American Chemistry Council

CAL DOOLEY
PRESIDENT AND CEO

March 15, 2013

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

Dear Chairman Tenenbaum,

On behalf of the American Chemistry Council, I am writing to follow up on my letter dated August 24, 2012 and to request that the Consumer Product Safety Commission (CPSC) publicly clarify its plan for an open and transparent peer review of the draft Chronic Hazard Advisory Panel (CHAP) report on phthalates and phthalate alternatives. During our meeting in August of 2012, we outlined the requirements under the Office of Management and Budget's "Final Information Quality Bulletin for Peer Review" (OMB Peer Review Bulletin) for the review of a highly influential scientific assessment. These requirements ensure that a scientific assessment which is novel, controversial, or precedent-setting or has significant interagency interest undergoes the most rigorous review before it serves as the scientific underpinning for potential regulatory action. At that meeting, you emphasized a great interest in following those guidelines, consistent with the Administration's stated commitment to openness and transparency. In numerous public statements and press releases you have reinforced CPSC's intention to "maximize openness and public participation."[i]

The OMB Peer Review Bulletin specifically states that:

> *Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public.*[ii]

However, we understand that, after objections from some members of the CHAP, CPSC has decided to not conduct an open, public peer review of the draft CHAP report. CPSC's current approach is not only inconsistent with the OMB Peer Review Bulletin and widely accepted principles of rigorous scientific review, but also inconsistent with your public statements made in support of "openness and public participation." As underscored in our previous correspondence, CPSC is required to subject the CHAP report to a peer review process that complies with OMB's Peer Review Bulletin under the Information Quality Act (IQA) and the Paperwork Reduction Act (PRA). Since rulemaking based on the final CHAP report could broadly impact federal risk assessment policy, the CHAP report "is novel, controversial, or precedent-setting or has significant interagency interest." In opting not to conduct an open peer review, CPSC is

explicitly choosing not to follow legal requirements, as well as best practices for peer review by federal agencies.

While we do not believe there is any scientific basis for restricting the use of phthalates as currently used in consumer products, we are committed to working with CPSC and other regulatory agencies to ensure that the proper research and scientific reviews are completed to continue to ensure public health and safety.

We remain committed to working with CPSC on a review of phthalates that is done in a transparent, scientific and timely manner, and we would like your commitment that CPSC will follow the robust process for a highly influential scientific assessment outlined in the OMB Peer Review Bulletin. I will call you soon to discuss our concerns.

Sincerely,

Cal Dooley

cc: Matthew R. Howsare
Jason K. Levine
Scott J. Wolfson
Joseph Martyak
Mr. Boris Bershteyn, Acting Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget

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[i] http://www.cpsc.gov/About-CPSC/Chairman/Statements/Press-Statement-from-CPSC-Chairman-Inez-Tenenbaum/

[ii] http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf