



May 12, 2010

To:

The Honorable Bobby Rush  
Chairman, Subcommittee on Commerce, Trade and Consumer Protection  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Ed Whitfield  
Ranking Member, Subcommittee on Commerce, Trade and Consumer Protection  
2322A Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Henry Waxman  
Chairman, Committee on Energy & Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Joe Barton  
Ranking Member, Committee on Energy & Commerce  
2322A Rayburn House Office Building  
Washington, D.C. 20515

CC:

Robin Appleberry  
House Energy and Commerce Committee  
Brian McCullough  
House Energy and Commerce Committee  
Inez Tenenbaum  
CPSC Chair  
Nancy Nord  
CPSC Commissioner  
Thomas Moore  
CPSC Commissioner  
Anne Northup  
CPSC Commissioner  
Robert Adler  
CPSC Commissioner

Re: The Consumer Product Safety Enhancement Act (CPSEA)

To the Leadership of the House Commerce Committee:

Thank you again for the opportunity to testify before your committee and for your continued attention to the needs of our small businesses. We would like to reiterate our position on the CPSEA and the relief we are seeking for our members.

We have previously endorsed the CPSEA because it is the only opportunity currently available to save small batch manufacturers from extinction after February 10, 2011, when the CPSC's stay of enforcement of third party testing requirements expires. Under the CPSIA as it currently stands, many of our members are substantially limiting the products that they offer--some foregoing children's products altogether--while others are laying off employees or limiting their business growth. .

We have stated clearly that the CPSEA can and should be improved to reduce unnecessary regulatory burdens on small businesses without compromising safety. The CPSEA as currently written will likely save some of our member businesses. With improvements, however, you can save almost all of them. For the record, we would like to review the improvements we would like you to consider.

First and foremost, we would like the CPSEA to clearly state that small batch manufacturers are exempt from third party testing requirements. While report language to that affect would be helpful, a more explicit exemption within the language of the bill itself would provide more immediate and substantial relief. You can accomplish this by allowing:

- the use of XRF testing as an alternative testing method for lead in paint and lead in substrate
- alternative testing methods for products intended for use in classrooms or for children ages 7-12
- EN-71 testing as an alternative testing method
- CPSC rulemaking to allow for alternative testing methods based on risk analysis
- exemptions for small batch toymakers from ASTM F-963 testing

This language should be in the bill itself, not just in the report language. In the intervening days since our initial endorsement of the CPSEA, we have heard conflicting answers from several different CPSC commissioners as to the commission's willingness or ability to provide affordable alternative testing methods for small batch manufacturers. If this bill is truly meant to benefit small batch manufacturers, it must be more clear and explicit in the exemptions it provides.

Second, we wish to reiterate our belief that alternative testing methods should be available to all companies. The Small Business Administration defines toy and clothing manufacturers with less than 500 employees as small businesses, which is far in excess of the CPSEA's \$1 million limit. If a revenue limit is used, it should be based only on income generated by the manufacture or importation of children's products without including other

unrelated business income. A manufacturer's ability to pay for testing any given product is a function of the revenue it generates from that particular product, not the overall size of the company.

Third, we stated publicly during the April 29 hearing that the functional purpose exemption for products exceeding 300ppm/100ppm lead will not benefit our members because of the narrow scope of the exemption and the cost required to obtain it. The CPSC should instead be given authority to make exemptions to specific materials or product categories based on risk analysis. For example, the commission should have the power to exempt brass as a material and children's saddles or microscopes as a product category. This is the only way in which small businesses would be able to take advantage of the functional purpose exemption.

Fourth, we believe that small batch manufacturers should be entirely exempted from mandatory labeling requirements.

Finally, we hope to settle any confusion regarding our intent in endorsing the CPSEA. We endorsed it as our only available alternative. We truly believe that many of our members will be forced out of business after February 10, 2011 without meaningful, clear reform provided by your committee. We believe that the CPSEA can and should be improved to better target risk and provide more comprehensive relief for our members, who were never the source of unsafe products in the first place.

We remain hopeful that the democratic process can prevail and that a meaningful and bipartisan reform of the CPSIA can be enacted. We urge members of the committee to mark up the CPSEA and allow open discussion within the product safety subcommittee. The CPSIA was a bipartisan bill—its reform should be, too.

You hold the livelihoods of hundreds of small businesses in your hands. Please, make this work.

On behalf of the 435 small business members of the Handmade Toy Alliance, we thank you again for your attention to this important issue.

Respectfully,

The Handmade Toy Alliance

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[www.handmadetoyalliance.org](http://www.handmadetoyalliance.org).

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