



founded 1881

April 9, 2012

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway, Room 802
Bethesda, MD 20814

Submitted electronically via www.regulations.gov

Re: **Docket No. CPSC-2012-0005: *Products Containing Imidazolines Equivalent to 0.08 Milligrams or More***

Dear Mr. Stevenson:

The Consumer Healthcare Products Association (“CHPA”) appreciates the opportunity to provide comments on the Consumer Product Safety Commission’s (“CPSC” or “Commission”) proposed rule, “Products Containing Imidazolines Equivalent to 0.08 Milligrams or More,” published in the Federal Register on January 25, 2012. The proposed rule will require child-resistant (“CR”) packaging for over-the-counter and prescription products containing the equivalent of 0.08 milligrams or more of an imidazoline (includes tetrahydrozoline, naphazoline, oxymetazoline, and xylometazoline drug classes). The CPSC, consistent with statutory requirements of the Poison Prevention Packaging Act (“PPPA”), has proposed that such a rule become effective one (1) year after the publication of a final rule.

Founded in 1881, CHPA is a national trade association representing leading manufacturers of over-the-counter (“OTC”), non-prescription medicines and dietary supplements. A number of CHPA member companies manufacture nasal congestion and/or ophthalmic products that would be affected by this proposed rule. Together, CHPA members manufacture more than forty (40) affected products. These OTC medicines provide consumers with important relief from symptoms such as nasal congestion and itchy and red eyes due to allergies or other irritants. Consumers rely on these medicines and depend on the ability to purchase them OTC.

As described in more detail below, based on discussions with member company experts and a global supplier of packaging for these types of medicines, CHPA has concluded it is not feasible for manufacturers to comply with the proposed one (1) year effective date. At a minimum, manufacturers will require approximately two (2) years to implement

**Consumer Healthcare
Products Association**
900 19th Street, NW, Suite 700
Washington, DC 20006
† 202.429.9260 ‡ 202.223.6835
www.chpa-info.org

the packaging changes. Accordingly, in order to ensure continued consumer access to these important medicines, we respectfully request the Commission issue a one (1) year stay of enforcement after the effective date of the final rule (therefore providing at least two (2) years after the publication of the final rule for manufacturers to comply). In addition, we ask the Commission to grant extended stays of enforcement for manufacturers with special circumstances requiring additional time. CPSC has a history of recognizing that unique circumstances may require additional time as the Commission explicitly noted that companies could request a stay of enforcement in the preamble to the final rule on minoxidil CR packaging. *See* 62 Fed. Reg. 63602, at 63606-7 (Nov. 16, 1998).

One (1) Year is Not Sufficient Time to Design, Develop, Test, and Manufacture New CR Packaging for Applicable Products

The statutory requirement for new CR packaging rules to be effective within one (1) year after publication of a final rule does not allow manufacturers sufficient time to design, develop, test, and manufacture new product packaging for the affected products. Due to the unique qualities of the imidazoline-containing nasal and ophthalmic OTC medicines and their packaging, manufacturers will require additional time to implement CR packaging.

There are no “off-the-shelf” or “stock” CR packaging solutions currently available and therefore significant package development work and associated stability and manufacturing qualifications are needed. While CR screw closure technologies are available, given the range of bottle designs and thread sizes associated with nasal and ophthalmic products, custom solutions will need to be developed. For example, with nasal products, existing packaging involves one-piece protection caps whereas a CR feature would most likely require at least two different components (and potentially introduce a new material). As another example, for ophthalmic products, CR bands are not currently available in sizes less than 18mm and most ophthalmic bottle neck finishes are 13-15mm and will require smaller bands. Such adaptations may adversely impact the CR and senior-friendly features of the packaging so additional testing and/or design development will likely be required.

Further, the Food and Drug Administration (“FDA”), which regulates the drug products impacted by the proposed rule, classifies nasal sprays and ophthalmic products as having a “high degree of concern associated with the route of administration” and a “high likelihood of packaging component-dosage form interaction.”¹ Consequently, any proposed changes to the container-closure system may require specific considerations and significant qualification activities to ensure that the packaging remains “suitable” from the perspectives of protection (e.g., light, solvent loss, microbial ingress), compatibility (e.g., sterilization process, absorption,

¹ FDA Guidance for Industry: Container Closure Systems for Packaging Human Drugs and Biologics (May 1999), available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070551.pdf>.

stability), and safety (e.g., USP biological reactivity, extractables/leachables). Specifically, sterilization techniques, required for ophthalmic products, can affect the integrity of packaging components. Multiple iterations of testing are typically required to determine package functionality and acceptability following the sterilization process, extending the development timeline.

CPSC Should Issue a One (1) Year Stay of Enforcement After the Effective Date of the Final Rule

As noted above, based on discussions with member company experts and packaging industry authorities, we have concluded manufacturers will require a minimum of approximately two (2) years to implement the packaging changes for the relevant products. Accordingly, CHPA requests CPSC issue a blanket one (1) year stay of enforcement therefore providing at least two (2) years after the publication of the final rule for manufacturers to comply with the requirement.

Recognizing that timelines will vary based on individual product requirements, the following is a high-level summary of the anticipated steps involved in implementation of CR packaging for these nasal and ophthalmic product classes:

1. Design development – 2 to 4 months
2. Prototype tooling – 4 to 6 months
3. CR protocol testing – approximately 3 months (depending on CR testing facility capacity)
 - o If CR protocol fails, return to step 1
4. Industrial scale up for packaging and validation – 7 to 11 months
5. Adoption filling line and validation – 3 to 6 months (depending on complexity)
6. Stability testing – 3 to 12 months (if necessary)
7. Regulatory filings – 6 to 12 months (if necessary)

While this high-level timeline incorporates some steps that may be able to be performed in parallel, based on the above outline, CHPA anticipates manufacturers will require at least 19-24 months to implement the new packaging. There are a number of variables involved in the process and some manufacturers will require additional time to select suppliers, repeat CR testing with final production samples, and modify distribution packaging. In addition, an unsuccessful design that does not pass CR testing on its initial attempt will require time for modification and re-testing. It is not possible to define the upper limit of the timeline but due to the number of variables involved in the process and diversity of the medicines implicated, it is reasonable to expect that the process may take even longer than two (2) years in a number of cases.

Manufacturers Should be Granted Extended Stays of Enforcement as Special Circumstances Require

Depending on the specific product, packaging development activities could range from design modifications and/or adaptations of existing CR technologies, to full-scale changes to the packaging design and materials of construction. Based on the complex nature of the affected products and sensitivity to packaging-related changes, the number of products and package sizes involved, and the extent of the packaging development, qualification, and regulatory activities, some CHPA members estimate that introduction of CR packaging for all of the impacted products will take more than two (2) years. For this reason, CPSC should expressly permit manufacturers to petition for longer stays of enforcement as needed and grant such stays until such time as it is determined that an enforcement stay is no longer appropriate. As noted above, CPSC has a history of recognizing unique circumstances that require additional time as this is the approach the Commission took with regard to implementation of the final rule for minoxidil CR finger sprayer packaging (62 Fed. Reg. at 63606-7). In the minoxidil situation, the Commission explicitly noted that development of the applicable CR packaging may take 27-36 months.

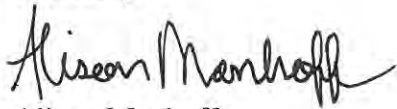
As an example of a potential scenario where additional time may be required for medicines containing imidazolines, some of the products affected by the proposed rule are subject to new drug applications (“NDAs”) or abbreviated new drug applications (“ANDAs”). In these instances, even after the CR packaging development and associated qualification work are completed, preparation, submission and approval by FDA may also be required prior to implementation. This process can take an additional 6-12 months. In addition, many of these products, as well as some non-NDA/ANDA products, may require stability testing. While stability testing may be able to occur in parallel with other steps, it can take 3-12 months and add time to the already lengthy process. Further, as noted above, ophthalmics and other products that are sold as sterile may also require more development time as the sterilization process can have an adverse effect on the packaging componentry (and possibly CR functionality) and potentially compromise the integrity and quality of the affected drug product(s). Due to the additional assessments required in the situations described above, products subject to NDAs or ANDAs, products requiring stability data, and products sold as sterile, represent examples of special circumstances warranting consideration for extended implementation times. Specifically, many of the ophthalmic products affected by the proposed rule will fall into one or more of these categories requiring additional time.

Additionally, it is important to recognize that many companies have multiple products and packaging sizes that are affected and it may not be possible to develop, qualify, and implement CR packaging concurrently for all of the medicines – a staggered approach will be needed. The quantity of products may also adversely impact product capabilities since final qualifications and validations will need to take place on the actual production line.

As described above, there are a number of factors that may prohibit a manufacturer from being able to implement new CR packaging for the affected products within a two (2) year timeframe. In order to ensure consumers have continued access to these important medicines, CPSC should grant additional enforcement stays to manufacturers upon petition as appropriate.

CHPA thanks the CPSC for the opportunity to provide comments. If the Commission has any questions or if CHPA can be of any assistance, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Alison Manhoff". The signature is written in a cursive, flowing style.

Alison Manhoff
Deputy General Counsel
Consumer Healthcare Products Association