

Rosario Palmieri

Vice President

Infrastructure, Legal and Regulatory Policy

September 10, 2014

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

Dear Chairman Kaye:

The National Association of Manufacturers (NAM) writes to express concern over the process used to review and comment on the Chronic Hazard Advisory Panel (CHAP) report on the safety of phthalates and phthalate alternatives, which will serve as the basis for an anticipated rulemaking by the U.S. Consumer Product Safety Commission (CPSC). The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states, and is the voice for 12 million men and women who make things in America. We represent manufacturers of consumer products, their suppliers and others who will be impacted by the CPSC's pending action.

Pursuant to section 108 of the 2008 Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. § 2057c, the CPSC is required to issue a final rule after evaluating the CHAP report and recommendations. Because the report would be a factor in promulgating a major rulemaking, it is a highly influential scientific assessment and is subject to the requirements established by the Office of Management and Budget (OMB) in accordance with the Information Quality Act (Sec. 515 of the Treasury and General Government Appropriations Act for FY 2001, Pub. Law 106-554). We are concerned that the process for developing the CHAP report has lacked transparency and that the CPSC has not followed OMB's guidelines for both the peer review process and for ensuring and maximizing the quality of information on which the Commission will rely.

OMB's "Final Information Quality Bulletin for Peer Review" establishes strict minimum requirements for the peer review of highly influential scientific assessments, including a requirement that an agency "make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review . . . and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public." While the CPSC released peer reviewers' comments upon presentation of the final CHAP report to the public, the report was not made available for public scrutiny and review before its finalization. Before the Commission proceeds with any action resulting from the CHAP report and recommendations, the report should undergo a more rigorous peer review and be made available to the public for comment prior to promulgating a proposed rule.

The need for more rigorous peer review is essential because the CHAP applied a novel and precedent-setting cumulative risk assessment in their recommendations to the Commission. When misapplied within the regulatory process, this cumulative risk assessment methodology could have broad implications across numerous regulatory programs and for all manufacturers of industrial chemicals and consumer products.

Further, the CPSC should ensure that the CHAP's analysis complies with OMB's and the CPSC's own information quality guidelines, which state that the Commission will apply "risk assessment practices . . . that are widely accepted among domestic and international public health agencies." The Commission should carefully review the CHAP report and solicit public comments on the report to ensure that the information used to support pending regulatory actions is of the highest quality and complies with established guidelines. This must occur prior to the promulgation of a proposed rule.

Given the importance of the CHAP report, it is vital that the Commission ensure that its information is of the highest quality and developed in accordance with federal guidelines. Thank you for your consideration of this issue.

Sincerely,

A handwritten signature in cursive script, reading "Rosann G. Palmieri".

cc: The Honorable Robert Adler, Commissioner, U.S. Consumer Product Safety
Commission
The Honorable Marietta Robinson, Commissioner, U.S. Consumer Product Safety
Commission
The Honorable Anne Marie Buerkle, Commissioner, U.S. Consumer Product Safety
Commission
The Honorable Joseph Mohorovic, Commissioner, U.S. Consumer Product Safety
Commission