
From: Rick Woldenberg

Sent: Wed 1/14/2009 6:54 AM

To: 'Christian.Fjeld@mail.house.gov'; 'robin.appleberry@mail.house.gov'

Cc: 'brian.mccullough@mail.house.gov'; 'shannon.weinberg@mail.house.gov';
'william.carty@mail.house.gov'; 'mjpg@brown-gidding.com'; Etienne Veber;
'challengeandfun@gmail.com'; 'kathleen@fashion-incubator.com'; 'Stephen Lamar
(slamar@apparelandfootwear.org)'; 'Nancy Nord (nnord@cpsc.gov)'; 'Joe Martyak
(jmartyak@cpsc.gov)'; 'Mary Toro (MToro@cpsc.gov)'; 'tmoore@cpsc.gov'; 'Patrick Magnuson
(patrick.magnuson@mail.house.gov)'; 'Carter Keithley (ckeithley@toy-tia.org)'; 'Rick Locker
(fblocker@LockerLaw.com)'; 'Desmond, Edward'; 'David Callet (calletd@gtlaw.com)';
'ravitz.georgia@arentfox.com'; Dennis Goldman; 'Pamela Gilbert (pamelag@cuneolaw.com)';
'Robert Adler'; 'Dan Marshall (dan@peapods.com)'; 'erik.lieberman@mail.house.gov';
'cfalvey@cpsc.gov'; Judy Bailey (judyth.bailey@mail.house.gov); adele@narts.org;
kmchugh@astratoy.org

Subject: CPSIA - "What do we do?"

In my continuing effort to keep you informed about real world attempts to live with the CPSIA, I wanted you to see the below correspondence with one of Learning Resources' sales reps. As a bonus, the email trail includes the Wall Street Journal editorial published this morning entitled "Pelosi's Toy Story".

This correspondence is the reality that we, and many thousands of other businesses, currently face. Many distributors and retailers are ignoring the new standards being imposed on February 10 and going directly to the August standards. This has been predicted in writing to you in earlier correspondence. While I am sure some people will be rubbing their hands in glee, with visions of greater "safety" as early as four weeks from now, companies like ours are in legislation-induced disarray. We have no choice but to skip to the new August standards. Is that fair? Didn't Congress want to give us time to make that transition? Sell off our inventory, blah blah blah. Well, the marketplace is jumping ahead, so we have no such choice or flexibility. And WHY is this happening? It's obvious and it's old news - the September 12 opinion of Cheryl Falvey, General Counsel of the CPSC, states that the lead standards will apply to existing inventory upon their effectiveness date. In other words, the law makes existing inventory in August subject to this same retroactive effect on the new, lower standards. Stores now are refusing to buy anything not certified to this standard now to avoid problems later. We do not regard this as an economic stimulus package.

And how do you expect us, in the real world which is where we reside, to deal with this dilemma? I hope you are not thinking "That's a market issue, not a legal issue - just tell them that the standards don't go into effect until August. This isn't Congress' fault." If you did have that thought, even for a second, you are in denial of reality. Out here in the real world, the customer is always right. In our case, please accept that it is impractical for us to segregate our customers into categories like (a) customers applying August standards, (b) customers applying February standards, and (c) customers who don't care or haven't heard of the law, and manage our inventory accordingly. So customers like The Doll Hospital below have a huge impact on how we have to run our business. While you may think this is not your fault or your problem, I beg to differ. I think you had something to do with the law that created this mess.

Welcome to our world. At this point, we are looking to hire experts in Chaos Theory.

Sincerely,

Richard Woldenberg
Chairman

Learning Resources, Inc.
rwoldenberg@learningresources.com

Carle,

Thanks for sharing this email. You are of course entirely right to be concerned. The chaos created by this law is a problem in and of itself. I wish Congress had ears

Regarding your specific question, Learning Resources and Educational Insights have conducted a thorough review of their products using XRF technology to form a reasonable basis for our continuing view that our products and existing inventory comply with the standards. We are anticipating the future standards in this analysis. We note the concern of your customer over holding inventory that might become illegal later. This shameful risk is being imposed by the government and will reverberate nationally until somebody wakes up in Washington. It is absolutely astounding to me that Congress is oblivious to the predictable response of the marketplace to the poorly-conceived retroactively-applied reducing standards. Maybe if they had to live with such standards themselves, they might get it. I wish someone would stop by the Congressional gift shop with a XRF gun just to see what they find.

We will certify to the standards online and with customer communications before the deadline. Tell your customers not to worry. They also need to understand that the completely unreasonable deadlines of the government are making an orderly process impossible. Realistically, everyone must be patient.

The visibility of this issue is rising, thankfully. See below. Perhaps we will live long enough for relief from the government. The current difficult transition period is a national self-imposed injury as existing inventory is not known to present a material human health risk. Write Congress every day!

Rick

<http://online.wsj.com/article/SB123189645948879745.html>

WALL STREET JOURNAL
REVIEW & OUTLOOK
JANUARY 14, 2009

Pelosi's Toy Story

In the tale of "The Velveteen Rabbit," a child's stuffed toy can only become "real" once all its fur has been loved off, and it's missing a button or two. If only. Under a new law set to go into effect February 10, unsold toys, along with bikes, books and even children's clothing are destined for the scrap heap due to an overzealous law to increase toy safety.

The damage comes from new rules governing lead in children's products. After last year's scare over contaminated toys made in China, Congress leapt in to require all products aimed at children under 12 years old to be certified as safe and virtually lead-free by independent testing. The burden may be manageable for big manufacturers and retailers that can absorb the costs of discarded inventory and afford to hire more lawyers. Less likely to survive are hundreds of small businesses and craftspeople getting hit with new costs in a down economy.

Because the new rules apply retroactively, toys and clothes already on the shelf will have to

be thrown out if they aren't certified as safe. When Congress passed the legislation in August, House Speaker Nancy Pelosi boasted that "With this legislation, we will not only be recalling, we will be removing those products from the shelves." Yeehaw. While large retailers may ask manufacturers to take back uncertified products, independent stores may be stuck with inventory that is suddenly illegal to sell. One Web site, NationalBankruptcyDay.com, is cataloging the costs faced by small businesses.

Small batch toymakers, many of whom make old-fashioned wood and sustainable products, say the testing requirements -- which can cost thousands of dollars -- are unaffordable. At Etsy.com, a Web site where entrepreneurs can sell their handmade items, many expect the new law to put them out of business. Also ensnared are companies that make products like bikes or childrens books. Because they aren't toy companies, many were caught by surprise when it became clear the law would apply to them. The only lead that can be found on childrens bikes is on the tire, where it poses no risk to a child not in the daily habit of licking the wheels. And while childrens books may contain no more noxious materials than paper and ink, under the new rules they would still need a test to prove it.

Responding to the uproar, CPSC has issued a rule-making notice that would exempt natural materials from having to be certified as lead-free -- but it will need to go further to avoid an economic trainwreck in February. The real responsibility lies with Congress, which rushed through "kid-friendly" crowd-pleaser legislation without considering the consequences. Despite warnings from small businesses, Illinois Representative Bobby Rush and California's Henry Waxman pushed provisions that now require pulling products from the shelf. Mr. Waxman demanded lead standards without allowing compliance to phase in.

Now even their allies are skittering away from strict enforcement, fearing the looming fiasco could force Congress to amend the bill. Last week, consumer groups that once flogged the law, including Public Citizen, Kids in Danger, and the Naderite U.S. Public Interest Research Group, wrote a letter urging the CPSC to "take the initiative . . . by providing prompt, common-sense, and explicit interpretations regarding exemptions to CPSIA." Now they tell us.

Congress has beaten down the CPSC for allegedly not doing enough about toy safety, but last year's toy law was an election-year overreaction by Congress. The Commission needs to implement the rules without putting more companies out of business in an already tenuous economy.

Please add your comments to the Opinion Journal forum
<<http://forums.wsj.com/viewtopic.php?t=4978>> .

From: Carle Wunderlich II [mailto:carle@besttoysinc.com]
Sent: Tue 1/13/2009 2:50 PM
To: Carle Wunderlich
Subject: FW: CPSIA Requirements - What do we do??????

Hello,
I am starting to be more concerned about these safety laws more than the economy. We are starting to get this type of request from our customers. (Below). It seems everyone I talk to have a different version of what is exactly happening come February 10. And will the toys on the shelves of our stores be OK to sell? Will the toys on your shelves to OK to ship. Any info you have would be greatly appreciated. Thank you in advance.

Carle R. Wunderlich II
Best Toys Inc.

Office 630-493-4540
Fax 630-493-4551
Cell 630-609-7281
Home 630-369-0482

Service is our Priority

Carle,

I am sure that you are well aware of the new CPSIA requirements* regarding legal limits for the allowable lead content in any product intended for children age 12 and under. We believe your company has probably already done extensive testing for lead in all products you have sold us; however, we need to obtain written confirmation of this. It serves our mutual interests to work together to classify all such on-hand product, as to your company's degree of certainty that they are not hazardous products under CPSIA. We are looking to get compliance information on all products that we currently have in stock that may have been produced or imported prior to November 12, 2008.

Attached you will find a report listing all of the Best of Best items that we currently have in stock. We need you to complete this form providing us with all of the compliance information for each individual product. It is very important that you advise us immediately on any non-compliance with the new requirements. Since many of the products that we have now and will be receiving in could remain in inventory after August 14, 2009, we must go directly to the <300ppm total and <90ppm surface paint standards as of February 10th.

Please complete the attached form and email it back to us at CPSIA@dhtss.com within the next 10 days. We appreciate your immediate attention to this matter. Please feel free to contact me directly with any questions.

Thank you,

Lori

Lori Lehman
CPSIA Liaison
The Doll Hospital
3947 W. 12 Mile Road
Berkley, MI 48072
(248) 543-3115 x241
CPSIA@dhtss.com

*Any product that is produced or imported into the USA after November 12, 2008 must have a Certificate of Compliance (COC) that it contains <600ppm of total lead. After February 10th, we must be able to provide comprehensive laboratory testing for each product to show that total lead is <600ppm in every part of the product. After August 14th, the allowable total lead is reduced to <300ppm and the lead in surface paint must be <90ppm.