



October 29, 2008

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814

Via E-Mail and Facsimile

Re: Section 102 Certificate Requirements

To the Commission:

The undersigned trade associations, representing the manufacturers, distributors, and retailers of a broad array of products, are writing to request that the Commission exercise enforcement discretion with respect to the new general conformity certification requirement imposed by the Consumer Product Safety Improvement Act of 2008 (CSPIA). A formal stay of enforcement, as well as clear implementation guidance from the Commission, is necessary to prevent the severe business disruptions that could otherwise result from manufacturers' practical inability to fully comply with the certification requirement by the effective date of November 12, 2008.

Individual associations will be providing additional comments regarding the applicability of the general conformity certification requirement to the products manufactured or distributed by their member companies and other issues relating to implementation and compliance as they affect manufacturers, distributors and retailers. Although the Commission has asked for comments by Wednesday, October 29, 2008, we ask that the Commission remain open to hearing additional concerns and questions that undoubtedly will arise as our member companies continue to grapple with the logistics challenges of complying with the certification requirement.

The CSPIA (P.L. 110-314) was signed into law on August 14, 2008. Section 102(a)(1) of the Act imposes a general conformity certification requirement that takes effect ninety days following enactment (November 12th).

Compliance with this requirement entails preparing a certificate to “accompany the applicable product or shipment of products,” attesting to the product’s conformity with all Commission “rules, bans, standards, or regulations applicable to the product.”

The general conformity certification provision is contained within the “Children’s Product Safety” title of the act and, specifically, within a section titled “Mandatory Third Party Testing for Certain Children’s Products.” Many companies and their trade associations learned only recently that the Commission interprets this provision as applicable to any product subject to the Commission’s authority, not only children’s consumer products. Some of the undersigned associations believe that this interpretation is not correct and that the CSPIA specifically does not apply to their industry. These individual positions are expressed in separate letters to the Commission. Nevertheless, without adequate time to both research and discuss these positions with the Commission, we are unified in asking the Commission to exercise enforcement discretion.

Our immediate concern is that the short 90-day timeframe from enactment to effective date for the certification requirement makes it impossible for manufacturers and distributors to be fully in compliance by November 12th, and raises significant compliance concerns and potential supply chain disruptions for pharmacy and other retailers.

Enforcing the new certification requirement beginning November 12th, rather than providing clear guidance allowing for a more reasonable implementation period, could result in a massive supply disruption affecting many thousands of products and a broad cross-section of the economy.

Especially in today’s economic environment, the prospect of this supply disruption is a serious threat to manufacturers, distributors, and retailers. We urge the Commission to issue at the earliest possible opportunity a clear statement providing a time period of at least six months for affected companies to fully assess their manufacturing, distribution, and supply processes, help ensure that all questions regarding compliance are answered fully, and implement the new certification requirement in a way that is both transparent and effective.

All manufacturers of products potentially subject to the general conformity certification requirement already are subject to the underlying substantive requirements of the statutes and regulations enforced by the Commission. Our request for the Commission to exercise enforcement discretion regarding certifications does not alter the ongoing obligations of our member companies to fully comply with those substantive requirements. There should be no concern, therefore, that allowing for a longer compliance period would have any consumer safety implications.

Thank you very much for considering our views and concerns, and we look forward to working closely and constructively with the Commission on this critical issue.

Sincerely,

Council for Responsible Nutrition
Consumer Healthcare Products Association
Consumer Specialty Products Association
Healthcare Distribution Management Association
National Association of Chain Drug Stores
Natural Products Association
Personal Care Products Council

cc: Ms. Patsy Semple, Executive Director