



**Testimony of Anne M. Northup
Commissioner
United States Consumer Product Safety Commission**

Hearing on the 2012 Performance Budget Request of the CPSC

Before the

**U.S. House of Representatives
Committee on Appropriations**

**Subcommittee on Financial Services
and General Government**

March 31, 2011

Chairman Emerson and Ranking Member Serrano, thank you for the opportunity to provide testimony to this Subcommittee regarding the Consumer Product Safety Commission's 2012 Performance Budget Request. This Commission has a proud history of assessing risk and providing leadership in consumer product safety issues across a variety of industries.

As a Commissioner since August 2009, I now have a tremendous appreciation for the work that goes on in an agency, including the time and effort that agencies expend implementing the laws Congress passes. It is not a simple task, and my colleague, Chairman Tenenbaum, has put in countless hours to ensure that the Commission meets its deadlines and fulfills the difficult tasks it has been given.

As you know, I did not support the Commission's overall 2012 budget request of \$122 million, because it calls for an increase in \$3.8 million over current funding levels. I believe we can be doing much more with less. Given the imperatives of reducing the national deficit and controlling federal spending, we as Commissioners have a responsibility to cut programs or advocate for reforms that will ensure that we are using our resources efficiently and not straying from our core mission of safety.

In that regard, my testimony today focuses upon the ways in which Commission resources have been wisely spent to improve safety outcomes for Americans, and areas where I believe there could be vast improvement. In particular, my testimony will focus on the Consumer Product Safety Improvement Act (CPSIA), a law that largely is not based on risk and whose implementation has overwhelmed the time and resources of this agency since August 2008. Because the CPSIA's lead, phthalates, and testing and certification standards are not risk-based, the enforcement of such standards diverts the Commission from focusing on real risk. The law has strained the Commission's resources and has had a devastating impact on American business growth and competitiveness, all with little or no offsetting improvement in product safety.

Effective Uses of Commission Resources:

Improved Enforcement Tools

Today, the Commission has enforcement tools vastly improved over those available even a few short years ago. Since the advent of our agency's Import Surveillance Division in 2008, we have continued to grow our full-time presence of CPSC investigators at key U.S. ports. We have also expanded cooperation with Customs and Border Patrol to maximize our ability to screen for products at all U.S. ports. Today, the Commission intercepts non-compliant toys through more extensive border control efforts, application of x-ray technology to identify violative lead content, and computer databases that flag previous offenders for greater scrutiny. The CPSIA also increased the incentive for compliance through the threat of confiscated and destroyed violative products at the border, by authorizing the Commission to impose higher penalties of up to fifteen million dollars, and by streamlining its authority to seek criminal penalties.

I support the agency's investments in expanding these emerging enforcement methods because I believe they can grow to become a more sophisticated and technologically advanced method of deterring the entry of hazardous products into commerce. Notably, even prior to the Commission's improved enforcement tools, the Chinese manufactured toys containing lead paint that were the impetus for the CPSIA were themselves identified and intercepted using the Commission's traditional methods. The companies responsible faced a class action lawsuit and a massive fine. Today, retailers, private labelers, importers and manufacturers are collaborating to prevent violative products from entering commerce, in order to protect themselves from lawsuits, damage to their reputations, the cost of recalls and the loss of inventories.

Consumer Education and Outreach

Providing safety information to American families is a top priority of the Commission. I have urged the Commission to do more to educate the public on broad-based safety hazards in concert with any new mandatory standards we are required to issue under the CPSIA. Additionally, I have long advocated for broadening the Commission's messaging through non-English language posters, and by working with non-traditional groups, like churches, to increase our outreach to minorities and harder-to-reach populations.

The Chairman's staff has done an excellent job using social media (e.g., online videos, text messaging, Twitter) and other creative ways to broadcast the Commission's many safety messages. In fact, as of last fall, there is now a downloadable "app" available for the Android phone that allows consumers to monitor and search recalls from the CPSC and other agencies: <http://apps.usa.gov/product-recalls2/> I continue to support these efforts.

Ineffective Use of Agency Resources: CPSIA

The law's non-risk based requirements

In both 2009 and 2010, the CPSC focused its time and resources principally on implementing the CPSIA. Although the Commission is a relatively small agency (FY 2010 funding of \$118.2 million), its budget has grown by nearly 48 percent since the law's passage in 2008, with both old and new resources shifted away from risk-based priorities to implement the arbitrary, non risk-based mandates of the CPSIA, including the lead content and phthalates bans, the Public Database, and the third-party testing, certification and labeling requirements. Over the past two and one-half years, the Commission has issued an estimated 3,500 pages of regulations and guidance documents as a result of the CPSIA—a large portion of which must be read and understood by every affected company in order for them to grasp the law's complex requirements.

The diversion of the Commission's resources to CPSIA implementation reduces our focus on genuine safety hazards. Our agency is charged with "protecting the public from unreasonable risks of serious injury or death" from consumer products—but we cannot

fulfill this mission if our time is spent primarily enforcing the CPSIA, including its non-risk-based lead content and testing requirements.

Indeed, since 2008, there has been a significant delay in progress on actions to address many genuine safety hazards, such as promulgating standards to reduce the risk of death and injuries caused by cigarette lighters, table saw blades and portable generators. These issues would be front and center on the Commission's schedule if it were not for the CPSIA.

Small Business Ombudsman

The creation of a new Office of Education, Global Outreach, and Small Business Ombudsman to assist small businesses will also likely end up a waste of Commission resources. This office was created last fall with an unspecified budget and staff size.¹ The stated purpose of the new office is to provide additional information to small businesses and other industry stakeholders through a "coordinated approach to education and outreach activities."

But this purpose could be fulfilled under existing Commission offices, and does not address small businesses' real concerns with the CPSIA. Small businesses are not clamoring for more information about how to comply with this law; they are asking for relief from this law because it is killing them.

The solution for small businesses negatively impacted by the CPSIA is to repeal the portions of the law that impose tremendous costs without increasing safety. Furthermore, no matter how successful this new office may be, small businesses will still need to hire lawyers to understand their obligations under the Commission's far-reaching and complex regulations.

To date, the Small Business Ombudsman has focused on responding to CPSIA-related questions posed by small handcrafters. This limited service to a small minority of manufacturers does not begin to assist the vast majority of small businesses -- with greater numbers of employees and a much larger impact on the economy -- suffering under the CPSIA. If the Commission really wanted to help all small businesses, it would use its rulemakings to mitigate the unintended consequences of the CPSIA, and propose meaningful legislative reforms to Congress. It is wasteful and counterproductive to instead create a new Small Business Ombudsman office to perform limited outreach to micro-businesses when an existing agency office could perform the same service.

¹ The agency has moved around existing employees to fill vacancies in this new office, including an Acting Small Business Ombudsman. The 2012 budget request includes two new FTEs to allow the Commission to hire a Director to develop the office and a permanent Small Business Ombudsman.

Public Database

The new Public Database will also unjustifiably drain Commission resources. According to the Commission's 2012 budget request, by the end of fiscal year 2011, the Commission will have already spent \$29 million on IT modernization and to develop the Database—two expenses that are interlinked. But the official \$29 million figure understates the real cost of the database. It does not include the hours CPSC staff dedicated to developing the database and preparing for its launch, including managing contracts.

Moreover, the \$29 million figure represents only the estimated contracting costs through FY 2011. And while we have not been able to estimate future costs, it is likely that the costs to maintain the Database will continue to strain Commission resources for years. For instance, the agency has yet to estimate the number of new FTEs we may need, year after year, to administer the public database, including new Compliance investigators and lawyers to handle claims of material inaccuracy. The Commission's 2012 Performance Budget Request discounts these expenses. According to that document, the "New and Reallocated Resources" dedicated to "Data Intake, Incident Review, and Investigation" is derived from an extrapolation of the growth trend line for reported incidents and investigations dating back to 2003. If, as is likely, this projection is proved to be too low, the assigned staff will be unable to timely manage all of the information reported through the database. As a result, Commission staff will be even less likely to resolve claims of material inaccuracy within the ten-day period prior to the posting of unverified information. The Commission will then either request and be provided additional funding in subsequent years, or preside over an increasingly misleading database.

Additionally, the Commission did not perform a cost-benefit analysis of their Database Rule. I believe the rule that was passed by the Commission's Majority is tremendously flawed and will result in a public database that is full of inaccurate or unverifiable information and therefore helpful to no one.² If this Commission is to have a public database funded by taxpayers, it should be *different and better* than any source of information that already exists in the public domain, such as websites like Amazon.com or Yelp.com. Unfortunately, due to the agency's regulation, our public database will be no more useful than similar sites that are already available to the public today, and will, in fact, be more misleading to the public, given the likelihood of inaccurate reports and the lack of ability for anyone to verify them. Many believe the public database, if left unchanged, will be useful only to trial lawyers or advocacy groups that will be able to populate it with unverifiable, second-hand information for their own purposes.

² The Commission Majority's database rule suffers from three major infirmities: 1) It interpreted the statute to allow *anyone* to report incidents to the database—even consumer advocacy groups, trial lawyers, and others with ulterior motives and who may not have firsthand knowledge of the incident; 2) the rule fails to require enough information from submitters so that reports are even verifiable; and 3) the rule requires that all reports will be made public on the 10th day following transmittal to the manufacturer, regardless of whether there's a pending, valid claim of material inaccuracy.

Further, the Commission has limited resources for enforcement. As a result, unverifiable information in the Database will divert resources from addressing genuine risks to monitoring and processing the likely increase in reports to the agency. Additionally, because inaccurate incident reports will be indistinguishable from accurate ones, the media's attention may focus on inaccurate reports, pressuring the agency to prioritize its efforts based on publicity rather than risk level.

CPSIA: Impact on the Economy

The lack of cost-benefit analyses

In March 2009, Commission staff reported that the economic costs associated with the CPSIA would be "in the billions of dollars range."³ Industry associations representing manufacturers of furniture, mattresses, sports equipment, children's clothing and handmade toys, just to name a few, have all told us that they will be saddled with enormous costs, first to reengineer their products to satisfy the new standards imposed by the law, and then to third-party test every component of every product they make to demonstrate compliance with all of the applicable standards.

This Commission has received a considerable amount of anecdotal evidence from companies and trade associations regarding the costs to test at independent labs, as well as the cost of certification, tracking labels, continued testing, record keeping, testing to product standards, and the potential reputational and litigation costs that will result from the upcoming Public Database. **Attached** is a sample list of businesses impacted by the CPSIA, as well as other economic data. Our staff has compiled some sample testing costs for toys and bikes, as part of a Regulatory Flexibility Analysis for our Testing and Labeling Rule. But the Commission has never conducted a full cost-benefit analysis of any regulation we have promulgated under the CPSIA.⁴

I believe such analyses would reveal that much of our CPSIA mandated regulation cannot be justified. To begin with, there is no scientific evidence suggesting there is any benefit from many of the law's requirements. For instance, no government health agency, including the CPSC, has ever concluded that the components of children's products containing either 300ppm lead content or the interim-banned phthalates pose a safety risk to children. The Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC) report that in 1978, about 13.5 million children ages 1-5 had elevated blood lead levels. However, by 2007-2008, this number had declined to about 250,000 children.⁵ Similarly, 2007 data indicates that one percent of children selected for testing across the country showed an elevated blood lead level as established by the CDC. This

³ Letter from Acting CPSC Chairman Nancy Nord to Representative John Dingell, March 20, 2009.

⁴ Most of the CPSIA mandated regulations are not required to be promulgated under Section 9 of the CPSA, which normally would entail a cost-benefit analysis. However, it also does not *prohibit* the agency from doing so, if the Commission recognizes a need for such analyses.

⁵ http://www.epa.gov/opeedweb/children/body_burdens/b1-graph.html

number was down from nearly eight percent in 1997,⁶ and is likely attributable to the elimination of lead in gasoline, as well as lead paint education and abatement. The CDC and the EPA have issued guidance for reducing children's exposure to lead, and neither has ever suggested that parents take away a child's bicycle because of the lead in the substrate of the metal comprising the spokes, pedals or handlebars. Nor has it ever been argued that the CPSIA, with all of its costs, will lower the number of children reaching the "tipping point" of having an elevated blood lead level.

Burdensome Testing and Certification Requirements

Given the available tools of manufacturers to determine compliance and our own improved enforcement methods, I do not believe the complex, third-party testing and certification requirements of the CPSIA are necessary or helpful in ensuring compliance with the law's new requirements. In fact, relief from the law's testing requirements is the number one request of small businesses, many of whom may be able to comply with the law's lead and phthalates limits but still cannot afford the mandatory third-party testing.

By requiring all manufacturers of children's products to send their products to be tested at a third-party lab, regardless of risk, the law disproportionately hurts companies with robust in-house testing programs, those with more creative and effective ways of ensuring compliance internally, as well as domestic American companies who have never had a violation. The CPSIA's micromanagement of a company's testing, certification and tracking of each and every component of a product is entirely unnecessary—and in fact, will be less helpful than the sophisticated internal controls manufacturers are currently using and continue to develop and perfect. Furthermore, a "bad actor" with a casual attitude toward safety standards compliance will be just as casual about maintaining accurate records to support CPSIA-mandated certifications.

The CPSIA also requires the creation of massive new paperwork and tracking systems, often without any safety enhancing product changes. A member of the American Home Furnishings Alliance reported that it spent \$13 million dollars on tests, new systems and tracking processes, despite the fact that every single component it used on children's furniture already complied with the current lead standard. The company was therefore not required to change a single material used in its manufacture of children's furniture, and there was no corresponding benefit in the improved safety of its children's furniture to justify the costs.

Similarly, some industry associations have had very few, if any, safety violations; yet, they are required to comply with onerous third-party testing, certification, tracking and labeling requirements that will not improve safety. The American Apparel and Footwear Association writes in their public comments on the Component Parts rule:

As the CPSC continues to issue specific compliance requirements, manufacturers become increasingly wrapped up in ensuring compliance over ensuring product safety. All AAFA members have had long-standing quality control programs in

⁶ <http://www.cdc.gov/nceh/lead/data/national.htm>

place that have developed based on the product, production of the product and the manufacturer's unique circumstances. These programs are effective and do not need to be changed. To demonstrate, only .0084% of all apparel and footwear sold in the U.S. in 2008 were involved in a recall. Moreover, most apparel and footwear recalls have been drawstring violations – a compliance issue that results from lack of information not lack of testing.⁷

The testing and certification requirements of the CPSIA have yet to be fully implemented. This Subcommittee can therefore prevent the law's onerous testing requirements from going into effect by withholding in any upcoming appropriations laws funding from the Commission for the purpose of promulgating regulations to implement the third-party testing and certification requirements of the CPSIA. This would allow the Commission's House and Senate authorizing Committees to fulfill their pledge to reform the CPSIA before it can further undermine the nation's economic recovery.

Recommendations to Reform the CPSIA and Reduce the Budget :

1) Reform the CPSIA's major requirements to be risk-based:

Reforming the CPSIA so that the law's principle requirements are based on risk, would greatly relieve the pressure on agency resources to have to implement, enforce and monitor non-risky products—and allow the agency to use its limited resources more effectively to fulfill its safety mission. This can be accomplished in a variety of ways:

➤ Amend the law's Absorbability Exclusion §101(b)(1)(A) so that it is meaningful:

The CPSIA included three statutory exclusions from the lead limits. But the Commission has meaningfully interpreted only two of them. The law's third exclusion, based on the absorbability of lead in a product, has not excepted a single product from the CPSIA' scope. The CPSIA should therefore be amended to exclude products or materials with a level of absorbable lead that the CPSC determines not to be harmful to a child's health.

Drawing the line at the level of absorbable lead that is harmful to a child's health is consistent with the findings of our leading scientific agencies, the National Institutes of Health, the CDC and the EPA. Only lead that is "absorbable" at greater than *minimal levels* is dangerous, especially to children ages five and under. Thus, the experts at the CDC and NIH have found that lead paint in old houses and lead in dirt near old gas stations are the main source of environmental lead presenting a danger to small children (<http://www.cdc.gov/nceh/lead/>). In other words, the *risk of absorbability* from lead in dirt that is tracked into a home or lead paint in an old home that becomes chipped and may be inhaled or ingested is quite high. Notably, the EPA standard for lead in soil is 400 ppm

⁷ American Apparel and Footwear Association. Request for Comments. Docket No. CPSC-2010-0037 & CPSC-2010-0038. August 3, 2010.

(<http://www.epa.gov/lead/>). This standard for safety is less strict even than the current 300ppm lead content standard provided in the CPSIA for children's products, including bicycle handlebars where any lead is embedded in the metal substrate and cannot be absorbed.

Unlike other Commission rules, the CPSIA, as interpreted by the Majority, has led to the banning or substantial reengineering of many products that pose no risk of harm from lead. For example, the CPSIA has led to a ban on children's books published before 1986, because the ink in them is likely to contain lead above the allowable level. But children are not likely to eat the pages of old books or ingest more than miniscule amounts of lead after touching their pages. Likewise, youth ATVs and bicycles are outlawed or must be reengineered even though the lead that is in the hood, handlebars, or hubcaps will not become ingested and absorbed in meaningful amounts. Other everyday products such as school lockers, the hinges on a child's dresser, or jackets with zippers and buttons are outlawed if they contain tiny levels of lead in the substrate. Even ball point pens are outlawed if they have a toy or game attached to them and are marketed to children, due to the brass found on the tip. Because there are still *negligible amounts of lead detectable by scientific equipment* that may be wiped off by touching a bicycle handlebar, the CPSIA treats these items in exactly the same way it treats products that truly could hurt a child by increasing the blood lead level.

If the law is amended to unambiguously exclude products with a level of absorbable lead that is not harmful to a child's health, the scope of the CPSIA will be considerably narrowed, and the Commission can focus its limited resources on real risks to children.

➤ Lower the age-range of products impacted by the law:

Under the CPSIA, a "children's product" is any product intended primarily for use by children twelve years old or younger. The CPSIA thus treats all products intended primarily for use by children under thirteen the same, regardless of whether they are intended for one-year olds or twelve-year olds. Recognizing the substantial difference in risk presented by the same products to different age groups, CPSC staff have suggested to the Commissioners that lowering the age range of products impacted by the CPSIA would be one of the most efficient ways to amend the law in order to exclude those products which many believe should not be impacted.

The 12-and-under age range affects many products that are also used by teenagers, thus creating enforcement difficulties over marginal products. Producers argue that the products are primarily intended for children age thirteen and older, and the Commission examines marketing and other factors to assess the claim. Some blurring of the age lines will happen regardless of the age cut-off, but there are many more products subject to this uncertainty for "tweens" (e.g., certain sporting goods, apparel, etc.)

In addition to enforcement difficulties, the benefits of the law are vastly reduced as applied to products for older children who are well past the age when they mouth things or constantly put their hands in their mouths. Thus, Congress could amend the statute to apply only to products primarily intended for children under age six, while giving the agency discretion to raise that age limit for particular materials or categories of products that are found in the future to pose a risk to older children. And in any event, the CPSC would retain the authority to issue a stop-sale order or to recall any product determined to pose “substantial product hazard” under the FHSA.

➤ Eliminate third-party testing and certification requirements:

As stated previously, the law’s third-party testing, certification, tracking and labeling requirements are the most burdensome for small manufacturers. They are also unnecessary for verifying compliance, particularly given the agency’s improved traditional enforcement tools. As a result, Congress could eliminate current third-party testing and certification requirements all together, allowing manufacturers to test in-house and/or in the best way they know how to determine compliance. The Commission would retain the discretion to impose third-party testing requirements on products with a risk that such testing would address.

At the same time, this Subcommittee can also prevent the law’s onerous testing requirements from going into effect by withholding funding from the Commission for the purpose of promulgating regulations to implement any further third-party testing and certification requirements of the CPSIA.

2) Eliminate the 5-member Commission and put the agency under one Administrator:

I believe the CPSC could be run more efficiently by one Administrator, rather than a Commission of five or even three. In fact, similar proposals have been considered in the past: <http://www.gao.gov/products/T-HRD-87-14>. Managing a small agency simply does not require more than an Administrator. Additionally, I have confidence that Chairman Tenenbaum (or a future Administrator) would be able to run the agency much more efficiently without the pressures from her Democrat and Republican colleagues, who wish constantly to influence her actions in one direction or another. Reducing from five Commissioners to an administrator would save the substantial costs of office space, Commissioner and staff salaries, and all other expenses associated with a Commissioner’s office.

The Chairman is already solely accountable for all of the agency’s core functions, including setting the rulemaking agenda, public relations, human resources duties, and budgeting. The other four Commissioners may be asked to sign off on these things from time to time as a formality or to provide input, but ultimately all accountability lies with the Chair.

Rulemaking involves the participation of five Commissioners. However, I would argue that this “participation” rarely involves more than duplicative analytical efforts—all of which usually result in a 3-2, party-line vote. This also means five different Commissioners, all their staffs (12 people), plus dozens of technical staff and lawyers are reviewing, editing and analyzing the exact same rule-making document. Moreover, despite hours of effort by me and my staff, many of the Commission’s largest regulations approved by the Majority have actually become *worse* through the process rather than more balanced—simply because at the end of the day, the Majority’s vote rules on any contentious, policy votes.

3) Public Database – require reforms to the Database Rule to ensure that incident reports are verifiable and useful.

Finally, the Commission’s Database Rule could be revised in order to ensure that incident reports going up on the new, public database are verifiable. Potentially inaccurate and unverifiable information is of no value to the Commission in its enforcement efforts, and useless to consumers seeking actionable product safety information.

Several features of the Majority’s rule guarantee a database populated by inaccurate information. The Majority has broadly defined the statutory categories of submitters to the Database to include groups and individuals with no direct knowledge of the incident or the person harmed. Such groups include consumer advocacy groups, trade associations and attorneys, for whom the accuracy of the incidents they report may be secondary to their own agendas, giving them no incentive to avoid the posting of false or misleading information.

The Database Rule also does not require sufficient information from the submitter to ensure that Commission staff or consumers can tell one type of product from another. Only the minimal amount of information is required, including manufacturer name and a “description of the product” which could include simply “baby stroller.” But one company may produce dozens of different models of baby strollers, some of which may no longer be in production. As a result, the limited product information required is insufficient to permit the Commission to investigate the claim, and of no value to a consumer seeking to identify a safe model of baby stroller.

The problems created by permitting inadequate product identification and allowing individuals and groups without firsthand knowledge to report alleged incidents of harm, are compounded by the rule’s failure to require the identification of the victim or product owner who experienced the risk of harm. As a result, the Commission’s staff may be unable to verify the accuracy of the report by speaking to the only party with actual knowledge of the product and incident. Moreover, because manufacturers’ bear the burden of proving a material inaccuracy, the Commission will publish a report that contains the

minimal required information, even where inadequate product identification or the absence of victim contact information leaves the report unverified. There are therefore likely to be many cases where a manufacturer will have good reason to believe a reported incident is either completely false or materially misrepresented (and companies routinely receive these types of mistaken or fraudulent claims), but neither the manufacturer nor the Commission will be able to obtain the information necessary to resolve the claim. Under those circumstances, the manufacture will be unable to meet its burden and the challenged, but unverified and unverifiable report, will remain on the database forever.

Inaccurate information will likely also be posted on the database - at least temporarily - even when there is sufficient information to eventually confirm the truth. That is because the Majority's rule requires the Commission to publish an incident report on the public database by the 10th day after sending notification to the manufacturer, notwithstanding that a manufacturer has adequately supported a claim that the report is materially inaccurate. Unless the Commission can conclude within 10 days that the report is materially inaccurate, it is published on the 11th day and remains on the Database while the Commission completes its investigation. And because there is no fixed period within which the Commission must complete its investigation, inaccurate information can remain on the site indefinitely.

Killing Small Businesses: CPSIA in the News, Letters and Public Comments

A MESS OF A LAW:

March 11, 2011

“President Obama has been on a campaign to shake his antibusiness reputation, so a good place to start would be to revisit the Consumer Product Safety Improvement Act, a mess of a law that has put new burdens on small businesses...”

<http://online.wsj.com/article/SB10001424052748703408604576164510202890494.html> “Get the Lead Out, Sir,” *The Wall Street Journal*, March 11, 2011.
Editorial.

HIGHER COSTS FOR SCHOOLS:

January 11, 2010

“NSSEA members sell educational supplies, equipment and instructional materials to schools, parents, and teachers...”

... the costs to schools, municipalities, libraries, and others of identifying and replacing such books would be extremely high and there is no reason to impose such costs given the lack of identifiable risk.

... While we applaud the efforts the CPSC has made to find solutions for small businesses... we believe the CPSC could do more if given more discretion by Congress. The alternative is the elimination of many valuable educational toys and products, some manufactured in low volume for niche markets (such as the deaf, blind, or otherwise differently-abled children) and typically not supplied by the huge multi-national toy manufacturers.”

Letter from the NSSEA (National School Supply and Equipment Association) to
Commissioner Northup, January 11, 2010

HIGHER COSTS FOR PRODUCTS WITH NO LEAD RISK:

October 13, 2010.

“The government wants to regulate Hannah Montana CDs and DVDs. The bureaucrats at the Consumer Product Safety Commission (CPSC) insist that the discs marketed to children be tested for lead, but when the same young starlet churns out raunchier material under her real name, Miley Cyrus, they will escape scrutiny. Never mind that the same 10-year-olds will likely end up buying both products.

“...Never mind that Hannah Montana's fans aren't likely to eat their DVDs, the latest red tape makes no distinction between products where lead is likely to be consumed and those where it isn't.”

<http://www.washingtontimes.com/news/2010/oct/13/bureaucrats-way-out-of-tune/>
“Bureaucrats way out of tune,” *Washington Times*, October 13, 2010.

PUNISHING SMALL BUSINESSES, WHILE MATTEL AND THE BIG GUYS SQUEEZE OUT THE COMPETITION:

June 17, 2010

"Now Mattel is testing and making toys without any trouble at all, and those of us who were never the problem are in danger of losing our businesses," says Hertzler, who runs EuroSource, based in Lancaster, Pa., with his wife and two sons...

“Nearly two years after the safety law was enacted, Congress and the Consumer Product Safety Commission are still struggling to reduce its burden on small businesses while eliminating the risk of lead and phthalates in children's products.”

http://www.usatoday.com/money/industries/retail/2010-06-17-productsafety17_ST_N.htm “Lead testing can be costly for mom and pop toy shops,” *USA Today*, June 17, 2010

BORDERING ON RIDICULOUS:

June 17, 2010

...“What the law should be about is ensuring safe products,” says Edward Krenik, a spokesman for the children's product alliance. “We've crossed over into ridiculousness.”

http://www.usatoday.com/money/industries/retail/2010-06-17-productsafety17_ST_N.htm “Lead testing can be costly for mom and pop toy shops,” *USA Today*, June 17, 2010

REGULATION FOR REGULATIONS' SAKE

November 8, 2010

“Regulation for regulations’ sake, where there is no inherent change to a bill of materials, a process or a product indicated after extensive, statistically significant testing across multiple points of input and verification, is simply wasteful.”

American Home Furnishings Alliance
November 8, 2010 – Letter to Commissioners

MATTEL FINDS CPSIA A CHALLENGE – HOW MUCH MORE FOR SMALL BUSINESSES?

November 9, 2009

“Officials of the toy manufacturer, Mattel, met separately with two CPSC commissioners November 3 to talk about how challenging it was for Mattel to comply with the CPSIA...

Peter Biersteker, a lawyer for Mattel with the law firm Jones Day in Washington D.C., said his client is finding the CPSIA difficult to decipher... "It's a lot of work. I don't know how smaller companies do it," Biersteker told Commissioner Robert Adler.

Despite Mattel's large team of in-house lawyers, he said, the company needed to hire outside lawyers to help understand the CPSIA. He said Mattel holds weekly conference calls on the issue, discussing how to comply with the act while remaining "cost competitive."

“Mattel Finds CPSIA to be a Challenge,” *Product Safety Letter*, November 9, 2009.

COMMISSION ACTION ADDS TO CPSIA'S PROBLEMS:

August 16, 2010

“The latest dictates from the Consumer Product Safety Commission (CPSC) will drive up the cost of manufacturing products intended for children. The agency adopted a pair of new rules in July and August implementing the Consumer Product Safety Improvement Act of 2008, but as drafted, these regulations will force companies to waste time and money on redundant testing programs solely for the entertainment of bureaucratic busybodies.

... The redundant examinations, mostly checking flammability, can be prohibitively expensive. For instance, the regulations could require a manufacturer to build a queen-sized-bed prototype of a baby's crib just so it can be tested in an independent lab. Yet each of the component parts - the crib-sized mattresses, blankets and all other component parts - already are individually tested for the same hazards when manufactured.”

Editorial: “The Red Tape Stimulus,” *Washington Times*, August 16, 2010
<http://www.washingtontimes.com/news/2010/aug/16/the-red-tape-stimulus/>

EVEN THE NEW YORK TIMES SPOTLIGHTS THE UNINTENDED CONSEQUENCES OF THE CPSIA:

September 28, 2010

“... a new federal crackdown on dangerous toys has left some in the industry crying foul and not wanting to play.”

“...Critics point to provisions in the law that they deem ludicrous. For instance, a paper clip that is included in a science kit for schoolchildren would have to be tested for lead. But a teacher can walk into any drug store and buy a box of paper clips that would not be subject to the same testing.

Similarly, a lamp that is festooned with cartoon characters would have to be tested, but a lamp without the characters would not.”

<http://www.nytimes.com/2010/09/29/business/29toys.html> “Toy Makers Fight for Exemption From Rules,” *New York Times*, September 28, 2010

SCIENCE KITS ARE “NOT BANNED” – BUT THE TOOLS USED INSIDE THEM ARE!

October 1, 2010

“The science kit makers had asked for a testing exemption for the paper clips and some other materials. On Wednesday, in a close 3-2 vote, the commission declined to give them the waiver they sought.”

“...After the science kit vote, CPSC Chairman Inez Tenenbaum sought to reassure people that, “There is nothing in this rule that bans science kits.”

Right. But while the commission vote doesn't ban the kits, manufacturers say it may crimp the supply of kits for elementary school children.”

<http://www.lvrj.com/opinion/goodbye-to-chemistry-sets-104139059.html>
“Goodbye to chemistry sets,” *Las Vegas Review Journal*, October 1, 2010.
Editorial.

FURNITURE MANUFACTURERS FACED WITH ADDED COSTS, ZERO SAFETY BENEFIT TO CHILDREN:

November 8, 2010

“...there has not been a corresponding benefit in the improved safety of children’s furniture for children. All the representatives told you that their respective companies have not had to change a single material they use in the manufacturing of their children’s product lines since they began testing to CPSIA in 2008....The testing is simply being done to attempt to prove a negative.”

American Home Furnishings Alliance

November 8, 2010 – Letter to Commissioners

FURNITURE MANUFACTURERS FACED WITH ADDED COSTS, FORCED TO CUT JOBS:

November 8, 2010

“The majority of the annual costs will be in the record keeping requirements because none of the companies have the requisite IT infrastructure to handle the tracking of test reports per batch... Hooker estimates that it will cost them from \$350,000 to \$400,000 per year. Furniture Brands International said this will cost them over \$4.5 million per year which is more than the profits from their best quarter in the last 2.5 years. In addition, this company must invest an additional \$2 million in start up costs for setting up the production testing, programming computer systems to work with existing systems, and hiring and training employees for the administration of the CPSIA.”

To offset these new costs, the company is forced to consider these choices: 1) shut down a small domestic plant which will mean the loss of 64 full time and 30 temporary US jobs; 2) shut down a larger domestic plant which will mean the loss of 384 US jobs; 3) significantly increase prices to offset the loss in revenue making them less competitive; 4) offer a lower quality product... or 5) shut down all domestic production which incorporates any finishing processes, which will mean the loss of approximately 460 US jobs.”

American Home Furnishings Alliance
November 8, 2010 – Letter to Commissioners

NO MORE MOM AND POP TOY SALES:

July 7, 2010

“The second program involves making wooden toys that are given to the church and other charitable organizations in the county for distribution to needy children throughout the year especially at Christmas. Last year we created over 700 toys. The idea that we now are required to have these handcrafted toys certified will bring the program to a halt.”

Dupage Woodworkers, Downers Grove, IL (July 7, 2010, Public Comment, Testing rule)

ECONOMIC IMPACT OF THE CPSIA - EXAMPLES 2009 and 2010

Costs associated with the CPSIA

1. In a letter from the CPSC to Representative Dingell in March 2009, Commission staff reported that the overall economic impact of the CPSIA would be in the “**billions of dollars range.**” The Commission also acknowledged that the testing and certification costs will fall disproportionately on small-volume businesses. (*Letter from Acting Chairman Nancy Nord to Representative Dingell, March 20, 2009*)
2. “**MAJOR RULE**” - CPSC acknowledges in its FY 2011 Regulatory Agenda that its main rule pertaining to the CPSIA’s testing requirements (**[PDF] CPSC Docket No. CPSC-2010-0038**) is a “major rule” under the Congressional Review Act, resulting in, or likely to result in: 1) an annual effect on the economy of \$100,000,000 or more; 2) a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or 3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.
3. In an article entitled “Makers Are Pushing Back on Toxic-Toy Law” (*Wall Street Journal*, March 5, 2009 <http://online.wsj.com/article/SB123621357629835121.html>), Joe Periera reported the following loss statistics:
 - Goodwill Industries to destroy **\$170 million** in merchandise.
 - Salvation Army expects to lose **\$100 million** in sales and disposal costs.
 - The Toy Industry Association estimates inventory losses at **\$600 million.**
 - Members of the Coalition for Safe and Affordable Childrenswear lost **\$500 million.**
 - The California Fashion Association estimates troubled inventory at **\$200 million.**
 - The Motorcycle Industry Council expects to lose 50,000 motorized bikes and four-wheelers worth at least **\$125 million.**
4. On March 11, 2009, *Playthings Magazine* reported updated data from the Toy Industry of America (see <http://www.playthings.com/article/CA6643505.html>), including:

- From a pool of nearly 400 manufacturers and 220 retailers, the TIA estimates **losses of \$2 billion in retail value.**
- More than **\$1 billion** in already shipped merchandise has been returned or is being withheld for return.
- More than **\$800 million** in compliant merchandise is at risk of return.
- **40%** of all respondents plan to eliminate jobs to pay for the CPSIA, with more than 1200 jobs reported to be in jeopardy.

“TIA: Safety Act puts \$2B crimp in toy biz”

3/11/2009

5. Separately, the Motorcycle Industry Council advised that total losses from disruptions in its members’ businesses could total **\$1 billion**. See:
<http://www.1st5ive.com/harley-davidson/motorcycles/2009/02/2452/new-lead-rule-could-cost-motorcycle-industry-1-billion-annually>

Examples of businesses closed due to CPSIA

Most names provided by the Handmade Toy Alliance

1. Whimsical Walney, Inc. – Santa Clara, CA
2. Fish River Crafts – Fort Kent, ME
3. Kungfubambini.com – Portland, OR
4. Baby Sprout Naturals – Fair Oaks, CA <http://www.babysproutnaturals.com/about/>
5. Gem Valley Toys – Jenks, OK
6. Angel Dry Diapers – Michigan
7. Abracadabra Educational Craft Kits for Kids – Bend, OR
8. Hailina’s Closet – Ellensburg, WA (thrift store)
9. Eleven 11 Kids
10. Perfect Circle Consignment – Bremerton, WA
11. [JenLynnDesigns](http://waytobow.blogspot.com/) - <http://waytobow.blogspot.com/>
12. A Kidd’s Dream – Conway, AK
13. Storyblox – New Vienna, OH
14. Phebe Phillips, Inc. – Dallas, TX <http://www.phebephillips.com/shopnow.htm>
15. Pops Toy Shop - mountains of Tennessee, Virginia, North & South Carolinas

Businesses that have stopped production of children’s lines due to CPSIA

Most names provided by the Handmade Toy Alliance

1. Creative Artworks – Greenwood, AK
2. Craftsbury Kids – Montpelier, VT
3. “Pockets of Learning” *Special Needs Products Being Driven from Market By Testing Costs – Rhode Island*
4. Creative Learning Connection

5. Giverny, Inc / Mini Me Geology
6. HABA
7. Challenge & Fun, Inc. -
<http://online.wsj.com/article/SB10001424052748703478704574612573263963560.html>
8. Hands and Hearts Far East History Discovery Kit – Greenwood, SC
9. Moon Fly Kids – Las Vegas, NV

Businesses that closed and list the CPSIA as one of the factors

Most names provided by the Handmade Toy Alliance

1. Due Maternity – San Francisco, CA
2. Frog Kiss Designs – Fairfield, CT
3. Waddle and Swaddle – Berkley, CA
4. Lora’s Closet – Berkley, CA
5. Baby and Kids Company – Danville, CA
6. Baby and Beyond – Albany, CA
7. Obabybaby – Berkley, CA
8. Bellies N Babies – Oakland, CA
9. Oopsie Dazie - <http://www.oopsiedazie.com/>
10. Bears on Patrol – not a business, but program by police departments to hand out stuffed animals to scared children -
<http://learningresourcesinc.blogspot.com/2009/10/cpsia-cpsia-casualty-of-week-for.html>
11. Simple Treasures

Other companies hurt by retroactivity of the CPSIA’s lead content ban:

1. Gymboree – “change in safety requirements related to levels of phthalates rendered about 1.7 million of its inventory obsolete”
 - i. <http://www.reuters.com/article/idUSBNG44760220090305>
2. Constructive Playthings, Inc – ““We have millions of dollars worth of merchandise sitting in 30 40-foot-long trailers waiting to be hauled out to a landfill somewhere,” says Michael Klein, president of Constructive Playthings Inc....The banned products include beach balls, inflatable toy guitars and blow-up palm trees.”
 - i. <http://online.wsj.com/article/SB123621357629835121.html>

Businesses no longer exporting to the U.S. due to the CPSIA

Most names provided by the Handmade Toy Alliance

1. Hess – Germany

2. Selecta – Germany <http://www.zrecommends.com/detail/breaking-news-selecta-to-cease-us-distribution-due-to-cspia/>
3. Finkbeiner – Germany
4. Saling – Germany
5. Simba – Germany
6. Bartl GmbH dba Wooden Ideas – Germany
7. Woodland Magic Imports – France
8. Brio
9. Helga Kreft – Germany
10. Eichorn – Germany
11. Kapla
12. Kallisto Stuffed Animals

EuroToyShop – On this company’s homepage, you will find links at the bottom with a list of “endangered toys” or “extinct toys” that are still sold to children in Europe but which the company will no longer be able to sell in the U.S. due to the CPSIA.

Endangered Toys The CPSIA (Consumer Product Safety Improvement Act) has unintended consequences. Now, some European toys are no longer available in the USA.

<http://www.eurotoyshop.com/>

Associations that have voiced concerns to the Commission regarding CPSIA’s costs (list is not exhaustive):

Association of Home Appliance Manufacturers
 International Sleep Products Association
 Retail Industry Leaders Association
 Specialty Graphic Image Association
 American Coatings Association
 The Carpet and Rug Institute
 National Retail Federation
 Association of American Publishers
 Consumer Healthcare Products Association
 Toy Industry Association
 Glass Association of North America
 American Honda Motor Company, Inc.
 Society of the Plastics Industry, Inc
 American Home Furnishings Alliance
 Sporting Goods Manufacturers Association
 Handmade Toy Alliance
 Consumer Specialty Products Association
 Footwear Distributors and Retailers
 Fashion Jewelry Association
 Craft and Hobby Association

National Association of Manufacturers
Halloween Industry Association
American Apparel and Footwear Association
Juvenile Products Manufacturers Association
National School Supply and Equipment Association
National Federation of Independent Business
Promotional Products Association International
Bicycle Product Suppliers Association