

American Academy of Pediatrics • Breast Cancer Fund • Consumer Federation of America • Consumers Union • Kids In Danger • National Research Center for Women & Families • Natural Resources Defense Council • Public Citizen • Union of Concerned Scientists • U.S. Public Interest Research Group

April 23, 2013

Mr. Jeffrey Zients, Acting Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Acting Director Zients,

We are writing in response to the letter that the American Chemistry Council (ACC) sent to you on April 8, 2013 regarding the Consumer Product Safety Commission (CPSC) Chronic Hazard Advisory Panel (CHAP) on phthalates.

The undersigned organizations were pleased to work with Congress to support the passage of the Consumer Product Safety Improvement Act (CPSIA)(Pub. L. 110-314) and were strong supporters of Section 108, which banned the sale of certain children's toys and child care articles containing six kinds of phthalates. There is a large and growing body of independent, peer-reviewed scientific studies that have been generated since the 1970s that have linked phthalate exposure to serious health hazards, in humans and other animals. The six phthalates banned by the CPSIA are associated with numerous adverse health effects by the hundreds of peer reviewed studies published in the scientific literature. Those health impacts include: hormonal disruption, increased incidence of undescended testes, decreased anogenital distance, hypospadias, DNA damage in human sperm, altered semen quality, decreased testosterone, reduced fertility, infertility, shortened pregnancy, endometriosis, early onset of puberty, effects on respiration and immunity (asthma, allergies), and effects on neurological development.

It is clear that the ACC is concerned about the results of the CHAP, and as a result it is requesting that OMB direct CPSC to apply the OMB Final Information Quality Bulletin for Peer Review ("OMB Peer Review Bulletin") to the CHAP process in an attempt to revise its findings. In a letter to the CPSC, ACC member ExxonMobil, represented by Latham & Watkins, made plain their interest in affecting the contents of the CHAP report, stating that, "...the process being contemplated would shield the outside scientists from any contrary views and scientific data of interested parties... [B]ecause they will be shielded from the views of interested parties, they may not know where to direct their closest attention, and overlook important issues."¹ The ACC and

¹ http://www.cpsc.gov/PageFiles/125955/latham_watkins03142012.pdf

several other industry representatives had ample opportunity to submit their views and data during the CHAP process and those data were included in the CHAP's deliberations.

The OMB peer review process that is being requested by the ACC would not be in compliance with the CPSIA. Congress made its intent plain in Section 108 regarding how it wanted the CHAP to be conducted by outlining a clear prescription for what specific steps the CHAP should undertake in its work. CPSIA Sections 108(b)(2)(B) and (C) make no mention of further review of the CHAP report. Instead, the statute plainly calls for the "panel" – not an alternative body or authority – to report to the CPSC, and it specifies what the "panel" should determine.

Congress could have required additional peer review of the CHAP report, and it was aware of the Information Quality Act when it passed the CPSIA. Instead, it set a specific timeline for prompt action, that is now considerably behind schedule, and laid out the exact steps that needed to be followed. Requiring further review of the CHAP report before the report can be finalized and sent to the CPSC is therefore inconsistent with the law. The ACC's request for additional direct input by their members to the peer review panel prior to open public comment is inappropriate. The ACC will have the opportunity to express its views through public comment to the Commission during the standard rule-making process.

In addition, the peer review process that ACC is requesting is not applicable to the CHAP process. The OMB Peer Review Bulletin "addresses peer review of scientific information disseminations that contain findings or conclusions that represent the official position of one or more agencies of the federal government." However, the CHAP report is not written by government (or CPSC) scientists, and it does not represent an "official position" of the Commission; the report represents the CHAP's opinion and recommendations. Any official position taken by the CPSC is at the sole discretion of the Commissioners. As such, the CHAP's report is not required to be peer-reviewed according to the OMB's guidelines.

It is important to note, that in addition to the legal and scientific issues raised above, that the scientific value of peer review is for objective, independent experts to bring their perspectives as they review a manuscript. The CHAP is independent of the CPSC and is an advisory group comprised of objective, independent experts with differing expertise and perspectives. As such, the CHAP provides the same important objectivity that peer review is intended to provide. Requiring additional peer review would be redundant and only serve to delay the process, which is already two years behind.

Finally, we are particularly surprised by the concerns raised by the ACC regarding "the lack of transparency and integrity" of the process, given that ACC has enjoyed unprecedented access to the CHAP. In November, 2011, the Hamner Institute was given an extraordinary opportunity to present ExxonMobil-funded research to the CHAP – despite the fact that the CHAP initially denied their request – after the public comment period was closed. Public health advocates and other independent scientists

were neither notified nor given an opportunity to present their own comments or respond to that Hamner/ExxonMobil presentation at the time.

Section 108 includes a timeline for the CHAP to conduct its research and for the CPSC to conduct its rulemaking. The CHAP report was due approximately three years after the CPSIA was enacted; and almost five years have passed since then. The ACC has made clear its intention to completely restart the risk assessment.² The process they have requested would be overly cumbersome, repetitive of the CHAP's work, and result in unnecessary delay. The ACC's request for public comment was satisfied during the CHAP process, and it will again have the opportunity to submit comments after the CHAP submits its report to the Commission.

We therefore respectfully urge the OMB to adhere to the statutory provisions of the CPSIA, respect the authority of the CPSC as an independent federal agency, and respect the status of the CHAP as independent from CPSC. Further, the CHAP must be allowed to complete its work expeditiously, without further outside interference. OMB should honor the CPSC's determination that the OMB Peer Review Bulletin does not apply to the CHAP's safety assessment of phthalates.

Sincerely,

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² <http://www.cpsc.gov/PageFiles/125723/acc081312.pdf>

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