

**\* Consumers Union \* Consumer Federation of America \*  
\* Kids in Danger \* National Research Center for Women &  
Families \* Public Citizen \* Union of Concerned Scientists \* U.S.  
Public Interest Research Group \***

January 7, 2009

Honorable Nancy Nord  
Chairman  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20814

Dear Chairman Nord:

Our groups, representing consumer, scientific, and public health interests, write to urge the Commission to provide guidance and clarity and to **immediately** dispel misinformation now circulating among entities regulated under the Consumer Product Safety Improvement Act (CPSIA). The CPSIA, a landmark new law, will go a long way toward improving the safety of products brought to the marketplace and restoring consumer confidence in the products they buy. Some small businesses have expressed concern about the lack of guidance and information from CPSC about the implementation of the CPSIA. The vacuum of implementation information, as well as the proliferation of misinformation regarding actual testing requirements and the cost of testing is leading to confusion and fear. The public counts on the CPSC to protect them from dangerous products. Now CPSC must take the initiative to allay their fears by providing prompt, common-sense, and explicit interpretations regarding exemptions to CPSIA stipulations, guidance as to the realistic cost of testing, and education regarding compliance with the CPSIA for retailers, including thrift and consignment stores.

As you are aware, events over the last several years have shattered public confidence in the safety of products sold in the United States -- particularly children's products. The year 2007 was dubbed by consumer groups and the media as the "year of the recall," with 473 recalls administered by the CPSC. These recalls included children's toys pulled from the market due to the presence of lead paint, cribs that collapse and toys with dangerously strong magnets that seriously damage children's stomach lining when swallowed, and even toys with toxic chemicals that can induce comas if swallowed. The year 2008 fared even worse, with 563 recalls, including nearly 8 million toys.

Although laws have existed with minimum safety requirements for toys and other children's products, these products were not required to be tested before sale. The many recalls of dangerous and toxic toys made it clear that the system was, in fact, broken. Fortunately, Congress answered the call to address these concerns, and on August 14, 2008, President Bush signed into law the Consumer Product Safety Improvement Act ("CPSIA"). Both the House and Senate passed this important bipartisan reform measure

by overwhelming votes. The Senate passed the CPSIA by a vote of 89 to 3, and the U.S. House of Representatives an overwhelming vote of 424-1. The CPSIA passed after lengthy and careful deliberation by Congress, with many hearings and extensive input from all stakeholders. Consumers, manufacturers, and retailers are now counting on the Commission to properly implement the law that Congress has passed.

The CPSIA requires what many consumers already thought was law—that certain children’s products must be tested for safety **before** they are sold. This is one of the most significant steps leading to a safer marketplace for our children. This law also recognized consumers’ expectations, that toys and other children’s products on store shelves would be safe – and certainly not harmful – to such a vulnerable population.

**The CPSC Must Quickly Provide Guidance and Clarify Any Exemptions Regarding the New Law’s Safety Testing and Certification Requirements**

Given the authority granted under the CPSIA, the CPSC has a critical responsibility to implement the new law effectively, fairly, clearly and in a timely manner. We are pleased to see the rapid pace at which the Commission is implementing many parts of this important new law. The CPSIA already presents a common-sense approach to many key product safety issues. Congress itself acknowledges within the legislation that while certain products create a risk, some products and materials will be granted exemptions from the pre-testing requirements if they do not present a risk of harm. (CPSIA Section 101 (b)(1)).

We are concerned, however, that the CPSC has been slow to respond to a growing chorus of confusion and concern expressed by product makers about the product testing and certification requirements of the CPSIA. Much of the confusion about these requirements has been expressed by smaller business owners. In the four months since passage of the CPSIA, the Commission has failed to use the process included in the law in Section 101(b)(1) to provide clarity for industry about common sense testing and certification exclusions for products and materials that will not harm the public health. Although some preliminary information regarding exclusions to the lead standard was released on December 24, we strongly urge the CPSC to move quickly to clarify how this new law applies to certain products or materials that do not present a risk to children or the public. However, CPSC should only grant exclusions to this provision that are scientifically well supported to have no negative impact on public health and safety.

While certain segments of industry are raising valid questions about the new safety testing requirements under the law, other industry statements and reports about the impact of the law overstate and/or misstate important aspects of the requirements of the new law. The CPSC can – and must – address valid concerns, and act to quell misinformation surrounding the new testing requirements. Congress has spoken clearly, and now the CPSC has the responsibility to use the tools already provided to it by the legislation and provide the necessary, accurate and important guidance to all interested parties to further the timely and effective implementation of the CPSIA.

## **Awareness and Information Campaign for Small Manufacturers, Retailers and Secondhand Sellers**

It is within the CPSC's discretion to inform smaller manufacturers and retailers how to comply with the new legal requirements. We strongly recommend the launch of an information and education campaign that would help regulated entities to comply with the CPSIA, thus supporting the CPSC's compliance efforts. CPSC must work with second-hand sellers to ensure compliance with the intent of the CPSIA – keeping dangerous products off shelves and out of our homes – while also presenting common sense solutions for these stores. Once CPSIA is fully implemented, the secondhand market will be safer since unsafe products will be taken out of the stream of commerce.

However, to be clear, exemptions should not be made to the law's requirements based upon the size of the product maker or seller (e.g. based upon production output or numbers of products imported). To the contrary, there are many reasons to include such entities. As evidenced by many product recalls, there have been dangerous or toxic products recalled involving manufacturers who produce less than 50,000 units per year. Here are just a few examples:

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09068.html>

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml08/08579.html>

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09028.html>

As well as recalls involving products made in the United States:

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09052.html><http://www.cpsc.gov/cpsc/pub/prerel/prhtml08/08253.html>

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06262.html>

There is also much misinformation circulating about the cost of testing for compliance with the requirements of the CPSIA. Here again, the CPSC can allay fears among the business community by publishing typical testing costs based on a survey of laboratories accredited to conduct such testing.

Our children deserve the safest products possible. The bipartisan law approved by Congress in 2008 provides that safety. It would be tragic if your Commission, by failing to provide the appropriate guidance and exemptions, failed to effectuate this important new law.

Sincerely,

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Public Citizen

cc:

CPSIA Conferees

Members of Senate Commerce Committee

Members of the House Energy & Commerce

Leadership of the United States Senate and the U.S. House of Representatives