IN GENERAL.—Section 14(a) (15 U.S.C. 2063(a)), as amended by section 102 of this Act, is further amended by adding at the end the following:

“(5) Effective 1 year after the date of enactment of the Consumer Product Safety Improvement Act of 2008, 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).”

What is the purpose of the tracking label?

The overall purpose of Section 103 is to enhance recall effectiveness. The tracking label achieves this objective by providing information to help a manufacturer target the problem and initiate an effective corrective action program, to help a consumer determine whether their product is subject to the recall. Manufacturers should keep this purpose in mind when considering what information to include on the tracking label. While the statute spells out some required “ascertainable” (to the extent “practicable”) information, different supply chains may want to consider including additional information to satisfy the overall purpose. Remember – this tool can also help manufacturers limit the number of products impacted by a recall.

¹ For purposes of this FAQ, I mostly refer to these “distinguishing marks” as the “tracking label.”

Does this provision apply to inventory?

No. One year after the CPSIA’S date of enactment, the manufacturer must begin applying tracking labels to children’s products. So, children’s products manufactured on, or after, August 14, 2009 must have a tracking label.

Who is responsible (liable) for applying the tracking label?

Section 103 requires the “manufacturer of a children’s product” to apply the tracking label. The CPSA defines a manufacturer as any person who manufactures or imports the product. Therefore, in order to streamline compliance and liability, we expect the CPSC to issue a similar determination to the general conformity certification ruling, and limit the responsibility to either the domestic manufacturer or importer.

In many cases, a product may be processed by several manufacturers in different facilities. Ultimately, the facility that applies the tracking label may simply be the facility that has the capability to add the information. However, the tracking label should serve as a link back to the final stage of production. For example, a company may manufacture a batch of plain white cotton T-shirts with tracking label information 123 on them. Half of that batch goes to another manufacturer who then screen prints the shirts. The other half of the batch is sold directly to a retailer. In this instance, tracking information 123 does not reflect the additional processing where a product hazard may be introduced. A company should further work to have internal tracking systems set up to allow the manufacturer(s) to trace the origins of components of the product.

Does a tracking label actually need to be a label?

No. The requirement calls for permanent “distinguishing marks” on the product and the packaging, to allow the manufacturer and private labeler to “ascertain” the required tracking information. The requirement applies to all children’s products to the extent that the product and packaging can be “practicably” labeled.

Are there any standard codes, words, formats, etc.?

No. As Commissioner Moore wrote, “The statute states the information that is to be on the product but it does not require it to be in any specific location, or to be in any particular size or format. The lack of detailed requirements may have been

an acknowledgement that a one-size fits all approach may not be possible, given the broad range of products covered by this provision.” The “tracking label” can be anything that allows the manufacturer and consumer to obtain the required information and determine whether the product is involved in a recall. Therefore, the marks can be codes, designs, symbols, words, letters, etc. In fact, the statute does not require that these “distinguishing marks” all be in one place on the product. The key is that the manufacturer be able to interpret the marks and convey the necessary information to the consumers.

“To the extent practicable.” What does this mean?

While the CPSC has not issued guidance on this issue, products currently exempt from labeling requirements, like the Federal Trade Commission’s Textile and Wool Act and the Customs and Border Protection’s Country of Origin Marking, may also not be “practicably labeled” for purposes of the tracking label. In general, factors like size, shape, function, aesthetics and material all are considerations. Products like children’s jewelry that are too expensive to be labeled may also fall under this exemption. However, if at all possible, a manufacturer should try to include some of the required information on the product or packaging.

Why does the packaging need to be marked?

The packaging will help a retailer remove non-compliant products from the shelves in the event of a recall. Hang tags, adhesive stickers, shoeboxes, plastic bags, even hangers are all examples of packaging. If your product is sold without packaging, you do not need to create packaging to satisfy the requirement. Furthermore, some packaging may not be “practicably” labeled, while the product itself can be. The opposite scenario may also occur. In some cases, multiple products have one package (For example, many barrettes may be sold in a single cardboard display box.) and labeling the container with tracking information for multiple products may be the only option. In another scenario, if a tracking label on the product is intentionally situated in a way so that it is visible through the packaging, that would seem to satisfy the intent of labeling the package itself.

How do I label a product that has multiple components or parts?

In cases where a product has multiple components or parts, a single tracking label may or may not be sufficient. Products marketed and used together are likely discarded together and so a single tracking label should meet the requirements. For example, children’s footwear may only require a tracking label on one of the pair, as the right shoe does not function without the left. Therefore, should one shoe be lost, a child cannot continue to use the product. Products like two-piece bathing suits may also fall under this category.

However, products that are simply packaged or sold together but can be used independently may require individual tracking labels because the products may be discarded at different times. The package itself may only require tracking information for all the individual products it contains, but each product within the package should have permanent tracking labels as well (assuming the products are “practicably” labeled).

In cases where a product is sold with a detachable accessory that is clearly a part of the accompanying product, a manufacturer may ultimately have discretion to decide to label only one of the components. For example, shoe laces (which may not be practicably labeled anyway due to their size) would not need separate tracking labels from the shoes themselves. A pair of patterned pants sold with a belt made out of the same material may only require a single tracking label. However, if the manufacturer markets the product in a way that highlights that the accessory can be used independently from the main product, the accessory should then also be labeled. In other words, stay clear from phrases like “detachable” or “separate.”

What information must be included?

The distinguishing marks must enable the manufacturer to ascertain the location and date of production, cohort information and any other information to help the manufacturer identify the specific source of the product. The marks must also enable the ultimate purchaser (consumer) to determine the manufacturer or private labeler, location and date of production and cohort information.

Specifics

The information a company decides to include on the tracking label may vary drastically between products, while still satisfying the requirements of Section 103. This discrepancy may be due to different interpretations of the requirements, or because of different product categories or supply chains. Below are some considerations when interpreting what required information must be included. Ultimately, when deciding what to put on the label, keep the purpose of Section 103 in mind (see first FAQ question).

Ascertain: The marks should help the consumer and manufacturer find out the required information. Keep in mind, the statute does not say the tracking label must “contain” the required information. Therefore, in the event of a recall, the consumer and manufacturer should be able to refer to the label and, through some reasonable means of communication (800 number, recall notice, company website, email, etc.) determine, with some specificity, whether the product is covered by the recall or not.

Information the manufacturer must be able to ascertain:

Location of production: Products already require country of origin information, which, technically, is where the product was manufactured. Providing any further information (province, city, etc.) does not help the consumer in the event of a recall and risks disclosure of information — such as the name or street address of an individual factory — that is business proprietary. For products that are processed in several different facilities in several different locations, the location should reflect the final processing stage.

Date of production: Manufacturing is a fluid process that may take a few hours or several months. Therefore, date of production may not always be a neat single day but a range of dates. Some manufacturers may decide to use “exit factory” as the date of production. This may be impossible for other manufacturers who insert labels and tracking information before an exit factory date is set. Furthermore, providing specific day information may not be “practicable,” because such specificity is not cost effective. With cost efficiency in mind, try to narrow down the date of production as much as possible, to limit the number of products subject to a potential recall.

Cohort information: With respect to “cohort,” it is clear that the CPSIA envisions a flexible approach to accommodate the many different kinds of production systems and organizations, internal databases and tracking systems that companies maintain. While batch numbers may work for one company, purchase orders may work for another. In some cases, a style or design of a garment or shoe may satisfy the cohort information requirement, because they are “other identifying characteristics.” For example, if only a few shirts are screen printed with a unique design, that screen print is a “distinguishing mark” that satisfies the cohort information. Finally, some companies may be able to use date of manufacture as cohort information. In these cases, the company should still be able to precisely identify a product in recall situations.

Separate information the ultimate purchaser (consumer) must be able to ascertain:

Manufacturer...: Section 3 of the CPSA defines manufacturer as any person who manufactures or imports a consumer product.

...or private labeler: The tracking label requirement uses the phrase “manufacturer or private labeler,” reflecting an explicit Congressional direction that private labelers may suffice in such circumstances. Finally, we note that manufacturer information — such as the names or addresses of factories — may be deemed business proprietary information, and consumer access to such information does not serve the purpose of the tracking label requirement.

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