UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

COMMISSIONER ANNE M. NORTHUP

STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON THE COMMISSION REPORT TO CONGRESS PURSUANT TO P.L. 111-117, CONFERENCE REPORT 111-366, ON RECOMMENDATIONS TO AMEND THE CPSIA

January 15, 2010

I voted in favor of the recommendations in this report because I support the basic premise that statutory changes are needed to address the dire and looming consequences of the Consumer Product Safety Improvement Act (CPSIA) of 2008. While the CPSIA aptly addresses lead paint, a known health hazard, the Commission's report acknowledges that the law has resulted in banning products with higher than allowable lead-content levels that are actually harmless to children and which Congress never intended to ban—such as books. Safety should be the focus of the Consumer Product Safety Commission (CPSC), as it was prior to the CPSIA, rather than the implementation of a law whose scope drastically overreaches the issues of safety to prohibit and regulate countless consumer products posing no health risk to children. Although the report does not explain *how* to address all the compliance concerns raised by Congress and small businesses, it does represent a unanimous appeal to Congress for more flexibility related to exclusions, the treatment of books, a portion of the retroactivity provisions relating to lead, and the treatment of small businesses. I am hopeful Congress will heed the requests in this report and, in every way possible, put this agency back on a course of focusing first on health risk and child safety and away from interpreting and applying an unwieldy statute that has many provisions that provide little to no benefit for consumers.

In supporting this report, I have a number of more specific recommendations that would alleviate the negative consequences of this law, which have been conveyed to the Commission by Members of Congress, small businesses, distributors, importers, resellers and other groups. These suggestions would address provisions of the law that—as this report also concedes—in no way impact safety. My recommendations cover the whole CPSIA rather than simply the lead provisions, as the list of compliance concerns related to the law extend well beyond lead. In presenting these recommendations, I will further define the problems with the law that the recommendations address and continue to articulate the health hazards, or lack thereof, related to lead that so often get misrepresented.

Risks Associated With Lead

Amending the CPSIA must take into account the real risks associated with lead absorption. The CPSIA effectively removes the ability of the Commission to assess risk in regard to any children's products, thus allowing for a brass musical instrument that poses no

health risk to a child to be outlawed right alongside a solid-lead charm on a piece of children's jewelry that is quite dangerous.

There is a substantial difference between the "exposure" of a child to lead (*e.g.* when a child is standing in the same room as a set of house keys) and ingestion of some meaningful amount of lead that may be "absorbed" into a child's bloodstream. Unfortunately, these terms are often interchanged with no explanation, leaving the average consumer to believe that it is necessary to eliminate lead in all forms from all products. The effect of the CPSIA has been to outlaw books published before 1985 that are likely to have lead in the inks, for example, which both the Commission and Congress now feel was an overreach because children are not likely to eat the pages of old books or ingest more than miniscule amounts of lead after touching their pages. Likewise, youth all-terrain vehicles and bicycles are outlawed or must be reengineered even though the lead that is in the hood, handlebars, or hubcaps will not become ingested and absorbed at anything more than a negligible level (from hand to mouth touching where minuscule amounts of lead may rub off—not from actually eating the hood, handlebars or hubcaps). Other everyday products such as school lockers, the hinges on a child's dresser, or jackets with zippers and buttons are outlawed if they contain certain levels of lead in the substrate. Even ball point pens, while not considered necessarily "children's products," may still be outlawed if they have a toy or game attached to them and are marketed to children.

The distinction that is necessary to make is that none of the above-mentioned items would result in any harmful *absorption* of lead into the bloodstream through touching, wiping, or licking even though all of these would count as lead *exposure*. In other words, riding a bike or wearing a coat with a zipper is not a health risk because it does not meaningfully increase the blood lead level in a child. However, because there are still *negligible amounts of lead detectable by scientific equipment* that may be wiped off by touching a bicycle handlebar, the CPSIA treats these items in exactly the same way it treats products that truly could hurt a child by increasing the blood lead level.

In many other laws, standards exist to allow for such minimal absorption. For example, the Food and Drug Administration allows for 0.1 microgram of lead in a one-gram piece of candy.[1] The Safe Drinking Water Act declares "zero lead" to be the objective for the amount of lead in water, but the pipes themselves are permitted to be 80,000 parts per million (8 percent) lead – potentially allowing for negligible, trace amounts.[2] California Proposition 65[3] as well as the European Union[4] allow for a negligible amount of absorbable (or soluble) lead in children's products. People often are surprised to learn that all children are born with a certain blood lead

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[1] "Supporting Document for Recommended Maximum Level for Lead in Candy Likely To Be Consumed Frequently by Small Children," Food and Drug Administration, November 2006: http://www.fda.gov/Food/FoodSafety/FoodContaminantsAdulteration/Metals/Lead/ucm172050.htm

[2] Environmental Protection Agency, Safe Water Drinking Act, Fact Sheets: http://www.epa.gov/safewater/sdwa/basicinformation.html

[3] California Office of Environmental Health Hazard Assessment (OEHHA), Proposition 65 - http://www.oehha.org/prop65.html, Children's Health at OEHHA - http://oehha.ca.gov/public_info/public/kids/schools041707.html

[4] European Committee for Standardization (CEN), EN 71-3 Safety of Toys-Part 3: Migration of certain elements. CEN, Brussels, Belgium, 1994: http://ec.europa.eu/enterprise/policies/european-standards/documents/harmonised-standards-legislation/list-references/toys/

level, depending on the blood lead level of the mother. Some additional amount of lead (roughly one microgram per kilogram of body weight)[5] is then taken into the body every day through just the food we eat and the air we breathe.

So what lead is actually risky and absorbable into the bloodstream at high levels? The experts at the Centers for Disease Control and the National Institutes of Health have found that lead paint in old houses as well as lead in dirt[6] near old gas stations can be very dangerous for small children (http://www.cdc.gov/nceh/lead/.) In other words, the *risk of absorbability* with lead paint in an old home that becomes chipped and may be inhaled or ingested is quite high. In the same vein, a solid-lead metal charm or piece of jewelry that can be swallowed presents a danger since such an item could get caught in the stomach and absorbed. However, none of these agencies, including the CPSC, has ever found that a child touching a brass musical instrument, touching a vinyl lunchbox, or riding a bicycle, could ever rub off enough lead, day after day, year after year, to affect his or her health.

Unfortunately, some Members of Congress as well as some CPSC Commissioners choose to ignore the science behind the risks of lead absorption. They are concerned about "**exposure**" to lead only, which does not necessarily have anything to do with absorbability and health risk. These individuals tend to favor banning all lead in all consumer products, no matter what the economic consequences, despite there being no added health benefit. Others, like me, are concerned about the "**absorption**" of lead into the body and the health risk to children from a particular product and therefore support a variety of amendments to the CPSIA to re-focus the Commission on genuine risks – as well as to avoid encouraging substitutes to lead, like cadmium, which may be much riskier.

Amendments to the CPSIA: Additional recommendations to Congress

Allow for a level of *de minimis*, absorbable lead:

The primary and best way to restore the agency's capacity to address "real risk" in the setting of its regulatory priorities and to align them with existing standards in other federal agencies and around the world would be to permit the agency to consider the absorbability (or bioavailability) of lead, and not just the exposure (or total lead content) of a given material. Total lead content in a substrate is a poor proxy for risk from lead in many, if not most cases. For example, it makes no sense to impose the same lead content limit on items that cannot be swallowed (*e.g.*, a bike frame) that is imposed on items that can wind up in the stomach (*e.g.*, a jewelry charm). The CPSIA's existing requirement to focus solely on exposure to total lead limits thus leads to absurd consequences—such as banning products that pose no risk to children

[5] Centers for Disease Control, Agency for Toxic Substances and Disease Registry, Toxic Substances Portal: Lead: http://www.atsdr.cdc.gov/PHS/PHS.asp?id=92&tid=22

[6] Although lead in dirt is a proven hazard for small children nearby to old gas stations that used leaded gasoline or certain pesticides, it is notable that the Environmental Protection Agency standard for lead in soil is 400 ppm. http://www.epa.gov/lead/ This standard is even higher than the current lead content standard provided in the CPSIA for children's products (for products for which there is no known health hazard, unlike soil), which is 300ppm.

and forcing the agency to spend more time and attention on children's products with 350 ppm of lead than it does on riskier products or emergent issues like cadmium. Congress actually included an absorbability exemption in the statute, but the Commission mistakenly interpreted that exception in a way that rendered it useless. Where bioavailability of lead is sufficiently low, there is no risk that a child will absorb enough of that lead to cause harm. In such cases, I believe product manufacturers should be completely exempted from the onerous lead testing and certification regime of the CPSIA.

There are at least three ways in which Congress could achieve this end, all of which would allow products that pose no health risk to be entirely exempt from the law's onerous requirements, such as third-party testing, re-testing, and certification to lead limits. First, it could entirely repeal the portion of the CPSIA dealing with total lead content. If that were done, the agency would continue to enforce strict limits on lead in paint and surface coatings, but it would revert to regulating lead content in other materials according to the actual risk posed by the lead under the Federal Hazardous Substances Act (FHSA) according to factors like its bioavailability.[7]

Alternatively, Congress could superimpose a requirement that a product or material contain more than a specific *de minimis* amount of bioavailable (and thus absorbable) lead before the requirements of the CPSIA would kick in. Product manufacturers could then avoid having to worry about the CPSIA by choosing safe materials containing only a *de minimis* amount of bioavailable lead.

As a third option, Congress could amend the existing absorbability exception in §101(b)(1) of the statute to restore its original meaning. Such an amendment would strike the requirements for notice and a hearing and for peer-reviewed evidence as well as strike the word "any" in §101(b)(1)(A). It could also specify that the exclusion is available to any product or material whose use does not lead to a meaningful increase in a child's blood lead level. Or, under either of the latter two approaches, Congress could leave it up to the Commission to define by rule what counts as a *de minimis* amount of lead or a meaningful increase in blood lead levels—possibly reflecting European Union requirements, California state law, or levels deemed acceptable in analogous contexts by other federal agencies.

The point of a *de minimis* bioavailability or absorption exception is to concentrate enforcement resources on the real problems as well as to avoid obtaining negligible benefits at enormous cost. Adding a *de minimis* exception would also address the arbitrary result under current law that permits goods with 299 ppm lead content that have significant amounts of bioavailable lead while simultaneously prohibiting items with 301 ppm lead content that contain virtually no bioavailable lead. A particular virtue of the *de minimis* approach is that it would not require product-by-product approval by the agency, because manufacturers could determine for themselves whether their products meet the standard (subject to penalty and liability for errors)

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[7] For example, the recent RC2 settlement regarding lead paint on Thomas the Tank Engine toys, the 2007 case that partly served as the impetus for the entire CPSIA, resulted in both a recall of the toy and a civil penalty of $1.25 million. These penalties all occurred under the FHSA. While this was a lead paint violation as opposed to lead content, the agency still has full discretion under the FHSA regime to remove any product that poses a "substantial product hazard."

without having to petition the agency for an exclusion. However, the agency could (as it did with its determinations) also deem certain alloys approved as inherently having only a *de minimis* amount of lead available.

Reduce the age range:

The CPSIA treats products used by a 12-month old baby and a 12-year old child in the same manner – ignoring any difference in risk. While not included in today's consensus report, one of the most persistent CPSC staff recommendations to Commissioners has been to lower the age limit across the board to which the definition of a "children's product" applies in order to more logically and workably implement the law. It is important to remember that regardless of the age range, the CPSC retains the authority to issue a stop-sale order or to recall a product at any time that poses a "substantial product hazard" under the FHSA.

The 12-and-under age range affects a lot of products that are also used by teenagers, thus creating a lot of enforcement difficulties over marginal products. Producers will argue that the products are primarily intended for children 13 and older, and the Commission will have to examine marketing and other factors to verify such facts. Some blurring of the age lines will happen regardless of where the age cut-off is placed, but there are many more products subject to this uncertainty for older children in the "tweens" (*e.g.*, certain sporting goods, musical instruments, etc.)

In addition to enforcement difficulties, the benefits of the law are vastly reduced as applied to products for older children who are well past the age when they mouth things or put their hands in their mouths constantly. To the extent the older age range may have been chosen due to the hypothesized "common toy box" circumstance, there are better solutions available. Congress could amend the statute to only apply to products primarily intended for children under age seven, but at the same time give the agency discretion to raise that age limit for particular materials or categories of products that are found in the future to pose a risk to older children. Less ideally, Congress could leave the existing age range in place, but grant the agency discretion to lower that age limit where agency experience indicates that no problem exists for younger children in the same household. For example, because it is unlikely that a one-year-old child would crawl out the door and suck on an eight-year-old's bicycle, the agency could exclude bicycles under such a provision.

Change the statute to provide relief to small businesses:

The Commission report makes reference to the ongoing issues of small businesses but stops short of providing recommendations to Congress on statutory changes to solve these problems or even acknowledging that statutory changes are necessary. One crucial fact omitted from this consensus report is that Commission staff have informed the Commissioners that there is no authority under the CPSIA to address what have become the core challenges for small businesses: 1) affording the initial third-party test of every component of a product that is subject to the law; 2) affording every third-party test thereafter that must be done when a "material change" is made to the product; and 3) certifying the product based on the third-party lab tests for compliance. For small businesses, even if they know their products are compliant

(let alone safe), they still may never be able to afford to have each of their products third-party tested and certified at an independent lab while remaining price competitive enough to stay in business. Countless businesses and trade associations have contacted the Commission regarding these problems. (See Appendix.)

Costs to businesses under the CPSIA come in many forms. In March 2009, the Commission estimated that the economic costs associated with the law would be "in the billions of dollars range."[8] The entire process companies must go through to produce a toy or children's product has drastically changed. Take, for instance, a child's doll. To be compliant with the law, a company must pay to have the doll's body, hair, each color of paint on the lips or eyes, and the doll's clothing tested in an independent lab for lead content – and soon will have to do the same for phthalates. If the company is small and makes or imports only ten of a particular doll, the testing costs will be exorbitant compared to a large toy company that can spread those same costs across thousands of dolls. The small company would have to decide whether to stay in the business of making or selling dolls but reduce its payroll, continue making dolls but eliminate colorful paints, clothing, or any unique components to minimize testing (reducing choice for consumers), or perhaps leave the children's toy market altogether. After testing, small companies tell us they probably will have to pay more to certify that the product is compliant.

For many companies, they are likely to have hired a lawyer or other outside expert just to ensure they understand the extent to which their product may or may not be impacted by various provisions of the law. The largest toy companies have told us that their internal corporate lawyers have not been able to handle this work and they have had to retain additional outside legal counsel. For American manufacturers or sellers who purchase from overseas, even the language barriers have inhibited local business. For example, American toy importer EuroSource LLC has told me they can no longer import products from German toymakers Selecta Spielzeug, Simba Toys, Eichhorn, Dickie Spielzeug, Italian toy musical instrument maker Bontempi, Swedish toymaker BRIO, and Czech toymaker DETOA. The letter states the following complications:

> All of these produce a fine product but I don't see how they can manage the prospect of duplicate testing and certification. . . . It is rough for small US manufacturers, but even rougher for those whose primary language is not English. The thought of even attempting to meet CPSIA standards when they already meet EN71 standards is terribly unpalatable. The regulation forces them out of the US market.

It is important to keep in mind that the reason that Congress wrote and passed the CPSIA in the first place was due to the high-profile recalls of toys made with lead paint by large toy manufacturers who produce products in China. Unfortunately, the law does not provide any distinction between what is required for a large company that may produce millions of toys in foreign manufacturing facilities that require constant oversight (and that can also have their products tested in their own firewalled labs) vs. what is required for small domestic

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[8] Letter from Acting CPSC Chairman Nancy Nord to Representative John Dingell, March 20, 2009.

manufacturers of children's products that now have to pay to have their products tested in third-party accredited labs. Additionally, testing a product in a lab in a country such as China is likely to be cheaper than the cost of sending that same product to a third-party lab in the United States.

By failing to make any distinction between large and small businesses, or foreign and domestic manufacturing, the CPSIA gives a palpable competitive advantage to large manufacturers over small ones due to the inability of small companies to afford the new requirements—which is a sad result, considering it is the small manufacturers and sellers that are more likely to employ American workers. As a result, large toy manufacturers have turned a corner to become supportive of the new regulations and clearly see the competitive advantage that the law gives them over small businesses.

While the Commission has the authority to grant low-volume or small businesses flexibility in the *frequency* of third-party testing (businesses are required to third-party test "periodically"—a rate to be determined by future Commission regulation), it does not have the ability to exempt companies altogether from burdensome testing requirements that do not in any way impact safety. Thus, I would recommend to Congress various ways to give the Commission authority to provide this flexibility, including: 1) allowing for *de minimis*, absorbable lead in children's products, which, as mentioned previously, would by itself remove harmless products from most all of the burdensome requirements of the law; 2) allowing small businesses the option of a "reasonable testing program" rather than a third-party test; 3) providing discretion to the Commission to determine the need for any third-party testing at all; and/or 4) providing a waiver for a civil penalty for a first-time, good-faith violation of the lead content limits.

Unfortunately, the Commission also has found that due to the risk of liability, large retailers are putting even more stringent testing requirements on businesses than are included in the statute. This only further disadvantages our smaller businesses. Thus, additional recommendations to assist small businesses would include reducing the liability of retailers with respect to the lead content limits to ensure that they do not force suppliers and manufacturers to jump through more hurdles than are necessary. Addressing this issue could be accomplished by: 1) absolving retailers of any penalties associated with non-compliant products, unless the product poses a real risk to a child (*e.g.* lead paint); 2) allowing for only a stop-sale of a product, instead of a recall, for products found to be non-compliant but posing no real risk; and/or 3) providing that retailers are only liable for the need to possess a valid certificate of compliance with the lead limits, but are not liable for the lead content of the product itself.

Do NOT add a new exclusion, such as for a "functional purpose":

What the Commission and the business community do not need is another exclusion under the CPSIA for which businesses have to apply in order to know if their product falls within the law's requirements, which would be a case-by-case exemption process. Right now, an exclusion exists for children's electronic products under which broad exemptions may be granted for classes of products or materials, entailing a certain level of work by the agency and the business community to figure out if various products "make the cut."

The current statute also includes an exclusion for absorbability that has been interpreted so narrowly by the majority of the Commissioners and agency staff that there are no products to which it will apply – although several industries submitted petitions that the Commission considered. Now, Congress has expressed an interest in adding yet another exclusion based on whether a component or product serves a "functional purpose"—which Commission staff has informed the Commissioners is likely to result in a large number of petitions, presenting the Commission with another new workload of deliberations for exclusions that have nothing to do with child safety. Any new exemption added to the CPSIA must be of a kind where manufacturers may take advantage of it without obtaining prior agency approval.

An exemption under the CPSIA for products or components that serve a "functional purpose" would not only weigh down agency resources, but it would be helpful only to those businesses with considerable resources able to hire the staff to put together a petition for the agency. Petitioning the CPSC, or any federal agency, requires considerable money and time. Seeking exemption before launching an otherwise safe product on the market would be cost prohibitive and time consuming, unpredictable, and would change the CPSC's mission from one of safety to one of product approval. Such an exemption would expand further the competitive advantage that big businesses have over small businesses that will not be able to absorb the costs.

Furthermore, granting these exclusions would be very subjective. As some Commissioners tried to draft appropriate language for such an exclusion, it became increasingly clear that deciding who and what products would qualify under a "functional purpose" exclusion would be more confusing than helpful. For a marketplace that depends on clear guidelines, transparency, and the ability to bring new products to consumers, such an exclusion ultimately would be counterproductive.

Eliminate the retroactive effects of the lead and phthalates bans:

Retroactive application of several provisions in the CPSIA—including the lead content limits and the temporary phthalate ban—has created major problems for enforcing this law. I concur with the Commission's call for addressing the market disruption that will occur if the 100 ppm lead content limit gets applied retroactively, however, I do not favor lowering the lead content limit from 300ppm to 100ppm to begin with. I believe one of the most indefensible aspects of the CPSIA is the impact it is having—and will continue to have—on moms and dads who now may have trouble finding second-hand affordable garments with which to clothe their children and keep them warm this winter while making ends meet.

The cost of complying with the CPSIA has forced major charities like Goodwill and the Salvation Army (let alone smaller thrift stores) to purge children's apparel from their shelves—including such crucial items as winter coats. The time, labor, and other costs to sort and test second-hand children's apparel—which are greater in this context because each garment has to be tested separately rather than as part of a production run—simply make them impossible to sell. Without testing, these stores have no way to ensure that they are selling goods in compliance with the law, so their only alternatives are: 1) to stop selling these products altogether; 2) limit selling to those few garments (such as plain turtlenecks or t-shirts) without any potentially lead-containing fasteners, appliqués, or other decorations; or 3) break the law.

Those second-hand stores that have decided to still sell limited items face costs to dispose of whatever donations they receive that do not meet their strict criteria for sale.

Those who respond that low-income children deserve the same protection from lead as other children miss the point. The unavailability of affordable clothes may well pose a more significant health hazard to children than that posed by the negligible amounts of absorbable lead contained in the fasteners on second-hand garments. Furthermore, families who pass children's clothing down from one child to the next or from family to family continue to use and wear these same items yet no one is considering sending out an alert that they are unsafe. Why? Because these products are, in fact, safe. Goodwill estimates that the CPSIA could cost needy families $670 million by making second-hand clothing less available to them.[9] The lead present in used children's apparel does not pose a degree of risk (where it poses any at all) that justifies a government ban on selling such apparel and thereby imposing higher clothing costs on the least advantaged.

Contrary to the expressed view of the commissioners in the majority, mere enforcement discretion does NOT suffice to address this retroactivity concern for several reasons. First, this policy is not working since most merchants are still complying with the prohibition, because they want to remain in compliance with the law, regardless of whether they expect the agency not to enforce it. Also, the agency's own guidance booklet for thrift stores, resellers and garage sales[10] specifically states that these sellers should test children's clothes before sale and makes prohibitively expensive suggestions for doing so. It also states that anyone not complying could be fined or jailed. This is why many thrift stores have signs posted saying that they will no longer accept children's clothes or toys.

This raises a basic fairness issue inasmuch as lax enforcement will allow businesses who do not follow the law to take business away from those who do. A "wink and nod" enforcement approach to resellers also sends the wrong message and could complicate efforts to enforce other important agency regulations. It could even create an opportunity for litigation against the agency based on a claim of arbitrariness. Enforcement discretion also does not prevent state attorneys general from refusing to follow the agency's lead.

In any event, agencies should not have rules on the books that they are not willing to enforce. Laws that prohibit seemingly innocent behavior make lawbreakers out of decent people and lessen respect for the law. On the other hand, fully enforcing this law against thrift shops, church bazaars, charity fundraisers, garage sales, and the like would only serve to undermine the agency's trust and esteem in the eyes of the very same public that receives the safety warnings we want them to heed.

Eliminating the retroactive application of the law instead would allow resellers, charities, and garage sales to once again sell children's garments without fear of facing legal consequences. Of course, the sale of recalled products would remain unlawful under such a

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[9] Goodwill Industries, CPSIA fact sheet, April 2009: http://www.goodwill.org/c/document_library/get_file?folderId=1943190&name=DLFE-25015.pdf

[10] CPSC Handbook for Resale Stores and Product Resellers: http://www.cpsc.gov/cpscpub/pubs/thrift/thrguid.pdf

scenario, as it was prior to the CPSIA. As newly produced children's apparel works its way into the second-hand market, the lead content limits imposed for new manufacturing will eventually prevail in the second-hand market too.

In terms of phthalates, I believe Congress never intended those provisions to be retroactive. Nor does it make any sense for a temporary ban to be retroactive. This agency litigated the phthalate retroactivity issue in federal court and lost, but Congress could rectify that judicial mistake. Even if Congress did mean for the phthalate ban to be retroactive, it should create accessibility and other appropriate exceptions to the phthalate ban, as it did for lead.

APPENDIX:

Recent letters to the Commission
in support of amendments to the CPSIA

[redacted]

January 14, 2010

Dear Honorable Commissioners:

As the Commission prepares its report to Congress regarding its suggestions for improvements needed to the CPSIA, we would like reiterate our concerns with the CPSIA and how it affects our 403 member businesses who specialize in small batch children's products.

We appreciate the opportunities the Commission has granted us to share our concerns about the CPSIA. As we wrote in our letter dated October 25, 2009, our fundamental belief is that the CPSIA focuses resources on processes rather than safety and needlessly hampers the Commission's ability to make product safety determinations based on risk. Although the Commission has been able to address some of our concerns, including the need for exempting natural materials and allowing component testing, many other common-sense reforms require Congressional action.

The following is a list of legislative changes to the CPSIA that our member businesses need in order to survive:

1. Grant the CPSC authority to use risk analysis to allow enforcement flexibility of third party testing requirements and hazardous content limits. High risk items like paint or metal jewelry should be held to higher verification standards than low-risk products like bicycle valve stems and brass zippers on children's garments.
2. The definition of what is a children's product should be changed to items intended for children 6 years or younger, except where the CPSC identifies a product requiring a higher age limit based on risk analysis.
3. Educational products intended for use in classroom or homeschool environment under the direct supervision of an adult should be exempted from the definition of a children's product.
4. Harmonize CPSIA standards with the European Union's EN-71 standards to remove the regulatory trade barrier which the CPSIA created between the US and the EU. This would include changing the lead content standard from an untenable total lead standard to an absorbable lead standard.
5. Exempt manufacturers who make less than 10,000 units per year from all third party testing requirements and allow them to comply instead with the 'reasonable testing program' requirements which apply to manufacturers of non-children's products under the CPSA. This would protect small batch manufacturers and specialty product manufacturers, including companies that make adaptive products for children with disabilities. These manufacturers would not be exempted from the standards themselves, only from the third party verification requirements.
6. Tracking labels should be voluntary except for durable nursery items and products which are most likely to be passed down to younger siblings or resold where the CPSC's risk analysis determines that tacking

labels would be most likely to prevent harm. Manufacturers who choose to implement tracking labels would benefit from a lesser burden in the event of a recall.

7. Revisit the retroactivity of the CPSIA based on a risk-based approach with the goal of preserving the market for second-hand children's products.
8. Inaccessible components, metals, minerals, hard plastics, natural fibers and wood should be exempted from phthalate testing.
9. Re-calibrate CPSIA penalties based on the scale and potential harm of any violation to protect small business owners' access to financing and insurance.
10. Allow the use of XRF technology to verify lead content in substrates.
11. Establish rules and procedures protecting manufacturers from false claims in the public incident database.
12. Require and fund an ombudsperson within the CPSC to help communicate with small businesses. Such an ombudsperson would serve to expedite answers to questions and give input to CPSC staff about policy decisions.
13. Require the CPSC to implement an education strategy for consumers. Media attention in the wake of mass market toy recalls has improperly skewed the public's understanding the primary sources of lead poisoning, which remain lead in house paint, dirt near highly-travelled roads, and workplace exposure. Lead awareness campaigns from the 1970s and 80s have now been forgotten by today's parents even though the same problems persist. The CPSC should take steps to re-educate the public about the highest-risk sources of lead exposure.

We strongly believe that all these changes, if implemented, would protect small businesses, maintain a vibrant selection of children's products in the marketplace, reduce compliance costs, create a more effective CPSC, and promote common sense *without sacrificing safety.*

On behalf of our 403 member small businesses, we appreciate your willingness to consider our concerns. We are hoping to preserve the long American tradition of hand-crafted children's goods while ensuring safety for the children who enjoy them.

Respectfully,

The Handmade Toy Alliance

A listing of all 403 business members of the Handmade Toy Alliance is available at http://www.handmadetoyalliance.org/members-of-the-handmade-toy-alliance

October 25, 2009

To:

Ms. Inez Tenenbaum
Chair, Consumer Product Safety Commission
c/o [redacted]

Ms. Nancy Nord
CPSC Commissioner

Mr. Robert Adler
CPSC Commissioner

Mr. Thomas Moore
CPS Commissioner

Ms. Anne Northrup
CPSC Commissioner

RE: Petition for CPSC Rulemaking and Other Actions to Preserve Small Batch Children's Product Manufacturers under the Consumer Product Safety Improvement Act (CPSIA)

Dear Honorable Commissioners:

We appreciate your continued willingness to address our concerns about the CPSIA and its effects on small batch children's products manufacturers. Our fundamental belief is that the CPSIA focuses resources on processes rather than safety and needlessly hampers the Commission's ability to make product safety determinations based on risk. While we believe that only Congress can correct these issues, we have identified a number of areas where CPSC rulemaking based on common sense and risk analysis will prevent the needless destruction of hundreds of responsible small businesses.

Therefore, we hereby petition the CPSC to take the following actions:

1. We request the CPSC to formally communicate to Congress that a technical amendment is needed to the CPSIA in order to correct unintended consequences. Chief among these corrections would be to grant the CPSC discretion to apply risk analysis to the application of third party testing requirements and lead content limits.

2. We request a further one year stay of testing and certification requirements. We understand that the Commission will soon be issuing guidance on component testing rules under Section 102 of the CPSIA. However, these rules will arrive less than three months before the end of the current stay on February 10, 2010. This

timeframe will provide little relief for manufacturers seeking to take advantage of component testing rules, who will need time to work with their component suppliers to assure upstream compliance.

Although the small batch community has already begun documenting CPSIA-compliant component suppliers (see http://cpsia-compliance.blogspot.com), without CPSC-issued regulations in place we have had little power to force suppliers to test and certify.

3. We understand that large toy manufacturers, represented by the Toy Industry Association (TIA), have been arguing for a tiered schedule for retesting under Section 102(d)(2)(B) of the CPSIA. Their proposal would define three tiers of manufacturers based on whether their factories have obtained ISO-9001 ratings. Under this scheme, "Tier 1" factories would be allowed to test less frequently and under more favorable conditions, while "Tier 3" would have to test more often under less favorable conditions.

   While we can appreciate TIA's intention to reward higher volume factories that have demonstrated quality and safety control, their scheme is unfair and unworkable at the scale of small batch manufacturers. ISO-9001 certification can cost tens of thousands of dollars and is not applicable to home workshops and small domestic manufacturers.

   We therefore request that TIA's standards not be applied to our small businesses. Instead, we request a retesting schedule based on the number of items produced, not on any chronological time line. Retesting should be required every 10,000 units for small manufacturers, not every 15 months.

4. We request that the CPSC issue a statement of enforcement policy that it will not prosecute small businesses for failure to test toys to ASTM requirements unless:

   a) The cumulative quantity of items manufactured or imported exceeds 10,000 or

   b.) the number of units manufactured or imported exceeds 4,000 in a single year.

   The products made by these manufacturers shall still be required to meet ASTM requirements and the manufacturer shall be required to act in good faith.

   This would allow a company to deal with products based on volume. Small businesses will most likely be able to afford to test higher volume items, but they should still have an incentive to bring in niche, low volume items that meet ASTM but are not third party tested. This policy would be entirely justified based on risk analysis, since toys distributed in smaller quantities pose a smaller potential public health risk than mass market toys.

Although the Commission has issued exemptions from lead content and phthalate testing for many toys which are made from natural or other exempted materials, ASTM testing remains an insurmountable burden for many small toymakers. Even though ASTM testing is usually somewhat straightforward and simple to do, many testing labs have instituted minimum per-item testing fees of $300-$350, which

largely negates any savings from natural material exemptions. Many of our members simply cannot afford to pay these fees and will be forced to cease operations without this relief. This issue not only affects handmade items, but also adaptive toys for children with disabilities, classroom supplies, and other low-volume specialty toy products.

5. We request that the CPSC issue a statement of enforcement policy that it will not prosecute makers of one-of-a-kind products for failure to test. Dozens of our member businesses earn their living by making custom products ranging from ceremonial Native American costumes to fabric dolls to hair bows. Testing these one-of-a-kind products is both physically and financially impossible.

6. We request that the Commission publish a simplified explanation of ASTM requirements, testing requirements, and other issues faced by small manufactures. We have created a CPSIA testing flowchart, which is attached. This flowchart is designed to educate small manufactures about what tests they are required to perform and has been a very useful teaching tool. We request that the CPSC adapt and publish this flow chart so that other small manufacturers may also benefit from it. We also request that the CPSC formally answer all of the questions posed on the site WhatIsTheCPSIA.com, where the small batch community has been attempting to share knowledge and interpret the requirements of the CPSIA.

7. We request the CPSC to appoint an ombudsperson to help communicate with the small batch manufacturing community. Such an ombudsperson will serve to expedite answers to questions, give input to CPSC staff about policy decisions on behalf of small batch manufacturers, and work with organizations such as Etsy and the Handmade Toy Alliance to communicate with small batch manufacturers.

8. We request that the Commission require that all CPSC-certified labs, as a condition of their certification, abandon their per-item minimum fees and post itemized per-test costs so that small manufacturers can easily compare testing services. Our members have found the process of obtaining quotes from testing labs to be extremely arduous and time consuming. Third party testing firms have been less than forthright about their fees, often quoting for tests which the CPSC does not require. These independent operators need more oversight from the CPSC to ensure that they are treating small businesses fairly.

9. Finally, we request that the CPSC implement an education strategy for consumers. Media attention in the wake of mass market toy recalls has improperly skewed the public's understanding the primary sources of lead poisoning, which remain lead in house paint, dirt near highly-travelled roads, and workplace exposure. Lead awareness campaigns from the 1970s and 80s have now been forgotten by today's parents even though the same problems persist. The CPSC should take steps to re-educate the public about the highest-risk sources of lead exposure.

On behalf of our 389 member small businesses, we appreciate your willingness to consider our concerns. We are hoping to preserve the long American tradition of hand-crafted children's goods while ensuring safety for the children who enjoy them.

Respectfully,

The Handmade Toy Alliance

A listing of all 389 business members of the Handmade Toy Alliance is available at http://www.handmadetoyalliance.org/members-of-the-handmade-toy-alliance

Sincerely,

The Handmade Toy Alliance
Full membership list available at www.handmadetoyalliance.org.

Board members:

Cecilia Leibovitz, Craftsbury Kids, VT
Jill Chuckas, Crafty Baby, CT
Jolie Fay, Skiping Hippos, OR
Rob Wilson, Challenge & Fun, MA
Kate Glynn, A Child's Garden, MA
Dan Marshall, Peapods Natural Toys, MN
Mary Newell, Terrapin Toys, OR
Heather Flottmann, Lilliputians, NY
John Greco, Greco Woodcrafting, NJ

cc:

Angela Crowley-Koch
Legislative Assistant, Senator Jeff Merkley

January 11, 2010

Honorable Commissioner Anne Northup
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Subject: Report to Congress on Amendments to the CPSIA

Dear Commissioner Northup:

I write to you on behalf of the approximately 1,500 businesses that are members of the National School Supply and Equipment Association (NSSEA). NSSEA members sell educational supplies, equipment and instructional materials to schools, parents, and teachers. Our manufacturing members range from businesses as small as one person and many are relatively small businesses that do not sell a large volume of products. Some of our member's products are highly specialized and serve niche markets such as differently-abled children. Many of these products are manufactured in low volumes. Other products have unique educational purposes and are used in schools in a supervised setting. Because so many of our members are relatively small firms, manufacturing or selling low volume and sometimes specialty products, compliance with the Consumer Product Safety Improvement Act of 2008 (CPSIA) is proportionally much more burdensome for our members.

We understand that the Consumer Product Safety Commission (CPSC) is planning to provide Congress with recommendations for fixing problems created by the CPSIA. Since you have decided not to discuss these changes in a public meeting, we are not aware of what you are considering. Nevertheless, we believe it might be helpful to provide you with some of our suggestions and the rationale for the changes. In sum, our focus is on maintaining a high level of safety for children but giving the agency more discretion to deal with problems based on the level of hazard that actually exists. We also believe the agency needs more discretion to take into account the unique problems of small businesses or firms selling small volumes of products as other agencies frequently do.

Lead Content Limit:

To many people's surprise—apparently including many members of Congress—the lead content limit affects many products for which there is no history of problems including books, pens, recreation vehicles, bicycles, and many other products that are intended for older children and seem to present virtually no risk to children. CPSC has attempted to address some of these unintended consequences of the current version of the CPSIA either by exercising enforcement discretion through public pronouncement, or through quiet non-enforcement. These actions were necessary to keep useful, non-hazardous products in use and to conserve agency resources to address significant risks of injury. However, as some of you have pointed out, stays of enforcement are not a long-term solution to these issues.

We suggest that you ask Congress to amend the "exclusion" provision of section 101(b)(1)(A) of the CPSIA which currently does not allow anything to be excluded. We think the reference to absorption of "any lead" should be changed to read "result in the absorption of sufficient lead into the human body to elevate blood lead levels more that one microgram per deciliter, taking into account normal and reasonably foreseeable use and

abuse. . ." This number is far short of the accepted "action levels" and provides a significant margin of safety to prevent adverse health effects. At the same time, it provides a definable benchmark the CPSC can use in future actions. We hasten to add that this is not the only solution to the exclusion problem. We would support any provision that allows the CPSC discretion to exclude products that do not present a real health risk to children. We note that both behavioral factors (age of child user, how the product is handled, the likelihood of interaction with the lead component, and the nature of that interaction) as well as the amount of lead that is biologically available can and should be considered in determining whether the exclude products from the lead ban.

We also believe that Congress should add a section we might call a "Technological feasibility and Practicability Exception." We suggest something along the following lines:

> If the Commission determines that it is not technologically feasible or practicable to meet the lead content requirement, the Commission may grant exemptions for classes of products or individual products that do not meet the requirement of section 101(a) regarding total lead content. In considering practicability, the CPSC shall consider the function of the lead containing component, the availability of alternative materials, the cost of alternative materials, the potential risks posed by alternative materials, the potential risks posed by elimination of the lead from the product, and the level of health risk to children likely to use the product.

We also believe that an exclusion of the lead ban should be added for ordinary books, posters, and similar printed materials manufactured prior to the effective date of the lead ban. Books are of tremendous value to children both as educational and recreational resources and are important to their development. There is no evidence that books or similar printed matter have ever caused a lead poisoning, and based on the available data, this appears highly unlikely. In addition, the costs to schools, municipalities, libraries, and others of identifying and replacing such books would be extremely high and there is no reason to impose such costs given the lack of identifiable risk.

Given the special nature of educational products used in schools, these products are typically used with close adult supervision. The likelihood that children will be sucking or chewing on educational products is very low. In addition, as children age to school age, that kind of mouthing behavior is greatly reduced. However, the current requirement arguably bans—or requires expensive compliance measures that amount to a de facto ban—for things like lead weights, rock and mineral collections, chemicals, and other products that have tremendous educational value. The statute should recognize the special value of educational products used in schools as well as the reduced risk because of the age of the students and the supervised nature of the product handling and use. Another possible approach is to reduce the age of a "children's product" from 12 to an age more likely to be at risk, or to give the agency the discretion to make such judgments.

We also recommend amending the law to make it clear that the lead ban was prospective in nature: that products that complied with the law before the ban went into effect February 10, 2009 may be sold unless they contained sufficient lead to be considered "banned hazardous substances" under the Federal Hazardous Substances Act. This provision will alleviate the burden on thrift shops, schools, libraries, and resellers who may have some untested inventory and cannot afford to test that inventory or to destroy what are likely perfectly safe products.

Third Party Testing and Certification:

We understand the events that led to the third party testing requirements for children's products and the certification provisions. However, it should now be apparent that not all manufacturers and importers of children's products are multi-national, billion dollar corporations manufacturing millions of products. Those firms enjoy an economy of scale and can spread the costs of testing among enough products to render those costs insignificant. That is not true for much of the manufacturing and importing community including many of our members. While we applaud the efforts the CPSC has made to find solutions for small businesses including the recent guidance on component testing for lead content and lead paint, we believe the CPSC could do more if given more discretion by Congress. The alternative is the elimination of many valuable educational toys and products, some manufactured in low volume for niche markets (such as the deaf, blind, or otherwise differently-abled children) and typically not supplied by the huge multi-national toy manufacturers.

To give the Commission more discretion, we recommend section 102 be amended to add a provision saying something like the following: "The Commission shall have the authority to exempt small businesses or to provide lesser requirements for small businesses or for businesses manufacturing small numbers of products, handcrafted products, or niche products. In considering such exemptions, CPSC shall consider the impact of testing and certification requirements on the cost of the products, the ability of the small business to compete in the marketplace against larger firms, the usefulness of the products affected, and the likelihood of elimination of useful products from the marketplace due to costs of testing and certification, and the risks of injury associated with a reduced testing scheme." A similar provision should apply to the general conformity assessment provision and to any recordkeeping provisions that relate to either testing requirement.

Tracking Labels:

The tracking label requirement imposes huge administrative costs on firms that may exceed the actual costs of labeling. We recommend a provision similar to the one for testing above that gives the CPSC discretion to modify the content of tracking labels for categories of products that present no demonstrable risk and to allow small business or firms manufacturing or importing small volumes of products to provide less detailed labels.

Durable Infant or Toddler Products:

Amend Section 104 to allow CPSC more time leeway to select standards and more reasonable time frames for implementation. The CPSC does not appear to have the resources to address all these products on the ambitious timeframe established by Congress in the CPSIA.

Adoption of Voluntary Standards:

The ASTM F963 standard is still not widely known or understood—including by the CPSC staff. In addition, the nature of the standard is obscure since many of the relevant provisions are not in the Code of Federal Regulations. Some of the provisions of ASTM F963 are merely summations of existing CPSC mandatory bans. In addition, some of the provisions do not necessarily relate to a significant hazard, and many of the provisions are methodologies for testing cribbed from the CPSC's FHSA guidance documents and are not truly "bans." Although the CPSC seems to have refrained from any significant enforcement, much confusion exists about these provisions both on the part of businesses and testing labs. Congress should amend section 106 of the CPSIA to give CPSC authority to select portions of the ASTM F963 standard that should be mandatory based on the significance of the risk posed by products that do not meet the requirements. These provisions should become mandatory only after CPSC publishes those requirements as rules in the CFR and provides testing procedures and accreditation provisions. This would allow CPSC to avoid confusion by filtering out test procedures and provisions that overlap with CPSC or other agency requirements. Further, it would lead to better knowledge and understanding of the provisions and a higher rate of compliance and safety would result.

Phthalates:

Perhaps more than any other provision in this law, this provision vastly exceeds in scope and costs imposed on the marketplace any known risk of injury. Particularly given the testing costs, this requirement imposes huge compliance costs on industry, CPSC, and consumers for very little, if any, gain in risk prevention. Even many of those who supported the existing phthalate provision concede that the risk from phthalates relates to younger children or fetuses whose development might be affected by ingestion. As you know, CPSC studies found that there was not sufficient mouthing of most toys to cause a risk to such children. However, if there were a risk it would be among children who are more likely to mouth products. Ironically, section 108 applies to items that are intended to facilitate sleep or are used in feeding, sucking, or teething *for children 3 and under*. However, the phthalate requirement applies to *toys* intended for children *12 and under*. CPSC should ask the Congress to limit application of the phthalate requirement to toys intended for children 3 and under (if it wishes to be extra conservative form a risk point of view, 5) based on the low likelihood of children over these ages to mouth toys. Further, Congress should limit the provision for *all* phthalates to "accessible components that would fit a child's mouth" as defined in section 108(e)(1)(B). There is no rational reason for a phthalate provision that applies to

non-mouthable products. There is no evidence that hand to mouth transfer of phthalates from plastic presents a realistic risk. Further, the failure to take accessibility into account for phthalates but to allow an exception for inaccessible lead makes absolutely no sense.

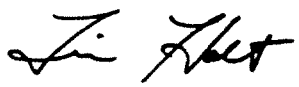
Finally, CPSC should ask Congress to provide CPSC with the authority to consider input from the CHAP and to determine based on that input and other evidence of risk whether to continue in effect the de facto ban of phthalates that CPSC determines do not present a sufficient health risk. In addition to being allowed to consider risks, CPSC should also be allowed to consider the potential risk of replacement materials that will be used in lieu of phthalates. It would be tragic if a relatively well understood and studied material is replaced by materials that turn out to present far greater risks to the public and CPSC should have some ability to prevent such an unforeseen consequence of this provision.

As with lead, this requirement should be treated as prospective only. Given the extraordinarily low likelihood of risk associated with pre-Feburary 10, 2009 toys, it is foolish to apply this provision retroactively with all the burdens that places on resellers, thrift shops, and others.

Conclusion:

While there are many other provisions of the CPSIA that are problematic for our members, we have tried to focus our recommendations on changes that most rational people would agree do not increase risk but allow CPSC to manage its resources effectively, and decrease unnecessary compliance burdens. We appreciate that the CPSC has done many things to address our concerns but wish to remove some of the strictures that have bound CPSC and limited its ability to regulate rationally. We trust that you want to be an effective regulatory agency and recognize that the law needs to be changed to allow you to do your job properly and to reduce unnecessary burdens on the marketplace and consumers. We hope that you will have the political courage to ask Congress to make the necessary changes.

Sincerely,



Tim Holt
President/CEO

Date: December 17, 2009

To: Commissioner Anne Northrup
Mr. G. Rodgers

Inventive Playthings
for Inquisitive Minds

From: Lea Culliton, President of HABA USA

RE: Effects of CPSIA on HABA USA

Dan Marshall, proprietor of Peapods Natural Toys specialty retail store in St. Paul, MN, suggested that I contact each of you to explain the real costs that the CPSIA has caused our once burgeoning USA business.

HABA USA is the American wholesale division of the 70 year old, family owned, German based, Habermaass Corp. HABA designs and produces over 1,800 toys and gifts for children which vary from wooden rattles, jewelry, board games, dolls, books, puzzles, dishes, bath toys, outdoor play, swings, tents, room décor and furniture. Prior to the CPSIA enactment HABA USA was importing and distributing almost the entire selection of the HABA® products. Sadly in 2010, HABA USA will lessen our offering to the American specialty retailers to less than 850 items.

It should be noted that HABA is known for our wide offering of products only available to specialty stores. We do not sell to the mass market, HABA® brand items cannot be found in your local Wal-mart, Target or Toys R Us stores. We are strictly a specialty supplier. In fact we have made the conscious decision to support our specialty retail, usually family owned and operated businesses, further by not offering our products direct to sale even at the online behemoth - Amazon.com. We keep our distribution channels to the specialty marketplace in order to remain true to our brand , our philosophy and to our production capacities.

We produce all of our items in relatively small batches, oftentimes less than 5,000 pcs in an annual production batch; we do not have the luxury of spreading out our testing costs amongst thousands of pieces. We still produce the overwhelming majority of our wooden items at our family owned and operated facilities in Germany. For our fabric/textile items that contain a wooden piece, we even go so far as to produce the wooden piece in Germany and then send to the Far East to be joined by its textile pieces in production.

We have incurred additional CPSIA testing costs of nearly $900,000 year to date and lost countlesss opportunities to sell, what we know are safe products, to American children due to confusion and risks now associated with the CPSIA.

Our parent company maintains an in-house safety team that collaborates with the design team at the time of invention of the products to ascertain and determine risks. We have purchased an XRF scanning gun (approximate $60,000 investment) in order to do our own prescreening of our suppliers materials.

The inability to get defined answers as to each of our categories of products and whether the applicability of each aspect of the law applies has been an extremely difficult and frustrating task. We have consulted multiple attorney and testing agencies only to find that each has a different interpretation of the CPSIA.

abermaass Corp., Inc.
O. Box 42, 4407 Jordan Rd.
:aneateles, NY 13152
: (315)685-6660 Fax: (315)685-3792
ww.HABAusa.com

We have to now incur substantial additional costs of approximately $100,000 to produce a "USA" of the HABA international catalog as we can no longer use the international catalog used by multiple countries using the English language.

One of our well respected competitors in the German toy market, SELECTA, determined early on that it was not 'worth it' to continue to offer its quality, German made wooden toys to the USA marketplace specifically due to this law. Immediately upon their announcement, our phones started ringing and emails were written literally begging HABA USA to stay in the USA marketplace. Retail specialty stores have grown to know and trust HABA .

In fact in the summer of 2008 you will note that we performed a voluntary recall on several of our wooden rattles. We expanded this recall to more products, at our own option, without incidents of reports and without the request by the CPSC. WE suggested that additional items be included in the recall based upon the similar design features. HABA USA did not "have" to do this; we voluntarily chose to do this to prove to our specialty retailers and our consumers that we do care about the safety of our children.

An additional cost of the CPSIA has been the changes in our packaging and the addition of multiple warning labels, many of which we were already applying however they now have to be on the front of the package, instead of perhaps the back of a game box where the consumer would really see it when learning more about the game.

It should be noted that HABA had even before the enactment of the CPSIA, been using and adhering to the ASTM F963 guideline for our items that we define as "toys" as if it were already a mandatory guideline.

A final additional cost has been the manpower and staffing needed to manage this entire process. We've had to add at least one fulltime salaried staff member to manage the administration of the paperwork. This does not include the hundreds of hours our existing staff has spent in meetings, phone calls and emails trying to interpret this poorly written legislation.

In summary, as the majority of other toy companies do, we CARE about the safety of our children. In fact you can visit our website to see video examples of our production facilities and our in house testing. HABA has been very transparent to the marketplace as we have nothing to hide. In fact Mr. Habermaass was the very first toy manufacturer in Germany to voluntarily obtain the ISO seal and he was the first German toymaker to have his facilities inspected and approved for toy manufacturing.

If you would like to learn more about HABA and our USA division please feel free to contact me. Thank you for your efforts to put common sense back into this.

Brownstein | Hyatt
Farber | Schreck

January 8, 2010

Hal Stratton
Attorney at Law
505.724.9596 tel
505.244.9266 fax
hstratton@bhfs.com

The Honorable Inez Tenenbaum
Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Claire's Stores, Inc.

Dear Chairman Tenenbaum:

We represent Claire's Stores, Inc. (Claire's). Claire's is a leading specialty retailer of value-priced jewelry for girls and young women. Claire's has been selling fashion jewelry and accessories in Company-owned and operated stores for more than 30 years. Claire's has approximately 2,000 stores dispersed across each of the 50 states, Puerto Rico and the Virgin Islands, and over 950 stores in 10 European countries.

The conference report for H.R. 3288 has set a January 15, 2010 deadline for the Consumer Product Safety Commission (CPSC or Commission) to send suggested improvements to Section 101(a) of the CPSIA to the House Appropriations and Energy and Commerce Committees and the Senate Commerce, Science and Transportation Committee.

We would ask that the CPSC in its submittal to these Congressional committees recommend that crystal and glass beads, including rhinestones and cubic zirconium used in children's products, including jewelry, apparel, accessories, footwear and other decorative applications be excluded from the provisions of Section 101 of the CPSIA by appropriate legislation.

On February 2, 2009 the Fashion Jewelry Trade Association (FJTA) and others filed a petition with the Commission requesting an exemption for crystal beads and rhinestones from the lead provisions of Section 101 of the CPSIA. A copy of the letter and petition filed on behalf of the FJTA by Keller and Heckman is included herewith. Claire's joined in that request by way of a letter dated February 10, 2009 which was sent to the Commission by Francis Citera of the law firm of Greenberg Traurig and a letter from Rebecca R.Orand, Senior Vice Present and General Counsel of Claire's on July 15, 2009. Copies of those letters are also included herewith.

The FJTA petition noted that glass and crystal contain varying amounts of lead to impart brilliance and facilitate cutting. However lead in glass and crystal is generally not accessible due to its physical properties and chemical make up and the manner in which it is included in the glass or crystal matrix. This makes the lead in such products virtually inaccessible unless the materials are subjected to laboratory conditions far more extreme than any encountered in a child's digestive system or currently

required for determining the lead content of any other type of component or material used in products for children 12 years of age and under. This situation is thoroughly analyzed in the FJTA letter and attachments of which I'm sure you are already aware.

The FJTA petition and attached materials also demonstrate that crystal beads and rhinestones do not pose a health risk to children even in the unlikely event that they are mouthed or swallowed. The data clearly demonstrate that any absorption from lead due to the ingestion of crystals and rhinestones would result in less lead being absorbed than that which would be absorbed from other materials containing lead that are compliant with the provisions of the CPSIA. Additionally, any absorption of lead from the ingestion of crystals or rhinestones would result in the absorption of less lead than from many common foods which is deemed acceptable by the Food and Drug Administration.

As you are aware, the CPSC career professional staff provided its assessment of the FJTA petition in its memorandum to the Commission dated July 9, 2009. In that memorandum, the staff agreed that extensive mouthing or swallowing of crystal beads by children is not expected, and in the unlikely event that mouthing or swallowing occurred, the staff further agreed that any exposure to lead from crystals or rhinestones would have little impact on a child's blood level, and would, therefore, not constitute a public safety hazard or otherwise be harmful. The staff further concluded that under the provisions of the Federal Hazardous Substances Act (FHSA) that ban lead and have been administered by the CPSC for over 35 years, the staff would have recommended that the Commission not consider the product to be a hazardous substance to be regulated by the statute. However, the staff did note that, physiologically, if ingestion of lead occurs, some portion of the ingested lead will be absorbed into the body, whether or not such absorption is significant or not. The staff then felt compelled to conclude that since children's use of crystal beads could result in absorption of some lead, however small the absorbed amount, that the FJTA petition did not meet the burden of proof provided by the CPSIA which precludes the absorption of "any" lead in the human body to obtain an exemption under the statute from the Commission.

The Commission then adopted the recommendation of the staff that the exemption not be granted, even though there was no finding by the staff that granting the exemption would result in any harm or risk of injury to the public. The restoration by the Congress of the Commission's authority to exercise its judgment to grant exemptions for products that clearly are not harmful and do not pose a risk to consumers would go a long way toward resolving many of the unintended consequences created by the enactment of the CPSIA.

I would add that to my knowledge and experience at the CPSC, a number of issues involving lead in children's jewelry have arisen over the years. For instance, in 2004, the Commission was involved in a major recall of over 150 million pieces of children's jewelry from all of the vending machines across the country which potentially contained lead. This and other similar recalls involved lead in the substrate of the jewelry and not decorative items such as glass beads, crystal and rhinestones. And, even though crystals and rhinestones are sometimes lumped in the general category of children's jewelry with lead, I am unaware of any health issues that have been attributed to crystals and rhinestones in children's jewelry.

The submissions by the FJTA also detail the practical problems that the CPSIA create regarding crystals and rhinestones. In order to be a crystal or rhinestone, the substance must contain lead. Without relief from the provisions of the current language of CPSIA, crystals and rhinestones will no

longer be available to adorn products for children age 12 and under. This situation not only deprives consumers of perfectly safe products, but also will cause serious economic damage to the producers of such products for reasons not related to consumer safety.

For these reasons, we would ask that the Commission include a request that glass, crystal and rhinestones be excluded from the provisions of Section 101 of the CPSIA by appropriate legislation.

Thank you for your consideration.

Sincerely,

Hal Stratton

cc: The Honorable Thomas Moore
The Honorable Robert Adler
The Honorable Nancy Nord
The Honorable Anne Northup
Secretary Todd Stevenson

GT GreenbergTraurig

Francis A. Citera
(312) 456-8413
citeraf@gtlaw.com

February 11, 2009

VIA FEDERAL EXPRESS

Mr. Todd A. Stevenson
Director, Office of the Secretary
United States Consumer Product Safety Commission
4330 East-West Highway
Room 502
Bethesda, Maryland 20814

Re: Joinder in Section 101 Request for Exclusion of a Material or Product: Request to Exempt Crystal Beads and Rhinestones

Dear Mr. Stevenson:

On behalf of various clients of the firm, who consist of jewelry suppliers and retailers, I write to join in the Section 101 Request for Exclusion of a Material or Product: Request to Exempt Crystal Beads and Rhinestones, submitted on February 2, 2009, by the Fashion Jewelry Trade Association (FJTA), Manufacturing Jewelers and Suppliers of America (MJSA), Footwear Distributors and Retailers of American (FDRA), National Retail Federation (NRF) and United Dance Merchants of America (UDMA) (referred to as the "February 2, 2009 request"). As noted in the February 2, 2009 request, the best available scientific evidence demonstrates, that because of the inherent nature of crystals and rhinestones in which lead is not readily leachable, no health risk to children or increased blood lead levels occurs from exposure to crystals and rhinestones, even under reasonably foreseeable abuse scenarios.

Our clients and other leading jewelry suppliers and retailers worked closely with highly respected toxicologists and the California legislature for approximately two years on the development of California Assembly Bill No. 1681, which was adopted on September 22, 2006 and made part of the California Health and Safety Code (hereafter "AB 1681"). AB 1681 sets forth regulations regarding the lead content in adult and children's jewelry. Importantly, AB 1681 recognizes the distinction between total lead and accessible lead, by acknowledging that a different standard for glass and crystal decorative components is warranted. As a result, glass or crystal decorative components (e.g. cat's eye, cubic zirconia, glass, rhinestones, cloisonné), all of which contain potentially high, but non-soluble, amounts of total lead, generally are permitted under AB 1681, provided,

however, that for jewelry intended for children ages six and below, these components can weigh no more than one gram.

The research contained in the February 2, 2009 request demonstrates that, even though crystals and rhinestones possess a total lead content in excess of 600 ppm, the accessible lead within crystals and rhinestones is *lower* than other materials, such as metal, which contain less than 600 ppm total lead content. ***As a result, the health risk to humans from exposure to crystals and rhinestones is, in fact, lower than exposure to other materials which are deemed compliant with the CPSIA, and even lower than exposure to lead contained within many common foods.***

In addition to the research described in the February 2, 2009 request, our clients conducted research on twenty-five samples of various types of crystal and glass components, including cat's eye, cubic zirconia, glass and rhinestones. The results of this research are attached hereto as Attachment A and are summarized as follows:

CPSC Acid Extraction Testing (Stage 1)

Each of the components were tested to reveal the amount of accessible lead that would occur in the unlikely event of ingestion, first by utilizing the CPSC's acid extraction method, as outlined in its Standard Operating Procedure for Determining Lead (Pb) and Its Availability in Children's Metal Jewelry, February 3, 2005. This standard is intended to simulate extraction as a result of exposure to stomach acid. The samples were exposed to a simulated stomach acid, 0.07M hydrochloric acid (HCl) using three separate stages, 1 hour, 2 hours and 3 hours, respectively. The results demonstrated that, even with a total lead content of up to 2,500 ppm,[1] the crystal and glass components had accessible lead levels that were well within the CPSC's acceptable limits of 50 ug.

BSEN71-3 Acid Extraction Testing (Stage 2)

Following utilization of the CPSC Acid Extraction method, the samples were then tested using the European Standard under BSEN71-3. This method is intended to simulate exposure to metal that is ingested into the alimentary tract. Samples are exposed to a simulated stomach acid, 0.07M HCl, for 2 hours. Under the European Standard, final results may not exceed 90 ppm for lead (90 mg/kg).[2] Test results demonstrated that the extractable lead ranged from non-detectable amounts to a high of 40 ppm, well within the European Standard.

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[1] Total lead content was determined by using hydroflouric acid, which is discussed in Stage 4 of the testing, below.

[2] EN 71 Part 3 states that the allowable amount of releasable lead in children's toys is 90 mg/kg. Fashion jewelry for children is specifically excluded from the definition of "toy" under the European Toys Safety Directive and EN 71 and is, therefore, not subject to this standard. Nevertheless, we believe that this standard is helpful in determining the potential health risk of releasable lead to children.

50% HCl Acid Extraction (Stage 3)

Lead extraction using the BSEN71-3 method was again performed. In an effort to determine how much lead could be extracted under a significantly more aggressive acid attack, using a significantly higher acid concentration than that which is found in stomach acid, the samples were subjected to a 50 percent HCl acid solution. Consistent with the results after the standard acid extraction test, the testing revealed extractable lead ranging from non-detectable amounts to a high of 35 ppm.

Lead Extraction Using 4% Hydrofluoric Acid (Stage 4)

The various components tested revealed a total lead content ranging up to approximately 2,500 ppm (2.5%) total lead content through the use of hydrofluoric acid (HF) to dissolve the glass matrix. The CPSC's Standard Operating Procedure (SOP) for Determining Total Lead (Pb) in Children's Metal (Including Metal Jewelry), (December 4, 2008) outlines the use of nitric and hydrochloric acid to evaluate the total lead content in metal. Glass and crystal do not fully dissolve under normal laboratory conditions using this method. Hydrofluoric acid, however, is recognized as a more aggressive material that can be used to dissolve the glass matrix. Hydrofluoric acid is not typically used in most laboratories because of safety concerns, due to the aggressive nature of the material. However, our clients have utilized a testing laboratory, Sheffield Analytical Services, that has the appropriate expertise to utilize this material in a safe manner, and has done so in an effort to obtain the most accurate total lead content reading for these samples. Even utilizing this aggressive testing methodology, which in no way resembles any foreseeable abuse situation, dissolution of the components required exposure to hydrofluoric acid for a period of 65 hours.

Conclusion

In summary, the additional testing performed by our clients confirms the research described in the February 2, 2009 request -- that the risk exposure to lead from crystals and glass components in jewelry, including cat's eye, cubic zirconia, glass and rhinestones, is significantly lower than many other materials that will be considered CPSIA compliant under the new lead content standards. On behalf of our clients, we therefore join in the February 2, 2009 Request to Exempt Crystal Beads and Rhinestones from Section 101 requirements under the CPSIA. Crystal and glass components, including cat's eye, cubic zirconia, glass, rhinestones and oloisonné are safe and desirable components of the fashion jewelry market. The failure to grant such an exemption will result in the destruction of millions of products from the marketplace which present a substantially lower risk of exposure to lead than most products which will be deemed compliant with CPSIA. This cannot be the intended result of this legislation.

We request, therefore, that the CPSC utilize its authority to determine that, pursuant to the best available scientific evidence, lead contained within crystal or rhinestones will neither result in the absorption of lead into the body and will not have any other adverse impact on health and safety. The Commission should immediately adopt an exclusion for crystal and glass components in children's products modeled after AB 1681 in the form suggested in Attachment B.

Sincerely,

Frank Citera/GWM

Francis A. Citera

Enclosures
FAC/rm
#57827124v2

January 11, 2010

Via Hand Delivery

The Honorable Inez Tenenbaum, Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Thomas Moore, Vice Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Robert Adler
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Nancy Nord, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Anne Northup, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Revisions to CPSIA

Dear Chairman Tenenbaum, Vice Chairman Moore, Commissioner Adler, Commissioner Nord and Commissioner Northup:

As the Consumer Product Safety Commission (CPSC) prepares to respond to Congress with input on revisions to the Consumer Product Safety Improvement Act of 2008 (CPSIA), the Fashion Jewelry Trade Association (FJTA), National Retail Federation (NRF), American Apparel and Footwear Association (AA&FA), Fashion Accessories Shippers Association (FASA), Travel Goods Association (TGA) and Footwear Distributors and Retailers Association (FDRA) collectively urge you to seek authority to grant common sense, risk-based exclusions from the applicable total lead limits. Doing so will be consistent with your mandate, and is in the best interests of consumers and industry, especially small businesses struggling with the impact of bans on safe products.

We again remind you of the adverse economic impact associated with the Commission's denial of a joint industry petition to exclude crystal and glass rhinestones and similar materials from the total lead limits specified in Section 101 of CPSIA on a range of affected industry

groups. Rhinestones have been an important and popular component of jewelry, apparel, footwear, dancewear, accessories and many other products. While crystal does not pose a health risk to children, the decision to deny the joint industry petition was predicated on the legislative language of Section 101(b)(1), which was viewed to limit the Commission's ability to grant an exemption if use "could result in absorption of lead, however small the absorbed amount." The failure to grant an exemption or adopt a stay of enforcement on children's products featuring rhinestones has resulted in significant adverse impact on industry which was detailed in a July 15, 2009 letter to you from FJTA (copy enclosed). The adverse impact continues. Looking at 2009 sales overall, for example, one FJTA member reported that sales of children's jewelry at just one customer dropped 41% compared to the prior year, a loss directly attributable to the inability to offer children's jewelry featuring crystal rhinestones.

Requiring the national consumer product safety agency to operate under legislative handcuffs that limit the ability to consider actual risks has deprived the public of a safe, desirable product and cost industry millions, not only in money but in jobs. We urge you to ask Congress to revise Section 101 to give the Commission the ability to truly act in the interests of consumers and to protect small businesses by giving you the authority to grant risk-based exemptions for products that do not pose a significant risk of harm to children.

Respectfully submitted,

Michael Gale, Executive Director
Fashion Jewelry Trade Association
1486 Stony Lane
Kingston, RI 02852

Tracy Mullin, President and CEO
National Retail Federation
325 7th St. NW, Suite 1100
Washington, DC 20004

Kevin Burke, President and CEO
American Apparel & Footwear Association
1601 N. Kent Street, 12th Floor
Arlington, VA 22209

Sara Mayes, President
Fashion Accessories Shippers Association
350 Fifth Avenue, Suite 2030
New York, NY 10118

Michele Marini Pittenger, President
Travel Goods Association
5 Vaughn Drive, Suite 105
Princeton, NJ 08540

January 11, 2009

Matthew Priest, President
Footwear Distributors and Retailers of America
1319 F Street NW, Suite 700
Washington, DC 20004

Enclosure

cc: Senator Jay Rockefeller
Senator Kay Bailey Hutchinson
Senator Mark Pryor
Senator Roger Wicker
The Honorable Henry Waxman
The Honorable Joe Barton
The Honorable Bobby Rush
The Honorable George Radanovich
Todd A. Stevenson, Director, Office of the Secretary
Cheryl Falvey, General Counsel

fashion jewelry trade association

1486 stony lane • north kingstown, rhode island 02852
ph: 401•295•4564 • fax: 401•295•0122
email: fjta@aol.com
www.fjta.org

July 15, 2009

Via Facsimile

The Honorable Inez Tenenbaum, Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Thomas Moore, Vice Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Nancy Nord, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Petition of the Fashion Jewelry Trade Association, Manufacturing Jewelers and Suppliers Association, Footwear Distributors and Retailers of America, National Retail Federation, United Dance Merchants of America

Dear Chairman Tenenbaum, Vice Chairman Moore and Commissioner Nord:

The Consumer Product Safety Commission staff released its analysis and recommendation on a joint industry petition to exclude crystal and glass rhinestones and similar materials from the total lead limits specified in Section 101 of the Consumer Product Safety Improvements Act of 2008 (CPSIA) on July 10. While the staff agrees with the independent safety analysis provided with the petition and concludes that crystal does not pose a health risk to children, the recommendation indicates that the staff's interpretation of the legislative language of Section 101(b)(1) limits the ability to grant an exemption if use "could result in absorption of lead, however small the absorbed amount." The failure to grant an exemption or adopt a stay of

enforcement will have a devastating effect on the fashion industry in general and the fashion jewelry industry in particular.

On behalf of the Fashion Jewelry Trade Association, we urge you to vote on the request before you in a manner that assures that safe products can continue to be marketed.

Factors Supporting the Petition

The situation with crystal rhinestones is unique compared to other exemption requests.

First, crystal was identified as a material that was intended to be covered by a risk-based exemption process during the legislative drafting of the CPSIA. Granting the exemption is, we believe, consistent with Congressional intent. We believe that by allowing some lead, Congress recognized that some accessible lead could be released, but intended the staff to exercise common sense in acting on exemption requests to assure that safe products could continue to be marketed.

Second, apart from the demonstrated safety of crystal based on accepted risk assessment criteria, the petition indicates that in the remote event of ingestion of crystal accessible lead is likely to be in the range of the amount of accessible lead that could be released from compliant materials and would not exceed exposure limits set by other agencies such as the Food and Drug Administration (FDA).

Third, jewelry materials, including crystal, are covered by a Proposition 65 settlement agreement, later enacted as legislation in California. Crystal used in products for children 6 and under can be used without any limit on total lead content, subject to a 1 gram limit. Crystal used in products for consumers 7 and older are subject to *no* limits on total lead content. Consequently, a legal question exists as to whether the "carveout" for Proposition 65 in Section 231(b) of the CPSIA applies in this case of jewelry materials such as crystal. The State of California has filed a request to exclude from preemption the state's jewelry law, a petition that remains pending. Confusion in the marketplace abounds due to unresolved questions of preemption.

Fourth, crystal is demonstrably different from other materials, as a review of the test method to test for total lead in crystal demonstrates. Most materials can be tested for total lead using a version of EPA method 3051. The CPSC issued an approved test method on February 1 which specifies that a combination of hydrofluoric and nitric acid be used to digest lead in glass and crystal. The method is based on EPA method 3052. These types of acids are not used to test for total lead in other materials, but because lead is bound into the crystal matrix, a much stronger acid is needed.

The crystal exemption is enormously important not only to the jewelry industry, but to the entire fashion industry. Without an exemption, many makers and sellers of children's products decorated with rhinestones will be banned. Given the popularity of rhinestones on jewelry, apparel, accessories and other products sold in secondhand venues, a ban will strike a

further blow at thrift stores who will be barred from reselling used products with crystal rhinestones.

We know that many members of Congress have expressed the view that the CPSIA does give the Commission flexibility to make common sense decisions about products or materials that do not pose a health risk to children. It is hard to see how child protection goals and common sense regulatory policies will be advanced by a ban on a material like crystal which has been deemed safe by the CPSC staff, the State of California, and third-party risk assessment experts. It is easy, on the other hand, to see the adverse consequences of inaction on this petition.

Impact of Failure to Grant the Petition

Millions of dollars worth of safe jewelry that meets the Proposition 65 standards have been withdrawn from sale as a result of the CPSIA and the failure to exclude crystal from lead substrate limits. Children's apparel, footwear, accessories, backpacks and other items featuring rhinestones have also been withdrawn from sale as a result of new lead substrate limits coming into force on February 10. Product lines have disappeared. Some customers are demanding that all products meet standards for children's products, effectively resulting in the disappearance of safe products for teens and adults, at enormous costs. For jewelry, apparel and other companies that have been able to switch some products to plastic alternatives, sales are almost universlly down because the "bling" factor has been largely lost. And most importantly, jobs have been lost as a direct result of the failure to exempt crystal from total lead limits.

Here are just a few anecdotes about the economic impact of the failure to grant a crystal exemption.

- A small East Coast company specializing in children's jewelry featuring rhinestones took back $200,000 worth of products from customers before February 10. Many of the company's other small retail customers have agreed to hold off on returning products in hopes that the exemption for crystal will be granted. The company was forced to stop selling a number of their product lines as customers would not accept acrylic as a substitute resulting in significant lost sales. For the product lines they were able to transition to acrylic - the items do not sell as well since they lack the sparkle and appeal of products made with rhinestones. The result: the company was forced to lay off 1/3 of its employees, a loss of over 15 jobs. If the crystal exemption is not granted, the company expects that many of its approximately 2,000 small business retail customers will ask to return rhinestone products, all of which meet Proposition 65 standards. The company is doubtful that it will be able to survive in the face of the expected expense of reimbursing customers and destroying the returned products with rhinestones, putting the remaining over 35 jobs at risk.

- A small Northeastern jewelry company specializing in children's jewelry took back almost $200,000 worth of Proposition 65-compliant jewelry as a result of the

new lead substrate limits. Although the company has transitioned to plastic rhinestones, the reduced appeal of this alternative has resulted in a 25 – 30% drop in sales. Continued poor sales are expected without an exemption for crystal. The company has 15 employees, but expects that if sales do not pick up – unlikely without a crystal exemption - it will be forced to reduce its workforce by 1/3, a loss of 5 jobs.

- A New England jewelry distributor has taken back $150,000 worth of children's jewelry with rhinestone accents that meet Proposition 65 standards. The company is hoping that positive action on the crystal exemption or a stay of enforcement will allow it to keep all 6 employees on the job.

- Another small New England company has issued credits for between $100,000 – 150,000 worth of rhinestone jewelry, putting it in a precarious cash flow situation and casting a shadow on its long-term viability.

- A small New England jewelry manufacturer whose principal product line is for girls age 4 - 7 reports an enormous drop in sales of its Proposition 65-compliant jewelry since the CPSIA lead substrate limits took effect on February 10. This company reports that of the top-selling items in its line for 2008, 19 had rhinestones. Sales to three of this company's top 5 customers have dropped significantly. For the first 6 months of 2009, sales to the company's largest customer dropped by an order of magnitude compared to the prior year. Sales are down 50% with other customers, who report the rhinestone restriction as the primary reason for their shrinking orders. The company has only a few employees but hours have been reduced and business with its subcontractors is also down significantly. For this company's product line, costs of substituting plastic rhinestones have significantly added to the costs compared to crystal. While less expensive than crystal, plastic cannot be soldered and must be glued separately, adding a costly step to the process. The economic viability of the company is in doubt absent an exemption for crystal.

- One company reports that one customer, which has purchased about 2 million pieces of rhinestone jewelry annually, is experiencing returns even for jewelry that is not intended or designed primarily for children 12 and under, including jewelry featuring crosses, peace signs, initials and similar motifs. Uncertainties in how the CPSC will apply the definition of a "children's product" to jewelry has resulted in returns of virtually all rhinestone products because of concerns about possible civil penalty exposure. This company has 35 employees and 18 representatives. Absent a crystal exemption, returns estimated to reach millions of dollars could force the company out of business, causing a loss of all 53 jobs. This customer's experience is shared by many others. Another customer who has switched entirely to acrylic rhinestones reports that sales have dropped 40%.

- One jewelry company reports it has largely transitioned its product lines to acrylic, but at least one line has disappeared because plastic cannot substitute for crystal. Sales of the new product lines are down, however, because products with plastic rhinestones are less appealing to consumers. This company also reports that the impact of the CPSIA is being felt beyond its children's product line because of customer demands that all jewelry products meet standards for children's products.

- Another New England-based medium to large jewelry company reports that retail buyers are not enthusiastic about products featuring plastic rhinestones. Consumers find the products are lackluster because plastic rhinestones do not have the "bling" appeal of rhinestones. Many thousands of dollars worth of Proposition 65-compliant jewelry remain tied up in inventory pending a positive decision on the crystal petition; the ability to sell products with real rhinestones could have a significant positive impact on the company's bottom line for 2009.

- A major retail chain reports that the financial impact of the lack of a rhinestone exemption amounted to a loss of about $6.5 million dollars in the first quarter of 2009, due to a combination of very aggressive markdowns in advance of the February 10 deadline and product withdrawals, both as a result of the lack of a crystal exemption for products featuring rhinestones.

- A major apparel and jewelry manufacturer and retailer withdrew almost 62,000 products meeting Proposition 65 standards for children's jewelry with rhinestones prior to February 10. In addition to the many thousands of dollars in lost sales represented by these products, the company spent almost $34,000 to destroy perfectly safe products. Designing around the loss of rhinestones has resulted in added costs, and the reduced appeal of products lacking the "bling" factor of rhinestones has adversely affected sales of the redesigned products.

- An apparel company reports handling $75,000 worth of returns of rhinestone aparel from customers.

- A retailer reports incurring $700,000 in testing costs alone.

Our Request

Real companies have been harmed by the failure to adopt a crystal exemption. Real jobs have been lost because of the lack of a crystal exemption. The jewelry manufacturers, distributors and retailers being harmed are committed to making safe products, and the children's jewelry products that are being withdrawn or destroyed meet Proposition 65 standards. The economic losses and lost jobs are not due to the economy. They are due to the failure to exempt a safe material like crystal in children's products. What is worse, real children are *not* being protected by banning a product, like crystal, that experts agree is safe for use in jewelry, clothing and other products.

We earnestly hope that when you consider the joint industry request for an exemption for crystal and glass, you consider what your vote means to the many companies in the fashion industry - and to their employees - who make products that all agree are safe, as well as to those who sell used products featuring rhinestones. Please support the exemption request. Alternatively, if you agree with the staff that the legislation limits your ability to act in a common sense fashion, we urge you to adopt a stay of enforcement and to ask Congress to revise the CPSIA so that a permanent exemption can be granted. Neither the Commission's nor the country's resources should be wasted, or one more job, lost by banning a product that your own staff agrees is safe. Please work with us to assure that common sense risk-based decisions are the basis for sensible product safety regulations in the U.S.

Respectfully submitted,

Michael Gale, Executive Director
Fashion Jewelry Trade Association

cc: Senator Jay Rockefeller
Senator Kay Bailey Hutchinson
Senator Mark Pryor
Senator Roger Wicker
The Honorable Henry Waxman
The Honorable Joe Barton
The Honorable Bobby Rush
The Honorable George Radanovich
Todd A. Stevenson, Director, Office of the Secretary
Cheryl Falvey, General Counsel

[redacted]

From: [redacted]
Sent: Thursday, January 14, 2010 5:46 AM
To: Commissioner Northup
Subject: [redacted] recommended CPSIA changes 1-13-10
Attachments: attc0701.gif; ETA Cuisenaire recommended CPSIA changes 1-13-10.doc

January 13, 2010

Honorable Commissioner Anne Northup
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Dear Commissioner Northup,

My colleagues and I at [redacted] a family-owned Illinois business employing 160 dedicated professionals, have closely followed the activity of the CPSC since the inception of the CPSIA in 2008 and we have frequently weighed in on how the CPSIA can be vastly improved for the betterment of public safety. We were pleased that part of the stay that was enacted in January 2009 was extended until February 2011. While this was a small, positive step in the right direction, we are disappointed that the commission will be meeting in private January 15th to propose recommendations for Congress to fix various problems with the CPSIA, as opposed to meeting in the traditional public forum. We can only hope that our voice, along with that of our industry partners and alliances in the U.S. education market, has been heard.

As you prepare to have your strategic discussion, we would like to share our opinion on specific changes to the CPSIA we believe would positively impact consumer safety, thousands of U.S. businesses, the U.S. economy, and CPSC resources.

The following is a highlight of the most critical parts of the CPSIA we believe need considerable revisions:

1. Grant CPSC authority to develop product safety policies and rules based on risk assessment, practicality of compliance measures, and allocation of resources.

2. Narrow the definition of "Children's Product" to mean what the original intent of the law was targeting – toys, not "general use" product where there is no recorded injuries or scientific studies warranting the regulation of books, stationary, pens, footwear, fashion apparel, ATVs, educational materials, etc.

3. Narrow the definition of "Children's Product" to be for product primarily marketed to children 6 years old and under. The fact that there may be toys or product intended for older children in the same household as a child under 6 should not dictate over-reaching, unreasonable compliance legislation. There is no empirical data identifying risk of injury from such product any more than children using non-toy products in the home, such as flashlights, fishing tackle, office supplies, tape measures, etc.

4. The definition of "Children's Product" should exclude educational materials that are used in schools and other learning environments (camps, museums, learning centers, home schooling) or where adult

supervision is recommended. These materials include "kits", "bundles", or "sets" of materials containing individual, general use, components that are not primarily intended for children sold separately but are collectively packaged for hands-on activities or demonstration for elementary school-aged children. An example of these general-use components is houseware and hardware goods (flashlights, insulated and non-insulated copper and nichrome wire, thermometers, bathroom and kitchen scales, nuts, bolts, screws, nails) office supplies (scissors, brass fasteners, paperclips, staples) stationary supplies, math manipulatives, reading manipulatives, elementary science supplies (brass weights, glass beakers, test tube stands, clamps), restaurant supplies (foil pans, plastic bowls, cups, spoons). Since the primary market for these products is NOT children, it is impossible to obtain CPSIA-compliant General Certificate of Compliance (GCC) from manufacturers, importers, wholesalers, or distributors, and due to the relative low-volume niche market to whom these "kits" are sold, it is not feasible to manufacture "compliant" components.

5. Limits set for phthalates should be limited to children 3 years of age and under and where the plasticized portion of the product is reasonably foreseeable to be mouthed.

6. Lead and phthalate standards should be prospective from February 10, 2009 so that products which complied with the law before the ban went into effect February 10, 2009 may be sold unless they contained sufficient lead to be considered "banned hazardous substances" under the Federal Hazardous Substances Act. This is needed to protect resale and thrift stores, charity organizations, and small to medium sized-businesses from losing billions of dollars in lost inventory that is too expensive to test and is perfectly safe to use.

7. Eliminate future reductions of the 300 ppm lead-in-substrate standard as there is no scientific data to support the case that lead levels from 100 ppm to 300 ppm pose any health risk to children. Reductions to this standard will result in great economic hardship for the majority of businesses while offering no increased level of public safety.

8. Identify and exclude any surface coatings and inks that are known NOT to contain lead and heavy metals, such as vegetable-based inks and aqueous (water-based) varnishes.

9. Change "technologically feasible" to read "technologically AND economically feasible". Just because NASA has the ability and can AFFORD to develop new technology doesn't mean the average business owner has the budget or resources available to solve engineering challenges in low-volume, low-margin, and low revenue product.

10. Tracking label processes and administration should be left up to the business owner. Tracking labels do not make products safer. Tracking labels provide businesses the ability to narrow the scope and exposure of a product recall. While this is desirable for a business, the cost of complying with a Congress-imposed and Congress-designed labeling process FAR out-weighs any financial exposure a product recall may pose to a business. Businesses have a much better understanding of their specific product and market that they must be allowed to employ their own strategies for limiting their recall exposure. Again, why go through the expense of such sophisticated tracking processes for the millions of products that are completely safe.

11. The whistleblower provision should be eliminated. While the intention of the provision is to protect employees from corporate criminal activity, such a provision will only result in more subversive corporate activity. The distrust between employee and employer will result in less, not more, open communication and will expose good, law-abiding companies to vindictive or dishonest employees. Employees are already fully protected from bogus terminations or demotions by workers' rights legislation.

12. Give the CPSC the authority to publish and enforce penalty guidelines that are congruous with specific violations, the size of the offending company's revenue, the extent of the company's reasonable testing program, and the behavorial track record of the company.

13. Eliminate the mandatory requirement to use CPSC certified Third-Party test labs. Instead, make it part of a company's reasonable testing program where it is used periodically to test high-risk product or components and to validate the effectiveness of a company's safety protocol. Making this a mandatory standard burdens small-run manufacturers or importers and creates an environment for labs to price gouge as the labs instantly have a captive customer base. Furthermore, imports will be significantly delayed due to the crush of mandated testing that current labs are not equipped to handle in an expeditious manner.

14. The public incident database should be limited to product recalls only. The content that is published in this database must be highly regulated and policed to protect businesses from so-called consumer advocate groups with hidden agendas; competitive mischief; and consumer extortion (class-action suits). Just as dishonest businesses risk punitive fines and jail time, so shall individuals and companies who create fraudulent postings.

As a supplier of math, science, and reading educational materials to U.S. K-12 educators for the last 40 years, we are highly dedicated to product safety. We also have a keen awareness of the devastating effect the current CPSIA standards are having on companies lik[redacted] and our ability to serve the school market. Teachers and students will have fewer products to learn with, and the economic impact of higher costs due to excessive compliance testing and tracking will trickle down to taxpayers who fund the schools' ability to procure educational materials. Of course, we realize that Congress and the CPSC had no idea of the CPSIA's unintended consequences affecting our industry, however, we implore you take the bold step to correct the considerable wrong that was signed into law August 14, 2008.

Sincerely,

[redacted]

[redacted]

From: Randy Hertzler [redacted]
Sent: Wednesday, January 13, 2010 5:07 PM
To: Tenenbaum, Inez
Cc: Adler, Robert; Moore, Thomas; Nord, Nancy; Commissioner Northup
Subject: Reconciling the CPSIA legislation with EN71 within the European Union
Attachments: image001.png; image004.jpg

euroSource™ LLC

January 13th, 2010

Commissioner Inez Tenenbaum
United States Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Ms. Tenenbaum,

The latest conference report for the legislation H.R. 3288 includes a deadline of January 15 for the CPSC to send suggested "improvements to the statute" to both Appropriations Committees, the House Energy and Commerce Committee and the Senate Commerce, Science and Transportation Committee. I look forward to seeing these suggestions on Friday as I have a vested interest in a fixed CPSIA as a small business owner.

The CPSC has issued another stay of enforcement of some testing requirements and issued guidelines for component testing. It is encouraging to see these steps towards a workable safety ruling. My top concern at this point in time with the CPSIA is:

- Testing requirements that do not align with European Union (EU) standard EN-71.

This incongruence in the CPSIA legislation seems to get little attention and is effectively placing a trade barrier between the USA and the EU. My small business depends on being able to offer specialty toys from small manufacturers in Europe for sale in the USA. I have already lost five German toy brands because of the CPSIA and am afraid more will follow this year.

Please assist me by keeping this important issue on your committee's agenda. And thank you for your time and efforts on this issue. I look forward to continued dialog and correspondence with the CPSC.

With kind regards,

Randall Hertzler,
President

CC: Commissioner Robert Adler,

Representing the Bulk Vending Industry Since 1950

Dear Member of Congress:

The National Bulk Vendors Association ("NBVA") writes to respectfully request that Congress explicitly grant a total exemption from the Section 103 requirements of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") for vended products in any future technical corrections bill. At the very minimum, Congress should issue a one-year stay of enforcement of the provision so the CPSC can adequately address the mandates of the provision and provide proper guidance on its implementation.

The NBVA would like to express our utmost concern over the deleterious effects of the CPSIA on the bulk vending industry. Section 103 of the CPSIA requires that, effective August 14, 2009, "the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable," to enable manufacturers and consumers to ascertain certain information regarding the manufacture of the product. We write to share our particular concern over the applicability of the tracking labels requirement to vended products: "low-cost children's toys and other children's products that are less than five inches in diameter that are randomly and mechanically or electrically dispensed from a vending machine."

While the NBVA appreciates and supports the congressional intent of this provision - to enhance recall effectiveness - the mandate of Section 103 will constitute a unique and heavy burden on the bulk vending industry. The industry will be unable to sustain this requirement for such an inexpensive item as the vended product and any such requirement will likely have adverse effects on the industry. The result of the provision could mean fewer consumer options for toys and other children's products with no increase in public safety. This is of particular concern for lower income children and their families who may not have other alternatives than to purchase vended products. Additionally, American jobs created and supported by the bulk vending industry, and its distribution chain, could be at risk across the country.

The National Bulk Vendors Association and Vended Products

The NBVA is a national not-for-profit trade association established in 1950. It is comprised of manufacturers, distributors and operators of bulk vending machines and vended products. The Association represents approximately 360 companies, although there are thousands of additional small operators across the country operating on a full-or-part-time basis who are not members of the NBVA.

Bulk vending refers to the sale of vended products. These inexpensive items include such products as small toys, novelties, stickers, temporary tattoos, *etc.* Vended products are dispensed by themselves or via an acorn-shaped capsule. Bulk vended toys and other children's products represent less than one percent of the total vending industry (the rest consists primarily of food and beverage vending). It is important to note that, unlike the machines that vend the type of bulk vended products defined above, the electrical vending machines that vend most food, beverage and other products can easily adjust the price that the consumer must pay to obtain those items. Bulk vending machines, by contrast, typically take quarters to mechanically dispense a product and so cannot be readily adjusted for price, and then only by quarter (or in some cases dollar) increments.

The bulk vending industry provides numerous opportunities for a variety of entrepreneurs in the U.S., from importers to distributors to "mom-and-pop" retail vendors. At each stage of the intricate distribution process, from manufacture to final sale, thousands of jobs are produced and sustained across the country. First, bulk vending supports numerous jobs at U.S. ports of entry, where millions of individual products shipped to the U.S. for vending machines are received in hundreds of cargo containers annually. Second, most of the capsules that deliver vended products to the consumer from the machine are manufactured domestically. Third, the capsules are then shipped to facilities where the actual toys and other products are inserted into the capsule, thereby creating additional U.S. jobs.

Members of the NBVA directly contract with numerous charitable organizations, both for placing the product in the acorn containers and for the placement and maintenance of vending machines. One such organization, Lighthouse for the Blind, provides thousands of workers with sight disabilities with gainful employment. Other charities include the American Cancer Society, Hugs Not Drugs, and Center for Missing and Exploited Children, among many others. These organizations receive proceeds from the sale of vended products not just from placing the products in the capsules, but also from a portion of the proceeds of the vending machines themselves. Machines are frequently labeled with the charity's name and information, indicating that proceeds from the sale of the vended products benefit that organization. Finally, the capsules containing the products are distributed directly to vending machine companies and operators who service their respective routes.

Most importantly, vended products provide smiles to millions of American children every year. Simply put, the vending experience, often the first consumer transaction for a child, provides quality toys, a family experience and, for the operator, a sense of the American entrepreneurial spirit. These machines are part of the American shopping landscape as they are found in virtually every type of retail location. In short, they have become an integral part of American culture.

Vended Children's Products Must be Excluded from Section 103 of the CPSIA

Importantly, Congress did not intend the bulk vending industry to attempt such an undertaking when it enacted the CPSIA into law. The NBVA believes that Congress inserted "to the extent practicable" into the tracking labels provision in reference to products where compliance with the requirement would not be technologically or economically feasible. In fact, the Conference Report accompanying the final version of the CPSIA states, "to the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize that it may not be practical for a label to be printed on each item." If this expression of congressional intent has any meaning at all, it compels an exemption from the mandate of Section 103 for vended products, which are among the smallest and least expensive consumer products on the market.

But, the CPSC will not likely provide such product specific determinations before the provision goes into effect on August 14, 2009. Therefore, Congress must make clear that it is not technologically or economically practicable to place tracking labels on vended products by granting an explicit exemption.

Technological Practicability: Vended products typically lack the requisite surface area for the placement of a tracking label. It would be virtually impossible to place tracking label information on a vended product's surface area where the product is typically one-inch or less in height and diameter. Moreover, the unique sizes and material composition of many vended products make it physically impossible to place such a tracking label of any size anywhere on the product.

Economic Practicability: Any requirement that would mandate the placement of a tracking label on vended products would render such products economically untenable. To implement the tracking

labels requirement, businesses of the NBVA will be forced to hire new staff, absorb expensive costs for new molds for every run of every individual vended product, purchase costly software, maintain more extensive records for tracking label cohort information and perform further periodic inventory quality control on the vended products. These additional costs cannot be absorbed for products that cost pennies to manufacture and typically retail to consumers for twenty-five cents to one dollar. An incremental shock to the cost of these items due to the tracking labels requirement is simply not transferable to customers as is the case with other products sold for retail. This unique situation for vended products makes the added costs prohibitive to the manufacturer.

In addition, Section 103 is wholly inapplicable to vended products where the remedy directed by the CPSC itself is to discard the product. Congress included Section 103 of the CPSIA to enhance and facilitate product traceability in the event of a recall. Given the intent behind Section 103, a total exemption from the tracking label requirement for vended products will not adversely affect children's product safety or recall efforts due to the inherent nature of vended products and the proposed remedy in case of a recall. In past recalls of vended products, the CPSC has instructed consumers to discard their vended products. This remedy negates the utility of a tracking label and its information on a vended product as there would be limited use for product traceability to the consumer.

The literal application of Section 103 of the CPSIA to vended products will have adverse effects on the bulk vending industry with no discernable enhancement to consumer product safety. The NBVA contends that Congress did not intend this harsh result. Therefore, the NBVA respectfully requests that the Congress explicitly grant a total exemption from the Section 103 requirements for vended products in any future technical corrections bill to the CPSIA. In lieu of granting this request, we respectfully request, at a minimum, Congress issue a one-year stay of enforcement of the provision so the CPSC can adequately address the mandates of the provision and examine the issues more thoroughly.

We urge Members of Congress and/or staff members to contact Senate Commerce Committee Chairman Jay Rockefeller (D-WV), Senate Commerce Consumer Protection Subcommittee Chairman Mark Pryor (D-AR), House Energy and Commerce Chairman Henry Waxman (D-CA), and House Energy and Commerce Consumer Protection Subcommittee Chairman Bobby Rush (D-IL) and ask for a statutory exemption for vended products.

Thank you for considering our concerns. Please feel free to contact me or members of the Association in your district or state if you have any questions or concerns regarding the tracking labels requirement of the CPSIA and its effect on the bulk vending industry.

Sincerely,

Randy Chilton
President
National Bulk Vendors Association

[redacted]

From: [redacted]
Sent: Tuesday, January 12, 2010 10:18 PM
To: Commissioner Northup
Subject: FW: [CPSIA - Comments & Observations] New comment on CPSIA - My Recommended Changes to the CPSIA.

FYI. This is a persistent complaint from the arts and crafts folks.

[redacted]

From: Leah [mailto:noreply-comment@blogger.com]
Sent: Tue 1/12/2010 7:46 PM
To: [redacted]
Subject: [CPSIA - Comments & Observations] New comment on CPSIA - My Recommended Changes to the CPSIA.

Leah has left a new comment on your post "CPSIA - My Recommended Changes to the CPSIA":

Amazing as always Rick! Another very important thing they need to do is exempt craft materials that are already subject to LHAMA certification from additional third party testing. I believe Nancy Nord is the only one of the commissioners to bring this up yet the costs for craft companies is exorbitant and redundant.

Posted by Leah to CPSIA - Comments & Observations at January 12, 2010 7:46 PM

[redacted]

From: Northup, Anne
Sent: Tuesday, January 12, 2010 3:14 PM
To: [redacted]
Subject: FW: CPSIA Report to Congress

Anne Northup
Commissioner
Consumer Products Safety Commission
4330 East West Highway
Bethesda, Maryland 20814
301.504.7780
Commissioner_Northup@cpsc.gov
www.SafetyandCommonSense.blogspot.com

From: [redacted]
Sent: Tuesday, January 12, 2010 1:44 PM
To: Northup, Anne
Subject: RE: CPSIA Report to Congress

Dear Commissioner Northup:

I just sent this note to Chairman Tenenbaum, with a cc to each Commissioner. I apologize, Outlook had memorized your email as having an "r" in your name, which must have been from a long time ago. Since that time I have been very much aware how to spell your name, figuring that given the enormous effort you have made to help fix the CPSIA, the least I could do is get your name right. Sorry that this one got past me.

Here is a copy of my email. Please soldier on and know that we appreciate all of your efforts.

Sincerely,

[redacted]

From: [redacted]
Sent: Tuesday, January 12, 2010 1:28 PM
To: 'itenenbaum@cpsc.gov'
Cc: "Nancy Nord'; 'anorthrup@cpsc.gov'; 'radler@cpsc.gov'; 'tmoore@cpsc.gov'; 'Walters, Jennifer'
Subject: CPSIA Report to Congress

Dear Chairman Tenenbaum:

I would like to take the time today to write a short note to encourage you and the Commission to please take advantage of the opportunity to write an extensive report to Congress regarding the amendments that need to take place to make the CPSIA work properly. As I am sure you are well aware, the current situation does no one any good. Businesses are closing, safe products are being lost, while products are not being made safer. I am sure there is not need to go into details the havoc this is playing out in the marketplace, and we are all going to end up losers. Each one of us will lose because of this law, except maybe the lawyers & testing labs, unless they have children who value quality, handmade products.

I would love to write a concise list of specific things that the Commission can request from Congress to fix this law. However, the demands of my fledgling business require my attention elsewhere at this time. Fortunately Rick Woldenberg has made such a list, including a list directed directly at the CPSC and what you can do even without amendments to make the law more workable. I have read both lists, and wholeheartedly agree with each point. I won't take the time to link to them now, as I trust that you have already seen them, and I hope and trust they have been printed out and are being discussed along with the other ideas and suggestions that are no doubt circulating your offices at this time.

It is important to understand that while we may get certain concessions, exemptions, or even a limited amendment, the fact remains that this law is so full of problems that extensive changes are required. Half measures will simply not do. As an example, even if the CPSC exempts our products from testing (and many of our cloth based products are exempt), we are struggling in a very real way to work with the European companies that we represent, to find a way for their manufacturers to put permanent markings on the product, based on the low volume of business that we do with them (often less than 100 or even 50 pcs per style per order). It is simply not economical, and so we (our business and the American people) are losing wonderful organic stuffed animals and organic cotton dolls in the name of safety, for a rule which simply does not make any sense for the volume of product being sold. Nevertheless, the permanent markings rule is in force, and we are making unfortunate decisions in our company this week to discontinue many products in 2010 catalog because of that one "simple" part of the law.

Of course, if you are somehow able to fix the permanent labeling for us, we still have serious concerns about the way the public database is proposed to be established. It goes on and on. That is why Mr. Woldenberg's list seems endless; because the problems of this law are endless.

I also want to express my profound disappointment with your decision to not hold a public discussion among the Commissioners. As someone that holds dear many of the ideals of the Democratic Party, not to mention ideals of democracy & America in general, such as inclusiveness, openness, and power of open debate to achieve results that would otherwise be impossible, I am truly saddened by this missed opportunity.

I am confident that you are well aware of the short-comings of this law. This puts an incredible burden on your shoulders to use all the power vested in you to gather the strength from your colleagues to present a compelling case to Congress. While your Republican counterparts are passionate about fixing the problems of this law, the change must come from the Democrats, or it will not come at all. Indeed, you, and you alone, can squander this opportunity, or make some brave decisions to make a true difference in the lives of millions of Americans across this country, by proposing comprehensive amendments that will make it possible for commerce to thrive while ensuring the safety of children's products, and maintaining a robust, independent CPSC.

Sincerely,

[redacted]
Director of Marketing
[redacted]

[redacted]

From: [redacted]
Sent: Monday, January 11, 2010 8:52 AM
To: Commissioner Northup
Subject: My Comments

Dear Ms. Northup,

I have written the commission numerous times over the past 2 years, however never directly to you. I have written my state senators (Arlen Specter and Robert Casey) and my representative (Jason Altmire) many, many times. I have phoned and left messages.

I read your most recent blog this morning and it makes me feel that there is a glimmer of hope with you and Ms. Nord.

TFH USA is a VERY small business.(8 employees) We sell adapted toys and products for special needs children and adults. Of the products we sell, we manufacture 50 of them. Either in our local area of Gibsonia PA or by our sister company TFH UK.(10 employees) Due to the nature of our business and customers, our manufacturing is done in very small lots. Some as few as 10. The largest is 100.

Needless to say we cannot afford to have extensive, expensive testing done. Because we know our products will be used by individuals who may be very **low** functioning, everything is manufactured to this end. Safe, Safe, Safe. In 20 years in business we have never had a recall or product liability.

I, and the Special Needs Population, appreciate any help you may be able to give us and other small businesses who will probably not survive the implementation of this law.

[redacted]

[redacted]

From: [redacted]
Sent: Saturday, January 09, 2010 12:00 AM
To: [redacted]
Cc: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Commissioner Northup; Chenoweth, Markham; [redacted]; Martyak, Joseph; [redacted] Paul Nathanson; [redacted]
Subject: Ideas for Amending the CPSIA

Matt,

I wanted to share my laundry list of changes that should be made to the CPSIA.

The tumult and chaos of the last two years is strong evidence of the failure of this legislative scheme. Perpetuating it is to choose more of the same long into the future – or worse. Unless the constant bickering and divisiveness is somehow contributing to greater safety, which is not apparent to me, it seems unwise to preserve the status quo. It's time to rethink the law entirely.

As background, I want to note the following:

a. My suggestions will have NO material impact on safety.
b. It is **critical** that the agency be well-functioning after amendment of the law. I have placed a priority on cleaning up purposeless complexity and tasks that are not critical to the mission of supervising safety. It is essential the CPSC have a set of ordered priorities – because if everything is important, nothing is important.
c. I believe the agency must reestablish a basic sense of what is safe and what is not safe. Judging from recent decisions of the Commission and recent recalls, I think the line between "safe" and "unsafe" has become blurred. Being careful about safety does NOT imply a fear of "everything". I have tailored my recommendations to focus in on REAL safety risks – only.
d. I believe the agency should retain discretion to apply its resources to emerging threats. My recommendations are NOT intended to limit the agency's ability to make these judgments or to take away its authority to supervise safety. In fact, although it is not discussed much, the agency always had a tremendous discretion in exercising its authority – the new law made much of that discretion mandatory, subverting the agency's ability to assess risk or make its own expert judgments. Please assume that all of the below suggestions incorporate an implicit power to alter the rules if circumstances warrant.
e. I do not believe recall rates is the best metric for safety in the children's marketplace. I prefer injury statistics, personally, as our goal must be fewer injuries (as opposed to fewer recalls). Unfortunately, fewer recalls is not necessarily equivalent to fewer injuries. It is worth noting that most children's products are recalled for technical violations of the law, NOT for large scale injuries. The assertion that these products would have led to injuries is unproven. The fact is that the injuries from children's products pale next to injuries from other childhood activities or products. Consider deaths and injuries from the use of swimming pools or from cheerleading. Of course, nothing compares to deaths from traffic accidents. See http://www.nlm.nih.gov/medlineplus/ency/article/001915.htm, http://www.disastercenter.com/cdc/111riskb.html and http://www.disastercenter.com/cdc/111riskc.html. We need to maintain perspective on the issue of children's product safety in order to properly design this law to prevent injuries.
f. Some of the below recommendations might be accomplished by agency action short of changes to the law. However, these changes have not been forthcoming so I include them here for completeness.
g. A properly designed CPSIA will provide economic incentives that really work. Excessive punishment and hair trigger reporting requirements are economic depressants. A system of punishment and reward needs to be tailored to the true drivers of market behavior.
h. The agency should consider requesting that Congress repeal provisions of the CPSIA that in essence duplicate authority that the agency already had before the CPSIA was passed. Examples include tracking labels, testing and certification requirements and the authority under the FHSA to exempt products for minor hazards. These new layers of complexity have made interpreting and living with the CPSA much more difficult for both regulators and regulated companies alike.

Perhaps most importantly, I want you to know that I believe the overall "solution" to long term issues of children's product safety is not a matter of the design of the law alone. The opportunity to improve on the past will depend on process and in

proactive investment. The challenge is simpler than it is complex. I have included some simple recommendations on process and proactive investment that will help the agency reduce children's product recall rates and even more importantly, reduce injuries and deaths from their already low levels.

Needed Changes to the CPSIA:

1. Restore the CPSC's authority to base its safety decisions, resource allocation and rules on risk assessment.

2. Definition of "Children's Product" should be limited to children 6 years or younger. The argument that young children play with the toys or possessions of their older siblings is not supported by statistically significant injury statistics. If children are not being harmed by this interaction, we should not have to spend billions on safety initiatives that will have little impact.

3. Definition of "Toy" (for phthalates purposes) should be limited to children 3 years old or younger. Human factors analysis by CPSC staff indicate that it is not age-appropriate for children over three to mouth their possessions. Again, there are no statistically significant injury statistics that support a contention that children over three have any material risk from mouthing toys.

4. Definition of "Toy" should explicitly refer only to products in the form used in play. This would eliminate uninflated globes from the mouthing rules. In addition, sleepwear should only be included in childcare articles to the extent the plasticized part of the sleepwear is intended or is reasonably foreseeable to be mouthed.

5. Definition of "Children's Product" should eliminate the factor set forth in Section 3(a)(2)(c) of the CPSA. This change is intended to make determinating which items are "in" and which are "out" more objective. The Commission already has in place age grading guidelines that supplant the "common recognition" factor and provide objective guidance.

6. Definition of "Children's Product" should be limited to a narrow class of product, ideally just toys. There is no justification based on injury statistics to regulate apparel, footwear, appliqués, hair accessories, books, pens, bikes, ATVs, educational products, rhinestones and so on. Much of the morass befalling the agency over the past two years stems from this overly-broad definition.

7. Definition of "Children's Product" should not include anything primarily sold into the schools or which is used primarily under the supervision of adults.

8. The standards/bans for lead and phthalates should be prospective from February 10, 2009, allowing the sale of merchandise manufactured in compliance with law prior to the implementation of the law. This is ABSOLUTELY necessary to protect the thrift store industry.

9. Make ANY AND ALL changes in standards after February 10, 2009 EXPLICITLY PROSPECTIVE, including those already implemented.

10. Phthalate testing should explicitly exempt inaccessible components, metals, minerals, hard plastics, natural fibers and wood. The statutory test standard should explicitly permit testing the entire product as a whole. California law, which may conflict with these definitions, should be explicitly preempted.

11. Eliminate the 100 ppm lead standard for August 2011. There is no scientific evidence that the change from 300 ppm to 100 ppm as a limit on lead-in-substrate will have any material impact on blood lead levels. However, the economic impact of this meaningless change could be severe - the equivalent of a high tax serving no known purpose.

12. Lead-in-substrate testing should be a "reasonable testing program", not mandated outside testing. Ideally a combination of in-house testing, spot checking, XRF (allowed for this use) and supply chain management. The focus of the rules should be on safety, NOT on compliance. Third party testing can be included as a safe harbor for a "reasonable testing program".

13. Small lot manufacturers are exempt from all testing requirements (but not the standards). ANY product which sells less than 25,000 units per annum is exempt from testing requirements.

14. Eliminate required future reductions in the lead-in-paint standard levels if technologically-feasible. There is no scientific evidence that this further reduction will have any material impact on health, but will have an economic impact on the marketplace.

15. Clarify that all inks are excluded from the lead-in-paint ban.

16. Modify definition of "technologically feasible" to take into account economics. It is demonstrably unfair to small businesses to apply a rule that works like this: "If Rolex CAN do it, Timex MUST do it." A technological feasibility standard without reference to economics is completely unreasonable to small companies or companies relying on narrow margins.

17. Restore ASTM F963 to voluntary standard status.

18. Eliminate the "periodic review" provisions that require ratcheting up of requirements (e.g., periodic review of F963 to achieve "highest levels of safety" that are "feasible"). Would like to further gut this provision, as I do not see that the CPSC adds any value in the process but has significant procedural burdens. This is pure government waste.

19. Eliminate exceptions to preemption (such as Sec. 106(h)). Add effective preemption of State laws on lead and lead-in-paint. Interstate commerce demands that there be one authority on safety, not 51 independent regulators. The disorder in the marketplace from the Proposition 65-style "consumer right to know" laws (like Illinois' new Lead Poisoning Prevention Act) needs to be eliminated by explicitly preempting them in the changes to the CPSIA.

20. Add penalties (up to and including felonies) for false or misleading accusations of violations of law or safety violations.

21. Make the resale of used product that violates safety standard a misdemeanor with very limited fines (like a traffic ticker). Can only escalate if done with actual knowledge.

22. Eliminate the "knowing" standard with its imputed knowledge of a reasonable man exercising due care. This standard is a 20/20 hindsight standard and is thus subject to considerable abuse. An actual knowledge standard would ease fears among regulated companies.

23. Completely reformulate penalties to restrict them to egregious conduct, reckless endangerment or conduct resulting in serious injury. The CPSC should have the authority to assess penalties when it deems it necessary, such as for repeated violations, but the practice should be that penalties are meant to provide incentives to good behavior ONLY (not for retribution or redistribution of wealth). Minor violations should either be handled administratively without penalties or should be subject to capped penalties akin to "traffic tickets".

24. State AG enforcement should be limited to matters involving actual knowledge leading to injury or to enforce a CPSC order.

25. Restore the ability to export non-compliant product as long as the product is compliant with the destination jurisdiction's law.

26. Mandatory tracking labels should be explicitly restricted to cribs, bassinets, play pens, all long life "heirloom" products with a known history of injuring the most vulnerable children (babies). Tracking labels would be voluntary on all other children's products and if in use, can be used to trim scale of recalls (as with other data maintained by businesses). CPSC should retain ability to expand the application of tracking labels as warranted. The power to impose tracking labels was a part of the prior law, it should be noted.

27. Elimination of whistleblower provision entirely. There is no demonstrated need for this provision which only creates an atmosphere of distrust and abuse in the workplace. To properly ensure corporate team play, the government should refrain from paying spies to infiltrate the workplace unless there is a demonstrated need based on actual data.

28. Elimination of lab certification process ENTIRELY. The CPSC adds NO value to this process, and in fact slows the process of labs coming on board with new testing capabilities. I am not aware of any instances of fraud by labs but if there were to be fraud, we already have anti-fraud standards on the books to protect consumers. Give the CPSC the power to create or modify certification standards or requirements if warranted in the future. Place reliance on industry organizations or independent professional organizations for certifications.

    a. For in-house labs, use established firewall rules as "but for" condition for companies to avoid liability. Otherwise, companies should bear full responsibility for testing done in-house.

29. Public injury/incident database restricted to recalls only

    a. If allow unfiltered postings, companies need adequate time to respond BEFORE posting. There needs to be enough time to allow for inspection of product and to conduct tests.
    b. Must post name and contact info to put info up on the DB. NO anonymous postings
    c. Liability for fraud, including fines and possible jail time. Need to prominently note this on the DB. There needs to be a consequence for bad actors spreading bad information intentionally.
    d. The terms of the DB should not permit postings of CPSC private remedies, like "do-not-sell" orders.
    e. The current timetable is unreasonable, needs to be spread out to allow for more consideration of unintended consequences.
    f. The current rules specify removal of inaccurate data that is TOO SLOW. Data needs to be impounded while being investigated (Zhu Zhu Pets wouldn't have survived this scheme).

I also recommend consideration of an exception from the lead-in-paint rules for violations which have less than XXX grams per unit. These essentially technical or *de minimus* violations might be exempt from recalls but not from "do-not-sell" orders. I am recommending some acknowledgement that certain L-I-P violations are not worth the expense to recall. A strict liability standard for L-I-P is not necessary to protect the public.

Needed non-legislative changes:

1. Liaison office to manage Q&A with regulated companies. "No name" inquiries should be permitted. This office should be staffed adequately to ensure timely replies.

2. Amnesty program – if you turn yourself in before you are notified that you are being investigated, you may NOT be penalized.

3. Industry Outreach/Education – as a TOP priority, the CPSC must create an educational outreach program to sensitize industry to safety issues and to educate regulated companies on their legal obligations and on good safety practices. This office should operate independently of enforcement staff or activities. On-site training should be offered for free.

4. Website should be reworked to meet best standards for access to information. The current website is quirky and difficult to navigate.

5. The agency should reexamine its allocation of resources according to severity of threat, and then reorganize its assets in line with threat priorities. Threat level teams should be separately staffed and tasked, with timeliness of processing a top priority. If resources are allocated properly, the concept of a "queue" can be abandoned in favor of objective expectations on how threats are processed by the agency. The teams should be resourced independently, as though they were separate agencies (e.g., the "high threat" team would have different lab resources than the "medium threat" team).

6. Industry self-regulation should again become the principle strategy of the agency to manage markets.

This is a comprehensive list of my objections to the law. I actually recommend all of these changes in order to reduce the chore of supervising the affected markets. The unfocused approach of the CPSIA almost ensures the observed diminishing impact of your agency. By eliminating many unnecessary standards and supervisory activities (totally eliminating vast amount of work for both agency and regulated community), focus can be restored to the task of keeping kids safe. This will result in GREATER safety, not increased injuries. The side project of properly allocating resources within the agency to bring about good results in the marketplace is far more important than having draconian rules on the books. With the scheme I recommend above, the Commission would be in the optimal position to leave a positive legacy for their tenure at the CPSC. A revitalized agency focusing on high impact activities and structured to respond quickly and insightfully against emerging threats will make the CPSC a model agency within the Federal government.

Matt, while I do think ALL these recommendations are needed; I recognize that it is impossible to make every change. I'd be happy to discuss how to implement those that you want to move forward on. Please do not hesitate to call me anytime over the weekend or next week.

Thanks for considering my views on this important topic.

Best Regards,

Richard Woldenberg
Chairman
Learning Resources, Inc.

Chairman
Alliance for Children's Product Safety

[redacted]

From: [redacted]
Sent: Monday, January 11, 2010 9:54 PM
To: Commissioner Northup
Cc: [redacted]
Subject: SAFETY AND COMMON SENSE-TRANSPARENCY AND THE CPSC
Attachments: LETTER TO REPRESENTATIVE HENRY WAXMAN RE CPSIA; RE: your recent message; CPSIA - Comments & Observations_ CPSIA - Transparency, Tenenbaum_Adler-style_BLOG FR RICK WOLDENBERG_1-6-10.pdf; CPSIA_ RICK WOLDENBERG-My Recommended Changes to the CPSIA_1-11-10.pdf

Importance: High

Dear Commissioner Northrup-

This letter is in response to your blog on the transparency (or lack thereof) in the CPSC discussions about amending CPSIA. I have to say that I am encouraged and elated to see that you are soliciting comments from companies and individuals affected by CPSIA!

I am the Compliance Manager at a small apparel company in California. It so happens that I am a constituent (my home residence) of Rep. Henry Waxman and have tried to contact him a few times via email, fax and phone regarding CPSIA and its affect on the children's apparel industry. (I attached a couple of my letters to him for your reference).

My message to Mr. Waxman was essentially that CPSIA has created huge expense for this and other apparel companies with *almost no return*. [redacted] primarily manufactures screen-printed tee shirts. To date, we have not found lead in the screen printed coating at all (probably because we use, and have used, lead-free inks for 15+ years in shops in the Western hemisphere). The expense of testing garments to comply with CPSIA has cost people jobs, which, I'm sure you will agree, is the last thing that California (or the U. S.) needs right now.

While we completely agree that safety compliance is necessary, the lead issue has been in the toy industry, not in the apparel industry.

Please reconsider the requests of apparel manufacturers and the AAFA to repeal the screen printing portion of the lead in coatings law (16 CFR 1303). We agree that testing trim items, especially zippers, metal buttons, grommets, rhinestones, and the like, IS necessary.

The other element in this is that CPSIA (and subsequently, our retailers) requires use of a certified lab. Many of the 'certified' labs we use have used use XRF guns to determine whether or not a item contains lead, yet when XRF is used by anyone other than a certified lab, it is not considered a valid means of testing. If the certified labs, Walmart and even the CPSC use XRF, why can't individual companies do the same and save time and money in doing so? If an item tests positive for lead above the allowable limits, then further testing can be conducted.

Rick Woldenberg with Learning Resources has taken hundreds of hours of his time working on CPSIA and he has really been the voice of the manufacturing community. I attached one of his blogs above as well as his recommendations on changes needed to CPSIA. He articulates all of the concerns much better than I.

Thanks very much for your consideration,

[redacted]

[redacted]
Social & Vendor Compliance, CPSIA, CSR

[redacted]

From: [redacted]
Sent: Tuesday, January 12, 2010 1:31 PM
To: Commissioner Northup
Subject: CPSIA Suggestion

Hi,

Thank you for trying to fix the CPSIA. In response to your request for ideas, please find the following suggestion.

My suggestion is in regards to the ASTM mandatory testing. I think the you should accept the EN-71 testing as an alternative to the ASTM testing. Since these standards are practically the same, it is ridiculous for items the be tested twice if they have passed EN-71, when we all know that the European standard is more stringent than the US standard.

One argument I've heard about this issue is the lead in paint issue. However, then just make that the exception, so at worse, a company can use their EN-71 test and then get an additional test to satisfy that one requirement. And if and when the component testing is approved (which we really need it to be or it's a moot point) then manufacturers could provide component tests for paint in addition to the EN-71 test. We've lost so many European brands due to the double testing on their extremely safe toys. **I can tell you that my wife's business is down 40% just from lost product that are, and always have been safe.**

Sincerely,

[redacted]

[redacted]

From: [redacted]
Sent: Friday, January 15, 2010 10:24 AM
To: [redacted]
Subject: FW: Suggestions: Waxman Amdmt/CPSC Report to Congress (1/15/09)

Importance: High

From: [redacted]
Sent: Wednesday, December 30, 2009 2:57 PM
To: [redacted]
Cc: [redacted]
Subject: Suggestions: Waxman Amdmt/CPSC Report to Congress (1/15/09)
Importance: High

[redacted]

I wanted to get back to you on the printing and publishing industry's recommendations regarding the recent Waxman amendment to the CPSIA and the CPSC report to House E&C and Senate Commerce due Jan 15th.

After a hurried consultation with our corp of book publishers, printers and manufacturers, we determined that the definition in the Waxman Amendment attempted to achieve more than now seems necessary in light of the better understanding of our CPSIA issues that we believe the Commission and its staff have obtained since that definition was first proposed months ago.

Specifically, we would urge that the definition should be shortened to read as follows:

"ORDINARY BOOKS. -- The term 'ordinary books' means books which are made of paper and/or cardboard that is printed with inks or toners and bound and finished using a conventional method. The term does not include any toy or other article that is sold or packaged with an ordinary book."

While there are many ways to define the nature of a book, it is clear that, for CPSIA purposes, we need a "manufacturing" definition rather than a "functional" one, since the former is really the only kind of definition that is relevant to our compliance with CPSIA requirements for children's products. Given our ongoing discussion with the Commission and its staff regarding the component materials and processes for manufacturing such ordinary books, we believe the Commission and its staff now have a fairly clear understanding of the distinction which, for CPSIA purposes, must be made between "ordinary books" and other items that are in the familiar form or shape of a book but are not made of paper-based materials and are instead made of or include items of other materials that confirm they are designed and intended for uses that clearly put them within the categories of "children's toys" or "childcare products."

For this reason, we see no reason to continue to try to qualify the meaning of the term "ordinary books" with references to their intended uses or use characteristics that are, at best, awkward and somewhat misleading and, at worst, not relevant to the CPSIA issue of whether, as a result of their component materials and/or manufacturing process, they need to be tested to determine whether they have a total lead content in excess of CPSIA's statutory limits. In short, the proposed references in the Waxman Amendment to distinctions based on whether the items are "intended to be read or having educational value" as compared to whether they have "inherent play value," are not necessary and would be ill-advised for inclusion.

Although you didn't ask, the definition of "ordinary paper-based printed materials" in the Waxman Amendment is OK for the reasons just described, and the "Exclusions" provision which follows and modifies both definitions is useful and should be retained.

And, since it appears that you are getting a quick jump toward putting together suggestions and recommendations for the report to Congress that was recently mandated under the Consolidated Appropriations Act, I would like to take the liberty,

on behalf of book publishers, printers and manufacturers, to lay down a few ideas for consideration by you and your colleagues.

* Urge Congress to allow manufacturers and importers to cite their compliance with CONEG, EPA and other lead content standards that equal or exceed the restrictiveness of CPSIA with respect to total lead content;

* Urge Congress to revise the definition of "children's products" to an age cap of 5 rather than 12 years, at least for "ordinary books" and other "children's products" where the likelihood of a child mouthing the product can be shown to be substantially reduced and then eliminated over time due to typically anticipated behavioral changes or controls in the child's use of the product that occur as the child matures and becomes more experienced in the use of the product and/or more likely to use it subject to adult supervision;

* Urge Congress to permit manufacturers and importers to use "reasonable testing programs," rather than accredited third-party testing labs, for testing component materials that require testing for lead content (i.e., materials that do not qualify for Commission "determinations" that would exclude them from such testing on either chemical composition or accessibility grounds) but which cannot themselves be viewed as "children's products" (i.e., they are not "intended or designed primarily" for children 12 or younger, or for inclusion as a component part or for other use in the manufacture of products that are "intended or designed primarily" for children 12 or younger), consistent with the existing dichotomy between non-children's products (which are subject to reasonable testing programs) and children's products (which are subject to requirements for testing by accredited third-party laboratories);

* Urge Congress to affirmatively state that application to children's products of State lead content testing and certification requirements which are different from those in CPSIA are preempted by CPSIA, at least where compliance with the CPSIA requirements can be shown; and,

* Urge Congress to affirmatively create an explicit "safe-harbor" from CPSIA liability for distributors of children's products that rely in good faith on supplier representations that any particular "ordinary book" or "ordinary paper-based printed material" is compliant with or excluded from CPSIA's testing and certification requirements.

I hope this is helpful, and that you and your colleagues will not hesitate to contact me any time you have a question about publishing, printing or manufacturing of children's books. We look forward to continuing our productive relationship with the Commission and its staff on the task of implementing CPSIA.

Happy and Healthy Holidays to the Commission and its staff!

Best,

[redacted]

From: [redacted]
Sent: Thursday, January 14, 2010 9:05 AM
To: Commissioner Northup
Subject: Aluminum Die Casting Industry

Dear Commissioner Northup:

My name is [redacted] and I am the President of the [redacted]). My industry has reviewed the new rules regarding lead (Pb) limits in children's toys. Currently, the new limit is .03% and is scheduled to be reduced to .01% in 2011. We believe that it is important to insure the safety of anyone using a die casting whether it be a child or an adult. The new limit and the eventual lowering of that limit for die cast aluminum will not additionally insure their safety. Unfortunately, it will only increase the cost of the product significantly.

What is our recourse to contest the application of this Pb limit in aluminum die castings?

We have already lost 99% of the die cast toy business to the Chinese, we are more concerned with a broader application or interpretation of this limit to everything that may come in contact with a child. We are therefore considering contesting this limit on all our aluminum products produced in the United States.

Thank you for your time and I look forward to your reply.

Sincerely,

[redacted]
President
[redacted]

[redacted]

From: [redacted]
Sent: Thursday, January 14, 2010 9:38 AM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Commissioner Northup
Subject: Changes to the CPSIA

Dear Commissioner and Members of the CPSC,

I am not a business person, I am a hobbyist. I have sewn many items for children under 12, including garments, bedding, and toys. These are one-of-a-kind items. I purchase small amounts of fabric, notions, trims, and various embellishments for my projects. Because I am not a business, I do not get warehouse prices, but pay full price for all my supplies.

Based on the current reading of the CPSIA, the testing requirements eliminate the possibility of making one-of-a-kind items since testing will destroy that one item. If I chose to make several identitcal items, using up a bolt of fabric, I could still only make a few items since a bolt of fabric at Jo-Ann's is 8-10 yards. The cost of testing these few items would be so exorbitant that I could not afford the cost, nor pass the cost on to customers who might purchase an item from me at a craft fair.

Ever since the CPSIA has become an issue, I have stopped making anything for children. You have taken away what little compensation I receive for my work, what little extra I can add to my social security, and the one enjoyment and passion I have. There was nothing unsafe about the items I created. There has never been an incident involving children eating their blankets, fabric books, jackets, or any other fabric item that has caused lead poisoning.

I have seven grandchildren. I am concerned about the safety of children's toys, but this law is too broad, open to too many interpretations, and has next to nothing to do with the safety of children. It is possible that a child may swallow a bead or two, but no normal child is going to swallow 40 beads, let alone 40,000. If a child were to do this, there is far more wrong with the child than with the beads.

So far, no good has come from this law. It has caused chaos in the work place, confusion in the mind's of parents, conflict among friends, has become a banner for "do-gooders", a political football for the politicians, and generally a nightmare for small businesses and hobbyists like myself. Please put some common sense into this law, or better still, work to repeal it, and start over using common sense. Please LISTEN to those who have far more knowledge than I concerning the changes that must be made to restore sanity, safety, and good judgment to the production of children's items.

Thank you,
Barbara A. Lussier
Andover, MA

[redacted]

From: [redacted]
Sent: Friday, December 11, 2009 11:09 AM
To: Commissioner Northup
Subject: CPSIA

Dear Commissioner Northrup,

I hear you're looking for real-life CPSIA impact stories. Mine is pretty short at ths point, so it fits neatly in a nutshell.

I started tie-dyeing garments for baby shower presents and also to hide stains on my own kids' clothing and discovered I liked tie-dyeing kids' stuff more than adult stuff. Lower cost per garment, plus smaller space requirements, made it perfect, and I made plans to go from "hobby" to "business."

Then the CPSIA hit. I pulled anything with fabric paint on it from my online Etsy shop as there's no way I can afford phthalate testing that would destroy my "lots of one" anyway, , let alone the lead testing that'll be required after the stay. I'm still trying desperately to unload the rest of my children's stock because for my single-item lots, the time and energy required to comply with labeling requirements for anything made after this past August are prohibitive even WITH the testing stay in effect. Other crafters who aren't homeschool special-needs kids can manage it, but I just can't. It's the main reason I'm still a "hobbyist" instead of expanding to a proper business. Kids' stuff I was getting orders for, which is why I was planning to make the leap, but orders for adult tie-dye are few and far between, even in the holiday shopping season. (My total sales tax checks for craft shows this Fall TOTAL about $6, which to me is NOT a sign of a thriving business model! LOL) Once this holiday shoping season is over, everything else I have is going into storage waiting for the odd craft show while my online store goes "on vacation" until I decide what to do and where to go next with it. Yep, the economy at large AND our single-income family REALLY needed the CPSIA, like we needed a hole in the head, as my mom would say.

I am alarmed that there has been so little discussion about the impact of this law and the testing burden on small crafters; a "small" lot in the discussions I've read about so far seems to be about 200, but for most of us, a "lot" is one item, maybe two. The law applies to us, though, regardless of our business models, and I'm not reading NEARLY enough about component testing being a remote possibility, let alone a viable option for us. (And don't get me started on the absurdity of my buying already-compliant garments, dyeing them with non-lead-containing dyes, and being liable for testing them is they have snaps - ever try to close onesies without 'em?)

OK, it turned out to be a big "nutshell," expanded by my soapbox. Thanks for reading. :-)

Cheers,
[redacted]

[redacted]

From: [redacted]
Sent: Friday, December 11, 2009 9:24 AM
To: Commissioner Northup
Subject: thank you so much for your work on the CPSIA

Dear Commissioner Northup:

We corresponded a few days ago and I just want to thank you for listening to the voices of real people out there who are deeply concerned about the effects of the CPSIA on consumers and businesses all over our country. Thank you so much for your work to make this practical, simple and effective.

Very sincerely,

[redacted]
--
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 4:57 PM
To: Amber Shipley; [redacted]; Joy Silvern; Marni Karlin; Michael Bennet, US Senator for Colorado; Paul Carver; Traster, Benjamin (Mark Udall); [redacted]; Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne; Kerr, Jennifer C.; [redacted]
Subject: FW: FYI

http://learningresourcesinc.blogspot.com/2009/12/cpsia-educational-company-woes-under.html

An entry on a blog that you may not have had time to follow.

CPSIA was not needed, adequate but underfunded legislation was already in place. It is a shame that so many innocent companies and their employees are going to hit bottom over this.

If a House Member can take the time to introduce 'BCS Football Playoff' legislation in committee, surely a public hearing can be held on CPSIA.....

I have let four employees go in Wisconsin this year with three more scheduled for January. Does this matter to any of you?

There is a very small group of students out there who are learning about geology using posters rather than using a small rock collection we were scheduled to produce for them. Do you think that any of those students will have quite the same understanding of geology that way?

Do you want your children/grandchildren/nieces/nephews getting their science education looking at books and posters or do you think maybe they should be doing something a little more hands on?

Speaking of bad science and lack of scientific understanding, I have had the largest educational distributor in the United States drop three products that had full testing documents supporting their CPSIA compliance because the customer used XRF scanning to TEST FOR LEAD IN PAINT. This despite the CPSC saying you can't test for lead in paint with XRF scanning, me providing that documentation and the product testing documents. With all of that, a very large, sophisticated business (one billion plus dollars a year in revenue) can't get it right. How is small business supposed to get it right?

Do you care at all?

There are thousands of us dying on the vine out here in the real world.

[redacted]
President
[redacted]

[redacted]

From: [redacted]
Sent: Friday, January 15, 2010 10:26 AM
To: [redacted]
Subject: [redacted]

From: [redacted]
Sent: Wednesday, January 13, 2010 11:29 AM
To: [redacted]
Subject: [redacted]

On behalf of the National Bulk Vendors Association, might you consider inclusion of this or similar language in your individual and/or joint "minority report" that I presume you will be submitting independently or jointly with Commissioner Nord to Congress in response to the CPSIA changes request? I have also shared this with [redacted] and would very much appreciate your consideration of its inclusion. Bottom line: this should be substantively non-controversial, but it would help tremendously to have some reference of it from the Commission/ers. And we have support for this from Congressman John Sarbanes, no. 2 D on the Consumer Affairs Subcommittee.

Thanks VERY much and good luck today!

[redacted]

In addition, I/we suggest the Congress consider a statutory exclusion for bulk vended products (toys and similar children's products dispensed from vending machines) from the tracking label requirements of Section 103(a). As stated in the Commission's July 2008 "Statement of Policy" interpreting the requirements of Section 103(a), "Legislative history [of the CPSIA] recognizes that a product's size is a primary consideration in determining if marking only the packaging is feasible. See H.R. Rep. No. 501, 110th Cong., 1st Sess. 32 (2007)." While that Statement of Policy explicitly indicates that it is not practicable to place a tracking label on bulk vended products, this determination is not binding on state attorneys general or other entities and does not have the force of law necessary to protect this industry segment from a determination that Section 103(a) does, in fact, apply to such products. A statutory exclusion is therefore necessary to ensure that the intent of Congress and the Commission in this regard is preserved.

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 2:29 PM
To: Tenenbaum, Inez; Nord, Nancy; Adler, Robert; Moore, Thomas; Northup, Anne
Subject: Feb Stay

Dear Chairwomen Tenenbaum and Commissioners,

Hello again, I have written to a few of your several times before. I am writing to share with you my concern about lifting the current stay on testing. If you want companies to comply with the law, it will be a huge error to lift the stay without having rulemaking completed. It will cause chaos and turmoil for everyone, including the CPSC.

To give you an example, in my world, the companies where we source our snaps from have been waiting for months before deciding what type of process to put in place. The snaps fall below 100ppm when we test them with XRF and the company itself states they comply (but we still test them with XRF). If you lift the stay in Feb and we are in mid-order for a store or customer...what does that mean for us? Can we ship that order? What type of testing will be required when the stay is lifted? Is there a grace period? Is XRF sufficient? If you lift the stay will the snap manufacturer just start sending things to the lab even though there isn't guidance? How long does that take? What do we do with the current supplies that we have? Do they need to go to a lab? How long will that take? Will we be able to fulfill the next order in time for that large retail store or will we lose the sale? How much money will we lose while not improving safety? These are real questions that impact my business and many others.

I also am a little concerned that not all of the commissioners understand the varying business sizes and challenges, or maybe it is just that it too overwhelming. In our case, I am a member of the HTA but I don't buy my materials at Joanne Fabrics and sew them at home, ie my product is not a craft or homemade. We sell to stores and I work with a contract manufacturer to sew our line. Some HTA members do knit booties and are crafters but some of us have larger operations but remain small. This means we have wildly different production schedules, commitments and deadlines. I don't know that that has been communicated to you.

I have spent a large portion of my year reading through many documents on the CPSC website. Honestly I can't make heads or tails of most of them. There are just too many documents and they are too hard to follow. It would be much appreciated if the staff could create more user friendly documents – perhaps that will come with time but also to have an industry specific type CPSIA tool would also be very helpful.

Again I would urge you to continue the stay until your rule making is completed and give everyone time to put their processes together.

Sincerely,

[redacted]
President
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 3:33 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Cc: Rick Woldenberg
Subject: Continuation of the Testing & Certification Stay

Dear Chairman Tenenbaum, Commissioners Adler, Moore, Nord and Northup:

I am writing to strongly urge the Commission to vote to extend the CPSIA testing and certification stay. The Stay should be continued for at least one year PAST issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements. The Stay has served its purpose well. However the timing of the lifting of the Stay in February will clearly affect large and small businesses adversely. Manufacturers and their supply chains desperately need time to adjust to new rules.

I can personally attest to the fact that our company is putting tremendous resources into making our products safe and meeting all safety requirements. We have in the past and will continue to make our products safe, there's no question about that. We are just asking for a reasonable set of rules to live by. I am confident you will make the best decision which will protect child safety and also allow companies like the one I work for to stay in business and provide this job which I need very much. Thank you for your consideration.

Kind regards,

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 2:59 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Cc: [redacted]
Subject: CPSIA - Letter to CPSC Re Continuation of Testing and Certification Stay

Importance: High

Dear Chairman Tenenbaum, Commissioners Adler, Moore, Nord and Northup:

I am writing to strongly urge the Commission to vote to extend the CPSIA testing and certification stay (the "Stay") originally implemented on January 30, 2009 and due to expire on February 10, 2010.

As a small business owner I urge you to help us!! We are currently facing one of the worse economic chapters in history and have seen endless small businesses close this year, while we hold on with the little hope of the American dream. I cannot even begin to tell you how many more people will go out of business or opt out if this Stay is lifted since it is basically a battle a typical Small American Business cannot afford or comply with. Other serious issues relate to the practical impact of the rules on the marketplace. First, the current rules are complex and disorganized, having been released in several places and formats. Even video testimony includes unique statements of agency policy. Some "rules" contradict other rules.

Manufacturers of children's products are good law-abiding citizens who want to follow the law. Until the CPSIA rules are clearly written and implemented, following the law is an impossible task. Please take bold action to support the lawful activities of the regulated community by promptly continuing the Stay for one year past the issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

Thank you for consideration of my views on this URGENT topic that can very well be the end of my career in this industry I have grown to love so much.

~[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 2:57 PM
To: Northup, Anne
Subject: CPSIA TESTING

I am writing to strongly urge the Commission to vote to extend the CPSIA testing and certification stay (the "Stay") originally implemented on January 30, 2009 and due to expire on February 10, 2010. The Stay should be continued for at least one year PAST issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

The Stay has served its purpose well. When originally adopted in January, the Commission intended to create a pause to allow the issuance of implementing rules and further permit market adjustment to those new rules. The Stay was needed to avoid confusion and chaos in the marketplace. Unfortunately, the task of issuing implementing rules to fully realize the goals of the Stay has not been completed. The incomplete state of the full range of testing rules and related activities (like test lab certification) has prevented full implementation of testing and certification in the marketplace. While many companies are testing aggressively, as the much-reduced toy recall rates attest, the market is simply not ready for full implementation. *No one knows what full implementation even means.*

Many critical tasks remain incomplete:

- The "15 Month Rule" was not issued when due on November 14th. The stakeholder feedback from this week's workshop on the "15 Month Rule" has not been received, much less reviewed or digested.
- Comments on the "15 Month Rule" are due on January 11. These comments have not received yet.
- The CPSC has not even solicited comments on the lifting of the Stay from stakeholders.
- Component testing rules have not been promulgated, despite calls by Commissioner Nord in her January 30th Statement on the Stay.
- The CPSC has not issued its phthalates test standard.
- The CPSC has not certified any testing laboratories for the phthalates test standard yet.

The CPSC has not certified labs for ASTM F963 testing yet.

- The CPSC admits that it has not certified enough labs to handle a full burden of testing for many product classes or safety tests.
- The CPSC acknowledges that fixed testing costs are creating a serious burden on small businesses.
- The CPSC has not defined "children's product", "toy", "play" or "childcare article" yet.

- The CPSC acknowledges that many companies have not acted to fill market gaps like component testing because the rules are not final (or even drafted in this case).
- The CPSC is on its third enforcement policy on lead and lead-in-paint.

I own a infant and baby showroom in Los Angeles and this effects me and my designers directly. Please act wisely

Sincerely [redacted]

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 5:30 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Subject: Lifting of the Stay

Dear Commissioners Tenebaum, Radler, Moore, Nord, and Northrup:

As outlined by numerous companies already, please do not lift the stay of enforcement. We as a company are already under enormous pressure from a poor economy, a host of regulations and misinformation among consumers. Please do not do what is politically expedient but what is right.

There is little I can add to the discussion that you have not already heard from others in our industry. We are a company of 14 people working hard to deliver quality products to children. For twenty years we have done our best to follow the rules and do what is needed to ensure product quality and safety. Adding more to our plate only makes it more likely that only the largest companies can continue to operate profitably under these circumstances.

Thank you for your help and understanding.

Regards,

[redacted]

Our Mission: To bring the best of fun and learning to children throughout the world.

Become a fan of [redacted] *on Facebook.*

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 2:34 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Cc: Amber Shipley; [redacted]; Joy Silvern; Marni Karlin; Michael Bennet, US Senator for Colorado; Paul Carver; Traster, Benjamin (Mark Udall); [redacted]; Kerr, Jennifer C.; Rick Woldenberg; [redacted]

Honorable Commissioners:

I am firmly of the belief that the 110th Congress has so tied the hands of the CPSC and its staff with regard to its ability to apply risk assessment methodology to protect the American public from unsafe children's products with the passage of the CPSIA 2008 that only an amendment through the legislative process could resolve the inherent conflicts and restrictions placed on the CPSC in its effort to interpret and implement this onerous Act. Unfortunately, I appear to be out of time to wait for the legislative process, as it seems that the Testing Stay so necessarily put into place last February is at risk of being lifted despite the myriad unresolved issues that preclude any removal of that Stay.

Actual, measurable increases in risk to children and their well being are at stake here.

Lifting of the Stay will result in an immediate and sustained increase in unemployment in the Small Business community, the subsequent reduction of income and wealth to unemployed workers with children and the subsequent reduction in nutrition, safety and health of children in these economically challenged households. This impact will be ongoing, as the cost of entry for any individual wishing to start a small business in the children's product market will have gone up astronomically due to the unnecessary and overwhelming increase in compliance costs, costs that do not remotely bring a measurable increase in children's safety to the marketplace.

Anyone who has actually taken the time to read CPSIA2008 can quickly grasp that risk assessment methodology, the hallmark of the CPSC's outstanding achievement in consumer safety, has been thrown out in favor of an across the board assumption that all children's products are dangerous until proven otherwise – back in time, in the present, and virtually at every time it is manufactured going forward. In response to this and many other conflicting restrictions, CPSC staff has worked diligently but unsuccessfully to create a framework for business to comply with the Act despite binding roadblocks written into the Act that preclude establishing any sustainable framework. One of the few high points in this process was the issuance of the testing Stay, as it at least allowed businesses to defer the inevitable disaster of this legislation, even if only for an adjustment period. Since then, we in the business community have been mired in the quicksand of the Act with but a single rope keeping us from going completely under – the Stay. Before that Stay is lifted, the following issues must be completely and clearly resolved:

1. The "15 Month Rule" – due November 15th, still outstanding, basically answers questions and details around testing frequency, sampling methods, the need for additional testing, component testing rules and other issues that WILL HELP SMALL BUSINESS DETERMINE WHICH PRODUCTS IT CAN KEEP IN THE MARKET.
2. Since the "15 Month Rule" has not been issued, the window of time available to Small Businesses to comment on it is closing, as those comments are due by January 11. Based on precedent ("penalty factors" – original comments due 12/2008, second round of comments due 10/1/2009, still no revised penalty factors released one year after first comments were due), just resolving the "15 Month Rule" is no less than a year away.
3. There is no phthalate testing standard, yet Small Business is expected to have testing completed and GCC's available in February – the remaining testing window is gone, it can't be done.

4. Without a phthalate testing standard, there can be and has been no certification of the required third party testing labs – which proves point 3 – phthalates testing and GCC certification cannot be achieved by February.
5. There are no CPSC accredited labs for ASTM F963 testing, thus the required testing cannot be completed, thus the required GCC cannot be finalized.
6. There are not enough accredited labs to handle the required testing in those areas in which testing standards and methods have been established (lead, lead in paint, etc).
7. Given the lack of certified phthalate testing labs AND certified ASTM F963 testing labs, Small Business is being told to incur the product/freight/administration COST OF TESTING AT LEAST THREE (3) TIMES TO ACHIEVE A SINGLE COMPLETE GCC – once for lead, lead in paint, etc and TWICE again sometime in the future for phthalates and ASTM F963. That requires product be pulled from stock, packed and shipped/delivered to the lab and 'administrated' (submission paperwork, check requests, vouchering of invoices, payment of invoices, postage, update of records and customer's records upon receipt and interpretation of results), and of course, shipping/freight must be paid three times and inventory must be written off/expensed three times.
8. The CPSC has not cleanly clarified or defined "children's product", "toy", "play" or "childcare article". Small Business cannot direct its distributors' and retailers to the 313 page "AGE DETERMINATION GUIDELINES: Relating Children's Ages To Toy Characteristics and Play Behavior" document made available by the CPSC to resolve differences in opinion on the ages assigned to a product. The lack of clear definitions and the outrageous penalties take any likelihood of a small distributor or retailer ever selecting (or continuing to carry) many products – the risk of being wrong is not worth $100,000 in fines and 5 years in jail.
9. Almost all of my references have been to "Small Business". That is because CPSIA 2008 and EVERY DETERMINATION AND GUIDELINE THAT THE CPSC HAS ISSUED fail to acknowledge at any real, tangible level exactly how disproportionately high the fixed cost of complying with this unnecessary monstrosity are to SMALL BUSINESS. Mattel, Hasbro, Target and Wal-Mart are all capable of dealing with this (Mattel effectively authored it). Businesses like the one I preside over with 5,000 different products generating $10 - 12,000,000 (ten to twelve million) ANNUALLY or an average of $2,000 A YEAR IN REVENUE (not profit, revenue) sold to 2,800 different customers need "Determinations" and "Rulings" that reflect our reality. Please see www.amep.com for a sampling of our products and remember, we are THE SINGLE MANUFACTURER for at least half of what you see there, so the average of $2,000 a year in revenue IS THE WORLDWIDE ANNUAL REVENUE FOR MANY OF THESE PRODUCTS. We are but one of thousands of companies in this predicament that have done absolutely nothing to have been placed in it in the first place.
10. The complexity of the legislation and the instantaneous implementation are beyond the ability of any business without a department of lawyers and compliance specialists to completely address it. There is at least one month in the last twelve in which the CPSC issued through listserv@cpsc.gov enough determinations, announcements, etc to average ONE PER BUSINESS DAY. Small Business cannot keep up, particularly with ever-changing requirements and determinations (we are on the THIRD enforcement policy on lead and lead in paint in twelve months). Nor can we afford to participate in workshops, webcasts and requests for comments on all occasions that the CPSC has offered. That is why Small Business participation in these processes looks nonexistent. Most of us actually have day to day business demands that make 2 to 4 hour windows of time pretty infrequent.
11. Point 10 highlights the fact that a Small Business like the one I preside over (64 employees, down from 74 pre-CPSIA) cannot allocate the resources needed just to keep abreast of what is going on, never mind actually participating in the process of working with CPSC staff in responses and comments such as this. This legislation and the subsequent implementation and interpretation process is beyond my ability to absorb, how am I supposed to communicate and train what little professional staff I have to comply in real time to the maze of documents that have been thrown at me? By any account and measure I apply, I see CPSIA2008 requiring one person day a year per product in additional administrative cost to manage. I also anticipate that the testing cost for each product will effectively be the same as the development cost incurred to bring that product to market in the first place, except that it will need to be incurred at least

every two years. THAT IS 2.5 (TWO POINT FIVE) PERSON YEARS ANNUALLY that I need to allocate from my 64 person organization just to administer/coordinate/report CPSIA requirements and several million dollars in testing cost ANNUALLY on 10 to 12 million dollars of annual revenue.

Lifting of the Stay before every open and pending interpretation and guideline is finalized will take what has been unworkable and make it untenable. There is far too much confusion in the market my company serves around the Act for AMEP to survive should the Testing Stay be lifted. There is no place to send product to test for phthalates and ASTM F963 requirements, therefore we cannot provide a complete GCC, therefore our customer will not purchase our product ($100,000 fine, 5 years in jail versus making a couple of hundred dollars in profit). As mentioned several times early on, I appreciate that the CPSC is doing all that it can to achieve the impossible requirements of CPSIA2008. The Testing Stay is the single thread that has been wisely provided by the CPSC to keep Small Businesses alive until the 111th Congress (or 112th Congress if it takes that long) finally understands that CPSIA2008 is a Gordian Knot that needs to be cleaved through intelligent amendment on their part rather than wrestled with forever by well meaning, but handcuffed CPSC Commissioners and staff.

PLEASE CONTINUE AND EXTEND THE TESTING STAY UNTIL ALL PENDING AND DEVELOPING ISSUES AROUND CPSIA ARE WHOLLY AND FULLY RESOLVED or PREFERABLY, CONGRESS DEVELOPS THE WISDOM AND GOOD SENSE TO AMEND THE ACT TO BE A PIECE OF EFFECTIVE LEGISLATION..

Thank you for your consideration and the opportunity to share my thoughts. If I can provide any additional insights or examples of the difficulties that Small Businesses are having with CPSIA2008 or if you would like copies of any my 40+ communications with my legislative contacts, the Department of Education, the Associated Press and/or the President and First Lady on CPSIA, please let me know. I will try to find the time to respond.

Sincerely,

[redacted]
President
[redacted]

[redacted]

From: Northup, Anne
Sent: Wednesday, December 09, 2009 6:33 PM
To: [redacted]
Subject: FW: CPSIA Stay

Anne Northup
Commissioner
Consumer Products Safety Commission
4330 East West Highway
Bethesda, Maryland 20814
301.504.7780
Commissioner_Northup@cpsc.gov

From: [redacted]]
Sent: Wednesday, December 09, 2009 6:31 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Subject: CPSIA Stay

Dear Chairman Tenenbaum and Commissioners Moore, Adler, Northrup and Noord,

I have viewed with extreme interest the video feed from the Commission's Dec. 2 meeting that addressed lifting the CPSIA testing and certification stay (commonly referred to as the "Stay") enacted on Jan. 30, 2009, and am writing you today to seriously urge that you extend the Stay for at least one more year beyond its scheduled expiration date of Feb. 10, 2010.

I am asking for your urgent attention to this matter because I firmly believe that as they now stand, the Stay rules are not clearly delineated and therefore, are impossible for good, law-abiding companies such as [redacted] to support and implement. The laws governing the definition of children's product, component testing, testing frequency, phthalate test standards, ASTM F963 test standards, certification of testing labs on a scale broad enough to handle market volume and prevent price gouging, and policies on enforcement and procedures, are still not clear enough and have not been developed well enough, to allow time for companies to come into compliance and develop the appropriate processes and procedures to follow these rules and regulations. The very technical nature of these new, and in some cases, still unknown, requirements and definitions integral to the effective issuance and implementation of the CPSIA is cause for great confusion and denial among the business community. While successful, law-abiding companies like mine are doing their best to comply with these complex new rules, our hands are tied by the lack of progress on the Commission's behalf. There still has been no finalization of these regulations, nor has there been adequate guidance or direction on how best to comply and implement the procedures. This applies not only to businesses such as mine, but to the manufacturers and importers we deal with on a daily basis.

[redacted] is a value-added distributor to the U.S. elementary school market. In fact, we are widely recognized as a leader in the educational publishing and hands-on supplemental learning products marketplace. We didn't get to this point because we didn't know what we were doing or didn't comply with governmental regulations.

Since the time the CPSIA almost became law in 2008, [redacted] has done it's very best to become oriented to the new rules. Unfortunately, the complexity of the law has exacted a tremendous burden on us as we struggle to comply with piecemeal rulings and opinions. For example, almost two years ago we began building a safety testing database to facilitate the administration of our reasonable testing program. Today, that database programming is 90 percent complete at a cost exceeding $100,000. And, if the Stay is lifted and we have only 90 days to comply with the new rulings, the additional administrative and testing costs will be an enormous burden on our human and financial resources. Unlike large corporations who can amortize testing and administrative costs over large runs, [redacted] has 30,000 relatively low-quantity, low-revenue items to manage. Beyond hiring and training our internal team, training our supplier based to adhere to the new laws and processes is absolutely not something than can be accomplished in a mere 90 days. We are all doing the best we can to comply now. Our suppliers monitor the CPSC and CPSIA on-line daily to monitor the ever-changing policies. But we cannot possibly comply to these new regulations and implement them in the best manner in only 90 days. If the full implementation of the new rules is required that soon, there are not enough certified labs to handle the volume of tests that will be necessary. How can you impose a rule knowing full well there are not adequate means to enforce it? If the CPSC and Congress truly want to protect the American public and children in particular, then we need to be logical, practical and methodical in our approach to remove the confusion and inadequacies that currently exist in the marketplace.

Another important factor that cannot be overlooked is that if the Stay is lifted and we have only 90 days to react to the Commission's rulings, we will be forced to incur costs that clearly may result in jobs lost. Our country, and our employees, do not need that in the face of today's economic conditions. Nor do our dedicated workers deserve that. My company, and others like it, have a responsibility to provide teachers and students with a variety of products to meet their educational needs. We also have a responsibility to our employees for their livelihood. Lifting the Stay by Feb. 10 will defeat us in our attempts to be an upstanding, responsible, law-abiding corporate citizen.

For all of these reasons, I am respectfully urging the Commission to extend the Stay for at least one year beyond the time the final rules and regulations are issued. As it stands now, there is much left to be done. These laws are indeed important for the well-being of our children and families, and in order to fully define and effectively administer them, our government must allow the time needed to assure that this is done properly and well. Anything less is asking for failure.

Thank you for your attention to this very important issue. I look forward to seeing the Stay extended and a successful resolution to this matter.

Respectfully yours,

[redacted]
President
[redacted]
Email: [redacted]

[redacted]

From: Northup, Anne
Sent: Wednesday, December 09, 2009 1:50 PM
To: [redacted]
Subject: FW: CPSIA
Attachments: CPSIA Stay; Extension of CPSIA Testing and Certification Stay; Please help; CPSIA and Stay of Implementation; CPSIA Stay; Possible lifting of the Stay; Cpsia; New Regulations; CPSIA; CPSIA Testing and Certification Issues; Lifting the CPSIA Stay; Untitled; CPSIA Testing and Certification Stay; Testing Stay; CPSIA -- Please Extend the Stay!!; the stay; CPSIA testing stay

More

Anne Northup
Commissioner
Consumer Products Safety Commission
4330 East West Highway
Bethesda, Maryland 20814
301.504.7780
Commissioner_Northup@cpsc.gov

From: [redacted]
Sent: Wednesday, December 09, 2009 10:50 AM
To: Northup, Anne
Subject: CPSIA

Dear Mrs. Northup,

I've watched your career locally and you've always seemed to have a down to earth perspective that is so desperately needed in our country. I was very disappointed when "that misguided liberal guy" won in the last election. Sadly it is a reflection of the lack of understanding of the electorate. Just like the Jewish nation in the old testament had to swing through periods of wisdom and glory to periods of defiance and punishment, our political landscape seems to have to suffer the same swings.

Nonetheless, we are to let our light shine wherever we're placed. The CPSC has just as much need for level headed people to prevail since they have been made the footstool of the congress with the passing of the CPSIA. As a business person with millions of dollars worth of inventory and sales we have to live in fear that our government is going to turn loose the toy police and start shutting down businesses for no apparent reason. I'm sure you have been involved with this long enough to understand the ludicrous waste of money that all companies would incur if we allow the government to force all finished goods items to be tested by third party labs. A 10 year old would understand that if you test the raw materials and they pass, then anything you make from the raw materials will pass.

Then how can we throw all products for 12 and under in to the same regulations?
Does anyone think that the same risks are involved with a teething infant as with a pre-teen?

Why can't the regulations evolve and progressively solve real problems that are exposed instead of wasting massive amounts of money and scarce resources on an industry wide crack down on products that are the safest in the world?

A stay on enforcement of this mess is essential, but it is too flawed to implement without massive correction. Hopefully some of your colleagues on the commission and in congress can be made to understand this before it is too late.

Every responsible business person is interested in safe products and they don't need to be punished or forced out of business with this new regulation. If you have been in business and want to stay in business you have to locate and

satisfy customers and you have to provide a safe and desirable product. Wasting massive amounts of money to pay government selected labs to prove that products that have never harmed anyone are safe smells of something and it is not wisdom.

When a country or any human endeavor takes flights of fancy and departs from the true course, it is only a matter of time before the penalty for that excursion comes due. The CPSIA is obviously a flight of fancy that is so far removed from reality and from a useful sense of purpose that consumers, businesses and regulators alike are having trouble figuring out how to deal with.

The CPSIA is an instruction and a roadmap that tells the regulatory agency to drive the car over the cliff. A good and perfect regulatory is going to follow those instructions and drive the car over the cliff with pride and assurance of a job well done. A wise regulator will attempt to mold this roadmap into something that accomplishes the purpose of making children's products safer while keeping the car on the road.

It is getting less and less interesting to try and provide jobs for the 120 people we employ directly and the many others that benefit from our industry. If this arrogant and predatory approach by government can't be curtailed there will be fewer and fewer people interested in playing the game and no one will care what new law the government passes.

I wish you only the best with your new role. I don't envy your position, but you certainly have the chance to stand up for the good of the country and to serve our nation.

God Bless,

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, December 08, 2009 2:05 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Subject: Testing Stay

Commissioners & Madam Chairman,
I am writing today in regards to the upcoming end to the stay of enforcement. While I am in the jewelry business, and therefore this stay has not applied to my company, I lend my voice to fellow product manufacturers, suppliers & retailers. The CPSIA, as written, has been an insurmountable burden to many, many businesses. It has forced many of us to become untrained, and uncomfortably appointed, "legal" counsel as we tiptoe our way through the vague language, making assumptions about the intent of the requirements. Common sense and honorable business practices seem to be overlooked in an attempt to regulate. It may be a naïve statement on my part, but I believe that companies providing goods for children want that product to be safe, and take measures to ensure it is so. If they don't actually care about the safety of children, they at least want to be sure they continue to make a profit- unsafe product, and the legal troubles that follow, would certainly impact that profit.
In the webcasted hearings, I continually hear your struggles to gain a full understanding of the impacts in the marketplace- testing costs as an example. I appreciate all your open dialogues with the various industries; and listening to how this has challenged, crippled and even closed the doors of some companies. I think this continued "partnership" can be the key to getting workable language in the regulations. Overall, I would like your understanding that some of us are trying with all of our efforts to be compliant with the laws. This request to extend the stay is not to avoid the regulations, but to allow the Commission additional time to lend the clarity that is so greatly needed.

I am looking forward to the workshops this week- and hope you find this to be very valuable in your process of information gathering. Thank you for your time.

Warmest regards,
[redacted]

[redacted]

From: [redacted]]
Sent: Wednesday, December 09, 2009 10:07 AM
To: Northup, Anne
Subject: Possible lifting of the Stay

Dear Ms. Northup,
I am an employee of [redacted], a company that would be significantly impacted by the lifting of the stay at this time.

I just met with one of our overseas suppliers on Monday and they require their project managers to "study" the CPSIA website on toy safety protocols every few months. If their project managers fail they must "re-study" until they pass. It is absolutely necessary that the written word is clearly articulated.

Please work with Ms. Nancy Nord and reason through the following issues >

- The "15 Month Rule" was never issued when due on November 14th. The "15 Month Rule" was supposed to address testing frequency, sampling regimes, the need for additional testing, component testing rules, etc. [Component testing rules were cited as critical by Nancy Nord when the original stay was issued on January 30, 2009. How time flies . . . .] There is a workshop to be held on Thursday and Friday this week to solicit feedback from stakeholders. More than 200 people will attend and many more will watch and participate online in the web simulcast. Presumably this feedback needs to be fully digested before the Commission acts on the stay.
- Comments on the "15 Month Rule" issues are due on January 11. For perspective, the original comments on the penalty factors were due in late December 2008, and a second round of comments were due on October 1. The revised penalty factors have not been released, and we are now within days of a full year since the first comment letters were received. With this as precedent, we are clearly MANY months from a completed "15 Month Rule". Arguably, without a fully articulated "15 Month Rule", an active testing requirement will be incomplete and utterly confusing.
- The CPSC has not issued its phthalate testing standard.
- The CPSC has not certified ONE phthalates lab yet.
- The CPSC admits that it has not certified enough labs to handle a full burden of testing for many product classes or safety tests. They have not provided any quantification of this deficit besides acknowledging that for bikes, based on current accredited labs, it would take a full year to complete testing on all bikes on the U.S. market. That's one round of testing only, btw.
- The CPSC has not certified labs for ASTM F963 testing yet.
- The CPSC has not defined "children's product", "toy", "play" or "childcare article" yet, making the application of the rules completely opaque.
- The CPSC has not leveled the playing field, acknowledging that fixed test costs place a disproportionately high burden on small businesses. This competitive disadvantage has no ready solution under current rules.
- The CPSC has acknowledged that many companies have not acted to fill market gaps like component testing because the rules are not final (or even drafted in this case).

- The CPSC is on its third enforcement policy on lead and lead-in-paint. With the enforcement-policy-of-the-week, the agency ensures that companies will have devote considerable resources to relearning the rules that they had previously mastered, leading to confusion and exhaustion. Imposing a further layer of incomplete, vague and unarticulated testing policies and plans will only reinforce chaos as the working standard for the children's product industry.
- The rules that the CPSC has implemented are so ornate, confusingly worded, scattered among multiple documents, letters, and even video testimony, that only the most obsessive observers can claim an accurate understanding of every nuance.

If the stay is lifted on two months notice with all these rules open, undrafted or in process, utter chaos will break out, not only between CPSC regulators and their regulated companies and industries, but also between (a) consumer groups, regulators and regulated companies, (b) State AGs and regulated companies, and (c) regulated companies and their dealers/retailers. By lifting the stay under these uncertain conditions, the Commission is risking complete market chaos.

I urge you to fully assess the current situation. The pressure may be on the CPSC to act now, but please know that to act in the best interest of all parties involved you must only put into writing what has been fully assessed. The writing needs to be absolutely clear. Please take the time that is needed to get this right.

Thank you kindly,

[redacted]
Buyer
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 9:13 AM
To: Northup, Anne
Subject: Please help

Please make the standards for toy manufacturing clear and develop a systematic way for us to comply. Manufacturers of children's products are good law-abiding citizens who want to follow the law.. Until the CPSIA rules are clearly written and implemented, following the law is an impossible task. Please take bold action to support the lawful activities of the regulated community by promptly continuing the Stay for one year past the issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

Thank you for all your diligent work.

[redacted]
[redacted]. . . Making life a brighter experience!

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 11:39 AM
To: Northup, Anne
Subject: Please Extend the CPSIA Enforcement Stay

Dear Commissioner:

Please vote to extend the CPSIA Stay of Enforcement. This law is broken and needs to be fixed. If the Stay is lifted, the implementation of the flawed law will only make matters worse.

The CPSC has wasted millions of dollars, and hundreds of hours (thousands?) of its valued staff time trying to find a way to implement this terrible piece of legislation without wreaking havoc on the business community, and by actually achieving something resembling the product safety aims of the Commission.

Diverting scarce CPSC resources to implement this law without a legislative fix will make the public *less safe* as your limited enforcement resources will be sent on wild goose chases to pursue violations of the CPSIA that, in reality, pose no threat to the public. This prevents the CPSC from pursuing products that actually do threaten public safety (your resources are not unlimited, right?)

Please maintain the Stay until the law is fixed so the CPSC can do the job the public deserves.

Sincerely,

[redacted]
President
[redacted]

Direct Line: [redacted]

Visit us online at [redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 10:49 AM
To: Northup, Anne
Subject: New Regulations

Dear Anne,

I am the owner of a small pool toy company ([redacted]). My products have never been recalled and I already pay a large proportion of my profits to testing to meet ASTM.
Please do not weight the scales any further in the direction of the Mattels and Walmarts of the world with proposed new regulations. The times are tough enough already for small business owners like me.

thanks, in advance,

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, December 08, 2009 11:17 PM
Cc: Northup, Anne; Moore, Thomas; Adler, Robert; Tenenbaum, Inez; Nord, Nancy
Subject: Lifting the CPSIA Stay

Dear Chairman and Commissioners-

I had the privileged to be present for Commissioner Nord's testimony before the Small Business Subcommittee in the House last spring, as well as testify myself before the members of Congress at the hearing. I talked about how the testing stay was the only thing keeping my business open, and how the law needed to be re-examined by Congress in order to work better for small businesses and not shut them down by the thousands.

It seems now that it will not be taken up by Congress and it is left to the CPSC to make sensible rulings on the details of the law. A lot of work has been done over the past year by the Commission, and I know that I am grateful for some of the testing exemptions that affect my business, namely the fabric exemption. However, there are still many troubling aspects of the law that have not been clarified or ruled on that put my business in jeopardy, as well as thousands of other small businesses like mine.

If the stay is lifted before these things are worked out, it will be disastrous and confusing for small businesses. Specifically, the rules for component testing have not been finalized, so the market gap has not been filled by people who are able to do this testing. This law and the rulings that have come out of the CPSC do not acknowledge the disproportionate burden on small business with no remedy in sight. The phthalate testing standard has not been issued, nor have any labs been certified for this testing. "Children's product", "toy", "play" or "childcare article" have yet to be defined, making it confusing for anyone who deals with these items in their business. And finally, the rules that have been implemented are so scattered and confusing that it makes it difficult for even the most astute observer to synthesize exactly what is going on with this law and it's implementation.

I urge you to take the sensible approach and keep the stay until the details are ironed out and the rulings are made. I know that for me I refuse to run my business afoul of the law. If the stay is lifted without sensible rules in place and still so many questions, many businesses will have no choice but to shut their doors. In these trying economic times, it would be disastrous.

For me personally, I have been unemployed since April and my small business is the one thing pulling in a little extra money while my husband is earning his PhD. Please think of the lives of the people and small business owners this law affects. With the stay lifted, business that make safe items for children will needlessly shut down and their families will be adversely affected.

Thank you.

--
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 9:06 AM
To: rwoldenberg@learningresources.com
Cc: [redacted], Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Subject: Extension of CPSIA Testing and Certification Stay

Importance: High

To Whom it may Concern,

The [redacted] would not be affected by either a decision to extend, or a decision not to extend the stay for testing. We have been proactive from the start of the crisis, which started the lead paint scare. Currently our products are not only tested to all CPSIA regulations, but also the exceed the requirements. Although there are some gray areas (e.g. phthalate testing standard, etc.), we stay in constant contact with our testing lab (STR), to ensure we are meeting the most current protocol available. I can only continue to ensure Ohio Art products meet the what is available right now, and I know it takes time to "standardize" things. Our biggest concern is not with the CPSIA regulations, but rather with every retailer have their own set of rules / regulations / preferred labs, which not only compounds the problem (more paperwork and time spent reviewing each retailer's protocol), but also causes redundant testing as well as extra expenses. I will be honest, most times I am not an advocate of government intervention in the free enterprise system; however, something has to be done to create a simple way of handling this mess. I never get any feedback, but the products (food and drink) that I can "put in my body" seem to have a simpler method (label) that "spells" things out for the consumer. Most food grade products do not warn people they have sugar in them,(Gatorade for instance) they just state how much sugar is in it. A certified lab or group of labs (agreed by ALL RETAILERS - BIG KEY) that verifies a product has so many ppm of a heavy metal should suffice. This could be stated of the package of a product like the nutritional label for food and drink products. The consumer can view and decide whether they feel safe with the product, just like I do when I but a candy bar.

Example Label - and let the consumer see it is in PARTS PER MILLION

This product meets the U.S. GOVERNMENT CPSIA Standard - Test Reports Available upon request it contains:
less than 600 parts per million for total Lead in surface coatings **Note - not for label - FYI - of course many retailers & ILLINOIS have lowered this on their own less than 90 parts per million for soluble Lead (substrates) **Note - not for label - FYI - of course some retailers have lowered this on
their own
less than 60 parts per million for soluble Antimony less than 25 parts per million soluble Arsenic less than 1000 parts per million for soluble Barium less than 75 parts per million for soluble Cadmium **Note - not for label - FYI - of course many retailers have lowered this on their own less than 60 parts per million for soluble Chromium
less than 60 parts per million for soluble Mercury
less than 500 parts per million for soluble Selenium less than 1000 parts per for all Phthalates (DINP,DIDP,DNOP,DEHP,BBP,and DBP) **Note - not for label - FYI - of
course some retailers have added DNHP on their own If needed - This Product contains SMALL PARTS - INTENDED FOR CHILDREN UNDER
3 YEARS OLD
or contains MAGNETS .....

And just think - all of this for toys in the U.S., and we haven't even touched on the requirements for Europe, Canada, Australia, New Zealand, etc.....

Respectfully,

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 12:32 PM
To: Northup, Anne
Subject: Extend the CPSIA testing and certification stay

Dear Commissioner Northup,

I am writing to strongly urge the Commission to vote to extend the CPSIA testing and certification stay (the "Stay") originally implemented on January 30, 2009 and due to expire on February 10, 2010. The Stay should be continued for at least one year PAST issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

As a small business owner that works with small manufacturers, I can tell you that there is much confusion and most have just decided to leave the market and that also relates to a loss of revenue and jobs. These toys would pass any test, but the costs are astronomical for these companies. Please consider the 20 people working for us and the many jobs up the supply chain.

The Stay has served its purpose well. When originally adopted in January, the Commission intended to create a pause to allow the issuance of implementing rules and further permit market adjustment to those new rules. The Stay was needed to avoid confusion and chaos in the marketplace. Unfortunately, the task of issuing implementing rules to fully realize the goals of the Stay has not been completed. The incomplete state of the full range of testing rules and related activities (like test lab certification) has prevented full implementation of testing and certification in the marketplace. While many companies are testing aggressively, as the much-reduced toy recall rates attest, the market is simply not ready for full implementation. *No one knows what full implementation even means.*

Many critical tasks remain incomplete:

- The "15 Month Rule" was not issued when due on November 14th. The stakeholder feedback from this week's workshop on the "15 Month Rule" has not been received, much less reviewed or digested.
- Comments on the "15 Month Rule" are due on January 11. These comments have not received yet.
- The CPSC has not even solicited comments on the lifting of the Stay from stakeholders.
- Component testing rules have not been promulgated, despite calls by Commissioner Nord in her January 30th Statement on the Stay.
- The CPSC has not issued its phthalates test standard.
- The CPSC has not certified any testing laboratories for the phthalates test standard yet.
  The CPSC has not certified labs for ASTM F963 testing yet.
- The CPSC admits that it has not certified enough labs to handle a full burden of testing for many product classes or safety tests.
- The CPSC acknowledges that fixed testing costs are creating a serious burden on small businesses.
- The CPSC has not defined "children's product", "toy", "play" or "childcare article" yet.
- The CPSC acknowledges that many companies have not acted to fill market gaps like component testing because the rules are not final (or even drafted in this case).
- The CPSC is on its third enforcement policy on lead and lead-in-paint.

Other serious issues relate to the practical impact of the rules on the marketplace. First, the current rules are complex and disorganized, having been released in several places and formats. Even video testimony includes unique statements of agency policy. Some "rules" contradict other rules. Many important industry questions posed to the CPSC remain unanswered months or more than a year later. The task of mastering the vast array of FAQs, letter rulings, rules, exemption requests and so on baffles even the largest companies. Notably, Mattel officials complained of this very problem in a recent meeting with Commissioner Adler and speculated on the practical impossibility of compliance by small companies. The timing of the lifting of the Stay in February will clearly affect small businesses adversely.

Second, manufacturers and their supply chains need time to adjust to new rules. Many of these new rules are not even drafted yet, much less ready to be issued in final form after public comment. This delay is not the fault of the manufacturing community . . . but the consequences could be quite significant for manufacturers if the Stay is lifted suddenly. Most legislative programs that involve a significant change in process or requirements include time for adjustment by manufacturers. It is not unusual for supply chains to receive two or even three years to shift to the new requirements. For instance, U.S. Customs started working on its new "10+2" program in June 2004, issued final rules in November 2008, has been running seminars nationwide for more than a year, and will only fully implement 14 months later in late January 2010 (compliance date). A reasonable lifting of the Stay requires at least a 12 month lead-time from implementation of the last component of the testing rules. Furthermore, to ensure successful implementation, the agency will need to make considerable investments in supply chain education and training during that 12 month lead-time. The agency must also make sure that the final rules are clear, simplified and understandable. Anything less will expose most businesses to the constant risk of conflict with 51 different regulators – regardless of their corporate efforts to comply.

Some suggestions have been made to lift the Stay in piecemeal fashion. We **strongly** urge the Commission to lift the Stay in the "right way" all at once after offering the regulated community a clean, complete, coherent package of rules, regulations and certifications sufficient to put manufacturers in an adequate position to successfully and efficiently comply with the new rules. Rolling out testing rules one-by-one with a similar ramp-up of compliance will only ensure that no one understands the rules for as long as possible.

The confusion engendered by a piecemeal implementation of the new testing rules will not only constitute a form of regulatory water torture, but will certainly cause regular conflicts between (a) the CPSC and its regulated community, (b) consumer groups, regulators and regulated companies, (c) State Attorneys General and regulated companies, and (d) regulated companies and their dealers/retailers. By lifting the Stay under these uncertain conditions, the Commission would be risking **complete** market chaos. The misery suffered by regulated companies and industries would be matched by equal misery at the CPSC. Under these circumstances, the agency would face a steady stream of crises caused by testing controversies and confusion without end. I fear that a drip-drip-drip implementation of the testing and certification requirements will render the agency crippled with overwork, inefficiencies and wear-and-tear.

These poor outcomes are avoidable by dynamic Commission action to delay the lifting of the Stay.

Manufacturers of children's products are good law-abiding citizens who want to follow the law. Until the CPSIA rules are clearly written and implemented, following the law is an impossible task. Please take bold action to support the lawful activities of the regulated community by promptly continuing the Stay for one year past the issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

Thank you for consideration of my views on this important topic.

Sincerely,

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 10:28 AM
To: Northup, Anne
Subject: Cpsia

Ms Northup,

I own a dice manufacturing and retail company in central KY that is affected by the new testing regulations. These are confusing and unneccessary regulations, IMO, and are causing much stress in the game indust[redacted]

I heard that after a workshop that the stay until February could be discussed and eliminated, which would accomplish nothing except complications.

Please do want you can to leave the program as it is now, or even reduce the regulations to something more manageable. I am certain that when this law was passed, they did not have small businesses like mine in mind, who manufacture parts so small we will have to incorporAte chemical markers into the plastic in order to date the batches (like carbon dating).

Thank you for whatever you can do.

Laura Witten
[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, December 08, 2009 12:27 PM
To: Northup, Anne
Subject: CPSIA testing stay

I know of businesses that are negatively affected by the CPSIA testing. This law was unnecessary if the previous laws had been enforced. Businesses in the U.S. were not the cause of the lead problem (except the one who imported toys from China and is now allowed to "test" their own products).

I hope you are not a member of the group determined to destroy small business and other lawful businesses in the United States. Your decision on whether to extend the stay or not (you should vote to extend) will tell us.

[redacted]

[redacted]

From: [redacted]]
Sent: Tuesday, December 08, 2009 4:19 PM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Cc: Falvey, Cheryl; Howell, Robert
Subject: CPSIA Testing and Certification Stay

Dear Chairman Tenenbaum, Commissioners Adler, Moore, Nord and Northup:

I am writing to strongly urge the Commission to vote to extend the CPSIA testing and certification stay (the "Stay") originally implemented on January 30, 2009 and due to expire on February 10, 2010. The Stay should be continued for at least one year PAST issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

The Stay has served its purpose well. When originally adopted in January, the Commission intended to create a pause to allow the issuance of implementing rules and further permit market adjustment to those new rules. The Stay was needed to avoid confusion and chaos in the marketplace. Unfortunately, the task of issuing implementing rules to fully realize the goals of the Stay has not been completed. The incomplete state of the full range of testing rules and related activities (like test lab certification) has prevented full implementation of testing and certification in the marketplace. While many companies are testing aggressively, as the much-reduced toy recall rates attest, the market is simply not ready for full implementation. *No one knows what full implementation even means.*

Many critical tasks remain incomplete:

- The "15 Month Rule" was not issued when due on November 14th. The stakeholder feedback from this week's workshop on the "15 Month Rule" has not been received, much less reviewed or digested.
- Comments on the "15 Month Rule" are due on January 11. These comments have not received yet.
- The CPSC has not even solicited comments on the lifting of the Stay from stakeholders.
- Component testing rules have not been promulgated, despite calls by Commissioner Nord in her January 30th Statement on the Stay.
- The CPSC has not issued its phthalates test standard.
- The CPSC has not certified any testing laboratories for the phthalates test standard yet.
- The CPSC has not certified labs for ASTM F963 testing yet.
- The CPSC admits that it has not certified enough labs to handle a full burden of testing for many product classes or safety tests.
- The CPSC acknowledges that fixed testing costs are creating a serious burden on small businesses.
- The CPSC has not defined "children's product", "toy", "play" or "childcare article" yet.
- The CPSC acknowledges that many companies have not acted to fill market gaps like component testing because the rules are not final (or even drafted in this case).
- The CPSC is on its third enforcement policy on lead and lead-in-paint.

Other serious issues relate to the practical impact of the rules on the marketplace. First, the current rules are complex and disorganized, having been released in several places and formats. Even video testimony includes unique statements of agency policy. Some "rules" contradict other rules. Many important industry questions posed to the CPSC remain unanswered months or more than a year later. The task of mastering the vast array of FAQs, letter rulings, rules, exemption requests and so on baffles even the largest companies. Notably, Mattel officials complained of this very problem in a recent meeting with Commissioner Adler and speculated on the practical impossibility of compliance by small companies. The timing of the lifting of the Stay in February will clearly affect small businesses adversely.

Second, manufacturers and their supply chains need time to adjust to new rules. Many of these new rules are not even drafted yet, much less ready to be issued in final form after public comment. This delay is not the fault of the manufacturing community . . . but the consequences could be quite significant for manufacturers if the Stay is lifted suddenly. Most legislative programs that involve a significant change in process or requirements include time for adjustment by manufacturers. It is not unusual for supply chains to receive two or even three years to shift to the new requirements. For instance, U.S. Customs started working on its new "10+2" program in June 2004, issued final rules in November 2008, has been running seminars nationwide for more than a year, and will only fully implement 14 months

later in late January 2010 (compliance date). A reasonable lifting of the Stay requires at least a 12 month lead-time from implementation of the last component of the testing rules. Furthermore, to ensure successful implementation, the agency will need to make considerable investments in supply chain education and training during that 12 month lead-time. The agency must also make sure that the final rules are clear, simplified and understandable. Anything less will expose most businesses to the constant risk of conflict with 51 different regulators – regardless of their corporate efforts to comply.

Some suggestions have been made to lift the Stay in piecemeal fashion. We **strongly** urge the Commission to lift the Stay in the "right way" all at once after offering the regulated community a clean, complete, coherent package of rules, regulations and certifications sufficient to put manufacturers in an adequate position to successfully and efficiently comply with the new rules. Rolling out testing rules one-by-one with a similar ramp-up of compliance will only ensure that no one understands the rules for as long as possible.

The confusion engendered by a piecemeal implementation of the new testing rules will not only constitute a form of regulatory water torture, but will certainly cause regular conflicts between (a) the CPSC and its regulated community, (b) consumer groups, regulators and regulated companies, (c) State Attorneys General and regulated companies, and (d) regulated companies and their dealers/retailers. By lifting the Stay under these uncertain conditions, the Commission would be risking **complete** market chaos. The misery suffered by regulated companies and industries would be matched by equal misery at the CPSC. Under these circumstances, the agency would face a steady stream of crises caused by testing controversies and confusion without end. I fear that a drip-drip-drip implementation of the testing and certification requirements will render the agency crippled with overwork, inefficiencies and wear-and-tear.

These poor outcomes are avoidable by dynamic Commission action to delay the lifting of the Stay.

Manufacturers of children's products are good law-abiding citizens who want to follow the law. Until the CPSIA rules are clearly written and implemented, following the law is an impossible task. Please take bold action to support the lawful activities of the regulated community by promptly continuing the Stay for one year past the issuance of final implementing rules and regulations relating to testing frequency, sampling, component testing, re-testing requirements, testing standards for phthalates and ASTM F963, enforcement policies and certification of sufficient laboratories to handle the market's volume requirements.

Thank you for consideration of my views on this important topic.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.

Chairman
Alliance for Children's Product Safety

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 1:07 PM
To: Northup, Anne
Subject: CPSIA Testing and Certification Issues

Dear Commissioners Tenenbaum, Adler, Moore, Nord, and Northup-

I am the President of [redacted], a small women-owned educational publishing company based in Texas. [redacted] is privately owned and not part of any lobbying groups. Our company sells printed study guides, along with educational games and activities to schools. We are not a greedy company trying to profit by selling harmful products to children. We make safety our priority while helping school children learn using our award-winning products. We also contribute to our local and national economies (from local printing companies and restaurants to the UPS and United States Postal Service).

I believe it is the responsibility of companies like ours to provide safe products for children, meeting all federal regulations. However I believe it is the responsibility of the CPSC to responsibly implement the CPSIA regulations – providing clear, timely, and reasonable guidelines so small American companies can easily and accurately meet them.

[redacted] is investing significant time and thousands of dollars to ensure compliance with the CPSIA regulations. However unclear deadlines, the lack of approved total lead and phthalate laboratories, and uncertain guidelines regarding repeated and component testing have hindered our attempts. Big companies likely have the resources to easily deal with these issues, while unscrupulous companies are likely ignoring them – leaving good, upstanding small businesses like [redacted] feeling the pinch.

[redacted] educational games contain individual parts like dice, sand timers, pencils, etc. and our workbooks contain staples as a binding. Some of our suppliers have provided us with either general conformity certificates or laboratory reports. For the suppliers that did not provide us with this information, [redacted] commissioned third part laboratories to test for lead and phthalate content. In order to confirm that our products meet CPSIA guidelines we had to invest significant time and money for lab testing during 2009 – and the lack of clarity from the CPSC has us unsure about our 2010 testing commitments.

As a small business with limited resources during an economic recession, we have several concerns:

- No laboratories have been approved by the CPSC for phthalate testing. To ensure we were selling compliant products, this year DynaStudy commissioned an ISO-certified laboratory that was accredited by the CPSC for lead-in-paint to test certain components for phthalates (assuming that they would also obtain phthalate accreditation). However if this laboratory is not quickly approved by CPSC, and/or its results are not retroactive, we will be required to find another laboratory and re-test, or discontinue selling a seemingly compliant product. **We feel the CPSC must extend the stay of enforcement, accredit laboratories, and allow component and supplier-provided testing data.**

- Few laboratories have been approved for total lead content. Again to ensure we were selling compliant products, this year DynaStudy commissioned an ISO-certified laboratory that was accredited by CPSC for lead-in-paint to test certain components for total lead. However if this laboratory is not quickly approved by CPSC for total lead, and/or its results are not retroactive, we will be required to find another laboratory and re-test, or discontinue selling a seemingly compliant product. **We feel the CPSC must extend the stay of enforcement, accredit laboratories, and allow component and supplier-provided testing data.**

- Periodic Testing Requirements. [redacted] will not sell any product that is not compliant with any periodic testing requirement. However we absolutely need the CPSC's timely guidance to help make business decisions on which new products to launch in 2010 and which products to possibly discontinue selling.

Annually we sell less than 1,000 of many of our games. **We need the CPSC to announce that units less than 10,000 are indeed exempt from repeated testing.** At our low volumes we cannot afford the exorbitant costs of repeated testing when the initial testing is indeed compliant. For instance testing of a single sand timer (with a red plastic base and clear plastic tube) costs $460 – ($55 for total lead and $175 phthalates with each of the two parts needing to be tested). Similarly the dice requires a surface lead test, total lead test, and phthalate test ($285). Requiring repeated testing of these items will likely force us to discontinue an otherwise compliant product. If an item is sitting on a shelf unsold in 2009, it will not magically absorb lead or phthalate by January 1 of the next year. We have products in the pipeline that are on hold pending the CPSC's decision – the economics of some products are such that we cannot proceed if repeated testing is required.

[redacted] recognizes that CPSC has many responsibilities and important decisions to make regarding the CPSIA and all consumer products, but we want the CPSC to recognize that many small businesses like us are in limbo trying to meet the CPSIA regulations while juggling harsh economic realities.

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 2:54 AM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Subject: CPSIA Stay

Dear Chairman Tenenbaum and Commissioners Moore, Adler, Northrup and Noord,

After watching the video feed from the commission's December 2nd meeting regarding lifting the CPSIA testing and certification stay that was enacted on January 30, 2009 and which the commission is considering to lift, I respectfully and urgently request that you extend the stay for at least 12 months beyond the commission's final rules and regulations on: the definition of children's product; component testing, testing frequency, phthalate test standards, ASTM F963 test standards, certification of testing labs on a broad enough scale to handle market volume and prevent price gouging, and enforcement policy and procedure.

While the stay has been in effect for the last 10 months, there has not been enough progress by the commission to finalize rules and regulations on the aforementioned topic areas. Manufacturers and importers have been successfully using "reasonable testing programs" based on a common sense approach and their knowledge of the manufacturing process to ensure safe products enter the marketplace. The silence you are hearing from the small-business community is due to confusion and denial. As a value-add distributor to the U.S. elementary school market, my company buys from hundreds of U.S. importers who often claim their product is not regulated by the CPSIA. This confusion is due to the lack of clarity of the definition for children's product. For small businesses who lack legal counsel or are not sophisticated enough to navigate the complexity of the current requirements without specific, final rulings from the commission, their alternative strategy is to wait and hope that the commission makes the correct, commonsense decision.

I heard several times during the commission's meeting the question of how long will it take for the market to comply once the stay is lifted. Being the COO of a small to mid-sized family business, it will take a full year to react to the commission's rulings. Since the time when the CPSIA was close to being signed into law back in 2008, our company was taking steps to get our supply chain orientated around the new law. Unfortunately, the complexity of the law has exacted a "tax" on our company to keep up with all the rulings and opinions as they are issued piecemeal. For example, we started building a safety testing database to help administer our reasonable testing program. Two years later, the database programming is 90% complete at a programming cost exceeding $100,000. Administrative and testing costs, if the stay is lifted and we have 90 days to react to the new rulings, will be an enormous burden on our human and financial resources. Unlike large corporations who can amortize testing and administrative costs over large runs, our company has 30,000, relatively low quantity, low revenue items to manage. And beyond hiring and training our internal team, training our supplier base to the new laws and processes is not something that can be accomplished successfully in 90 days. Our suppliers monitor the CPSC and CPSIA on-line on a daily basis to stay on top of the ever-changing policies. If the CPSC and Congress want to truly protect the public from unsafe product, then we need to be methodical in our approach to remove the confusion that exists in the marketplace.

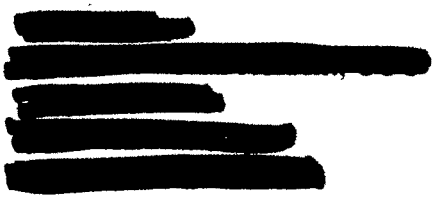
In addition to protecting our customers from tainted product, we, and companies like us, have a responsibility to provide teachers and students with a wide variety of product to meet their learning needs. We also have a responsibility to our employees for their livelihood. If the stay is lifted and we have 90 days to react to the commission's rulings, we will be forced to incur costs that may result in lost jobs.

Again, I kindly request that you extend the stay for a year after the commission's final rules and regulations are issued on the definition of children's product; component testing, testing frequency, phthalate test standards,

ASTM F963 test standards, certification of testing labs on a broad enough scale to handle market volume and prevent price gouging, and enforcement policy and procedure.

Thank you for your attention to this very important issue and I look forward to attending Thursday and Friday's workshops.

Sincerely,



office:
cell:
web:

[redacted]

From: [redacted] on behalf of [redacted]
Sent: Wednesday, December 09, 2009 9:36 AM
To: Tenenbaum, Inez; Adler, Robert; Moore, Thomas; Nord, Nancy; Northup, Anne
Cc: rwoldenberg@learningresources.com
Subject: CPSIA and Stay of Implementation

It has come to my attention that the commission is considering lifting the stay on implementation of the CPSIA. This is astounding to me, given the amount of work that still needs to be done by the CPSC and/or Congress before it is even remotely possible for companies to comply with these regulations in good faith.

I am an importer and manufacturer of baby carriers. It is critical to us and our customers that our products are safe, and we have always spent a great deal of time and attention ensuring that they are. The CPSIA adds no value to this process, and in fact throws up red herrings and roadblocks to our smooth operations and effective processes. Everyone: manufacturers, consumers, advocates are all left confused and frustrated.

Now is *not* the time to lift the stay. *You* have much more work to do before tossing this mess on the manufacturers.

Regards,

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, December 08, 2009 1:26 PM
To: Northup, Anne
Subject: CPSIA -- Please Extend the Stay!!

Dear Ms. Northup,

As a very small business that imports wooden toys from another small business in Germany, we are terrified that the stay will be lifted in February with so many issues still needing to be addressed and so many rules still needing clarification. Even if magically everything could be resolved by then, there would not be enough time to attempt to be in compliance. The CPSIA actually needs to be scrapped and rewritten, but as that isn't likely, the stay needs to be extended to prevent disastrous problems for hundreds of small businesses.

I won't waste your time listing all the problems and open issues here, but please be aware that if the stay is not extended until the CPSC has been able to clarify them and make reasonable rulings, it will be impossible for many small businesses to continue to operate. In essence you will be contributing to more unemployment and a further drag on our limping economy.

Thank you for your consideration.

Sincerely,

[redacted]

--

e-mail: [redacted]
website: [redacted]

[redacted]

From: Mr and Mrs [redacted]
Sent: Tuesday, December 08, 2009 3:29 PM
Subject: Continuation of the CPSIA Stay

Dear Commissioners,

This letter is to ask the CPSC to consider a continuation of the CPSIA stay that is already in place. I realize that there must be huge pressures on you all right now to implement the CPSIA law, however you all must realize the damage this law would do to our economy right now.

I am a home manufacturer of knitted garments, mostly to benefit charity organizations. There are many people like myself who provide much needed help to America's children's charities. The burden placed on charity workers like myself by the CPSIA law will create chaos within small charities that are already hurting in this economy. I ask you, I beg you, to please extend the stay on CPSIA testing.

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 12:28 PM
To: Northup, Anne
Subject: Commissioner Northrup, please extend CPSIA stay

I am just one of the many owners of a very small business about to be devastated by the CPSIA testing rules. Like hundreds of other tiny businesses, my business is dependent on my sewing to support my family. In this economy, I am doing all I can just to survive. If I am forced to close my business, I will have to leave my terminally ill mother and my baby girl while I work outside the home.

I simply can not afford to do the redundant testing currently required by the CPSIA. I will gross about $70,000 this year with a net far, far below that amount. The majority of my profits comes from the items I make myself. Several thousand dollars worth of testing would eat into my meager profits to the point where it simply would not make sense to stay in business.

I use Oeko-Tek certified snaps and other materials that are tested by the manufacturer. Redundant testing will not do anything to make children safer – but it will put me out of business.

With two months left to go, we have no clear information about component testing – or dozens of other vital questions. My business is at a standstill while we await clear guidelines that are practical for microbusinesses such as mine.

Please extend the stay of the CPSIA testing requirements until guidelines and regulations have been clarified. Small businesses such as mine can not survive unless we are granted component testing for parts unlikely to contain lead. We are seeking common sense here, not diminished safety.

[redacted]
[redacted]
Yes! We have a gift registry.
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 09, 2009 10:03 AM
To: Northup, Anne
Subject: CPSIA Stay

Dear Commissioner,
I do not believe that this letter requires an introduction, nor does the body require much length. The combination of ambiguity and far reaching effects of the CPSIA are disastrous to the business community. The entire business community is interested and working towards ensuring the safety of each and every product created. Blind legislation will only hamper the good intentions and acts taken by industry thus far and hurt the overall economy and consumer. Please do not turn a blind eye. I ask you to please vote to extend the stay on CPSIA requirements until intelligent legislation can be crafted that will be beneficial to both industry and the end consumer.
Thank you,

[redacted]