



March 13, 2009

The Honorable John D. Dingell
2328 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Emeritus Dingell,

We are writing to you today on behalf of the 1,500 companies we represent in the children's product marketplace. Our members' products can be found in every U.S. classroom. These educational product manufacturers and retailers care deeply about the safety of children; however, we have grave concerns about the insurmountable burden the Consumer Product Safety Improvement Act (CPSIA) places on small businesses in the educational products marketplace.

We appreciate the leadership you have demonstrated in addressing the many serious issues that have arisen as a result of the CPSIA. We share your concern that the CPSIA includes unrealistic deadlines for rulemakings and compliance, as well as too little implementation discretion for the CPSC. It is our hope that your recent letter to the CPSC will lead to prompt action to correct the excessive reach of this law and its devastating consequences on the small businesses within the educational products industry. We applaud your intention to work with Chairmen Waxman, Pryor, Rockefeller and Rush to hold hearings on the issues that have arisen surrounding this overreaching law.

Here are some specific areas of concern:

1) The definition of children's product is too broad.

The CPSIA imposes a regulatory burden on the children's product industry unrelated to risk. Many of these items have never presented any risk of injury and therefore will have no effect on improving safety. Both the lead and phthalates bans need to be carefully constrained to avoid unnecessary harm to commerce. The safety concerns covered by the CPSIA mainly pertain to products aimed at young children. We recommend the age limit for the definition of "children's products" be reduced to eight years and that the CPSC have the discretion to lower the age limit for certain groups of products for which the risk of harm from lead or phthalate exposure is remote to non-existent (for example, children's books, even those published prior to 1985).

2) The deadlines are not practicable and the economic impact is severe.

The children's product industry is not prepared for the sudden imposition of heavy regulatory burdens. Children's products are typically priced low in a very competitive marketplace. The overhead and infrastructure needed to comply with the CPSIA are unreasonable for small manufacturers, single location stores or even small retail chains and will accelerate mass consolidation in the channel. These changes will lead to businesses closing and continued job elimination.

3) The penalties are excessive.

The economic impact is overwhelming. In an effort to address every possible danger, the new law exposes businesses to excessive testing costs and record-keeping expenses and enforces its new rules with penalties of up to \$100,000 per violation. We urge you to sharply restrict the use of heavy penalties in the CPSIA particularly for inadvertent violations and for small businesses. The current law provides broad discretion to the CPSC to impose excessive fines, criminal charges and even asset forfeiture. Our members care deeply about safety and have a proven record of providing safe products.

4) The retroactive ban and timetable are unrealistic.

The children's products industry, including the school supply, art materials, educational toy and book publishing industries are working to gain relief from the CPSIA including the retroactive nature of the law as it relates to current inventory in stock for retailers and suppliers. Such interpretation exposes many small retail businesses and supply chains unnecessarily to excessive costs and potential liability that could bankrupt them without any perceivable increase in the safety of children's products. The cost to small business in terms of lost productivity, inventory, and jobs, not to mention the erosion of confidence in our products and services, is a burden our country cannot bear during this current economic crisis and has caused incalculable damages to the strength of our industry. The timetable of implementation needs to be spread out over a much longer period to give companies time to understand and adjust to the new rules in order to comply in the future. In general, the bans that went into effect in February happened before the Commission could resolve many of the testing and interpretation issues necessary to give good guidance to the regulated industry. Most of the guidance given to date has been temporary in nature. Businesses that have months lead time in bringing products to market need some certainty in order to plan in compliance. Further, as developed above, the ban of many of the products in question simply cannot be justified on a risk basis and, therefore, the goal of consumer protection is being achieved with a shotgun, causing tremendous amounts of collateral damage, when a rifle could have hit the target. Allowing the Commission more discretion — and time — to achieve the Congressional goals would serve the interests of consumers by not imposing tremendous additional costs on them without achieving commensurate consumer protection.

5) Ban on phthalates should be for children aged 3 and under

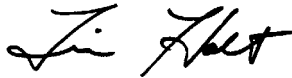
We applaud the goal of reducing risk from hazardous chemicals, however, Congress failed to draw lines that correlate with actual risk. For example, the scientists who advocated for this requirement (and CPSC's scientists believed there was insufficient risk) said the risk from phthalates is to fetuses and infants. In addition, it is children three and under who engage in the greatest mouthing behavior. Congress applied the "child care" requirement to children of that age but failed to limit the definition of toys accordingly. Limiting the phthalate ban to items intended for children three and under would protect the children who might be at risk, would draw fairly clear definitional lines, and would save a tremendous amount of money for testing. Similarly, the Commission should have the leeway to make discretionary decisions about excluding products that do not contain phthalates from testing requirements, to decide that inaccessible parts do not present a risk, and to make other risk-based decisions based on further scientific analysis by the CHAP. (In writing the lead ban in section 101, Congress did give the Commission some discretion to exclude such products.)

6) Commission needs more leeway to make risk-based decisions for banned products containing lead.

The mere presence of lead in many materials does not mean there is a risk of injury. For example, older children are far less susceptible to lead poisoning and engage in less of the mouthing behavior that can cause lead ingestion. Further, small amounts of lead bound in plastic or other materials may never be biologically available to a child, and lead transfer from certain types of products is highly unlikely given the nature of certain products (examples classroom items, bicycle valves, ATVs, motorbikes). The Commission should have the discretion to set limits on the lead ban that take these factors into account, including excluding certain age groups, products, and materials based on a risk based analysis. This would result in the high level of consumer protection anticipated by the Congress without imposing the kinds of costs for testing and compliance that are putting our members and many other consumer product firms in jeopardy.

On behalf of the members of the National School Supply and Equipment Association, we urge Congress to implement reasonable and common sense amendments to the CPSIA to fix its many serious flaws. The failure to act will have devastating implications for the educational products industry, our economy, our schools, and our children. As the impact of the CPSIA is already starting to damage many companies, there is a great deal of urgency in acting both sensibly and quickly.

Cordially,



Tim Holt
President/CEO
National School Supply and Equipment Association

Cc: U.S. Consumer Product Safety Commission
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The Honorable Thomas Hill Moore, Commissioner

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