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**Subject:** Important Misconceptions about the CPSIA

Popular support for the CPSIA is founded on the premise that safety in children's products needs a radical overhaul. Media-fed revulsion over a wave of toy recalls in 2007 led to a popular misconception that everything was wrong with toy safety and therefore, with the safety of children's products in general. In this email, I will challenge that misconception, explain how the excessive breadth of the CPSIA is self-defeating and describe necessary revisions to achieve the critical mission of the CPSIA - to effectively improve safety in children's products.

The CPSIA Casts Too Wide a Net. The expansive CPSIA definition of “children’s products” incorporating products intended for use by children up to age 12 needlessly broadens the class of products subject to the new safety standards without improving safety. This broad definition has no basis in common experience with childhood safety hazards or in childhood injury statistics. In fact, it is likely that in expanding the definition of children’s products, the CPSIA has become self-defeating - with so many imaginary safety issues and novel safety requirements for regulators to oversee, real safety issues will be lost in the noise. That would be the ultimate irony, as the original 2007 dissatisfaction with the CPSC asserted that it did not lavish enough attention on real safety hazards. Now, courtesy of the CPSIA, they won’t be able to.

By and large, safety from lead and phthalates is an early childhood issue. The safety concerns related to these product defects depend on ingestion, which is known to be an early childhood risk. This fact is tacitly acknowledged in the marketing materials of the various public interest groups agitating for improved safety standards, namely U.S. Public Interest Research Group (PIRG), [www.HealthyToys.org](http://www.HealthyToys.org), Consumer Federation of America, Consumers Union, Kids in Danger, National Research Center for Women and Families, Public Citizen, Illinois PIRG, Washington Toxics Coalition and Natural Resources Defense Council. In EACH case, these organizations use images of children under three to illustrate their articles and position papers on children’s product safety (see attached). The most common product illustrated is a rubber duck, a toy which is age appropriate for children under one year of age. Several organizations in fact display images of toddlers with rubber ducks in their mouths. While this imagery may tug on heart strings – it does not prove that children up to age 12 face safety issues from lead or phthalates – it just manipulates the reader into believing there is some sort of massive safety crisis under foot. Presumably, if these public interest groups felt strongly that lead or phthalates hazards crept into higher age groups, they might have illustrated 10-year-olds sucking on telescopes, licking the soles of their shoes or munching on a particularly delicious chapter in Harry Potter. In fact, their own documents reinforce the common sense, long-accepted principle that young children face special risks of toy safety and that older children (and adults) are not exposed to similar risks.

By extending the reach of the law to ALL categories of goods intended for children under 12, the CPSIA pulls in an entirely new, vast expanse of products not previously recognized as needing safety regulation. The list is quite extensive, including footwear, carpets, clothing, bedding, luggage, lamps, toys, books and magazines, consumer electronics, school supplies, office supplies, jewelry, housewares, sports equipment, and so on. With its enormous sweep, the CPSIA presents a “false promise” of better safety - Congress markets the notion that in applying safety standards to more items, we must necessarily be “safer”. Unfortunately, this argument overlooks the fact that safety standards need a nexus with safety risks to be truly effective. When applied to products or situations that don’t pose any real safety risk, the new standards become irrelevant in the practical sense and are then an unaffordable cost to society. [The excruciating cost of CPSIA compliance has been documented in earlier correspondence.] The application of the CPSIA to laughable hazards like licking shoes or sucking on telescopes is unfortunate and should not be permitted to stand.

Illinois and California have it Right – and the CPSIA has it WRONG. All safety issues are not made equal, and thus a one-size-fits-all approach to safety regulation cannot work well for consumers, industry or regulators. It is certainly possible to identify situations or product classes in which common sense would dictate that special safety rules are needed. A good example is lead-in-paint, which presents a known and obvious hazard to children. [Of course, lead-in-paint has been illegal for decades.] The longstanding approach of safety regulators has been to identify (and define) actual safety risks, and then develop appropriate safety rules. The fact, for instance, that cribs and bassinets require a special approach for safety does not mean every other product intended for children 12 and under must therefore be subject to the same rules. The CPSIA has not opted for this careful approach to tailored safety regulation - but it should.

Legislation in the State of Illinois, introduced by Attorney General Lisa Madigan, has provided a framework for this approach. Illinois SB 2860 (awaiting signature into law) defines three categories of items for concern with lead, namely:

- a. Child care articles,
- b. Children's jewelry, and
- c. Lead-in-paint (on toys)

Illinois, as one of the most aggressive states attempting to regulate children's product safety, focuses its new law on the leading causes of possible lead poisoning among American children. [In fact, since SB 2860 is a consumer "right to know" law, it is not a model for the more substantive CPSIA. In this analysis, I am simply commenting on its careful focus on specific risks.] By zeroing in on real safety issues, Illinois SB 2860 models a structure for the CPSIA to have a real impact on safety. Not only does Illinois SB 2860 limit the categories of goods subject to its new requirements, but it also carefully defines lead hazards in each remaining category of goods. Illinois SB 2860 implicitly rejects the notion that lead is always a risk irrespective of circumstances. It is notable that the Coalition to End Childhood Lead Poisoning states that lead-in-paint is the primary lead risk factor for children. Since lead is ingested in the form of dust, only those products or situations that create lead dust should be a health concern. Their "leadsafe" website identifies principal sources of lead dust as leaded house paint, lead-in-paint on toys, soil and airborne industrial emissions (see [http://www.leadsafe.org/content/kids\\_and\\_lead/index.cfm?pagelid=57](http://www.leadsafe.org/content/kids_and_lead/index.cfm?pagelid=57)). Entrained lead (total lead) is not identified as a health hazard by this organization on its website. The CPSIA can and should narrow its focus on lead to those circumstances that have a real nexus to potential harm.

California's phthalates law (AB 1108) provides a different legislative model for consideration. AB 1108 promulgates a new phthalates standard (a ban above certain levels of six different kinds of phthalates) but omits the myriad bureaucratic requirements which accompany the CPSIA standards. See <http://www.legisweb.com/calmodel/Retrieve.asp?ref=urn%3Acalm%3A2007%3Aab1108%3Adoc> The simpler California model for legislation substantially reduces the cost of compliance, but nevertheless clearly assigns responsibility for meeting standards. The California model of imposing simple standards without extensive implementing rules, if imparted to the CPSIA, would eliminate needless waste from paper-pushing, expensive testing to verify what is already known, ill-conceived lot markings and so on. A simpler, more focused CPSIA would also be much easier for the CPSC to enforce and for manufacturers, distributors and retailers to understand and implement.

It goes without saying that there might need to be specific exceptions to the generalized approach I advocate. Certain product categories might require unique approaches, as highlighted above. Some testing, such as lead-in-paint on toys, may be needed to reassure the public on known risks. Public hearings should be held to solicit the views of industry participants and regulators on the most appropriate approach to a simplified regulatory scheme.

How Would a Simpler CPSIA Enhance Safety? A simpler, more focused CPSIA would produce better safety results for several reasons:

- a. Simply-stated standards would be easier to understand and to comply with, and much easier to enforce. Costs would fall for manufacturers and other market participants as they exercise business judgment on how to best devote their resources to compliance.
- b. Better focused safety "targets" will release numerous categories of products from direct regulation under the law, but not from the regulatory authority of the CPSC. Thus, while the "hazard" of licking shoes would presumably not fall within this new CPSIA, the CPSC would retain

the authority to regulate anything that presents a real safety risk. This regulatory power would put the CPSC in a position to expand the reach of safety rules to new product groups if the need became apparent.

c. Fewer rules and fewer targets will allow the CPSC to reorganize to patrol markets more effectively. We recommend that the CPSC consider reorganizing into teams devoted to different grades of "safety threats" to facilitate quicker responses, better analysis, the accumulation of more expertise, better research and issue anticipation, more dialogue with industry, and so on.

d. A stripped down CPSIA will make U.S. industry more efficient and competitive internationally. The freedom from wasteful expense will allow U.S. companies to devote more investment to real safety issues.

Conclusion. The CPSIA can have a positive impact on safety in the United States but not unless legislators recognize the fundamental errors in the current design of this law. If the CPSIA were remodeled along the lines of the streamlined Illinois and California formats, the new law would be in a much better position to achieve its goals of better consumer safety. In addition, law-abiding companies serving children's product markets would be able to survive the imposition of the new law, continuing to add value, provide employment and contribute to society while keeping kids safe. This is an admirable goal, and an achievable one. I call on Congress to urgently call hearings on needed changes in the CPSIA and to work toward substantive technical amendments that will facilitate trade without sacrificing safety.

Sincerely,

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