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January 7, 2009

The Honorable Nancy Nord
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Nord:

I would like to express serious concerns regarding the implementation of the Consumer Product Safety Improvement Act (CPSIA).

In recent years, unacceptably high levels of lead were found in a number of toys, prompting Congress to take an active and aggressive stance to reform product safety laws. The CPSIA made critical changes to outdated product safety standards and granted the Consumer Product Safety Commission (CPSC) necessary new authority to better regulate consumer products. I supported this legislation as a very important step toward ensuring that only safe and compliant products are sold to America's children.

However, I also believe that the mandates of the CPSIA must be carried out in a way that does not adversely affect the companies who are trying to produce and supply safe and compliant clothing and other products to our kids.

The CPSIA's new lead standard goes into effect on February 10, 2009. CPSC general counsel has interpreted this provision to mean that all children's products, including those that were legally produced before the law was enacted and available in stores, must comply with the 600ppm total lead limit. As a result of this retroactive application, many of my constituents are now forced to prove that the clothing they made months ago, which is safe and presents no hazard to children, is compliant with new regulations. Even a plain white tee shirt would have to somehow be removed from shelves, individually tested and replaced. This decision would mean that millions of dollars of safe clothing and toys will not be able to be sold, and the companies that own that inventory will bear huge costs. The compliance trap presented by this unfair situation must be remedied.

At the same time, the CPSC has so far been unable to issue final regulations to help my constituents understand how these new regulations are to be implemented. For example, we know that fabrics and yarns are inherently lead-free. Yet, no rules have been issued that would clarify that such components are exempt from testing. Moreover, the implementation guidance so far appears to prohibit testing at the component stage. The combination of these two

decisions is that children's clothing companies are forced to undertake costly, duplicative and unnecessary testing.

Finally, the confusion surrounding the implementation of this legislation has encouraged many retailers to develop their own rules interpreting these provisions. While I understand the CPSC is working with insufficient resources to implement a new law with tight deadlines, the lack of guidance is creating a confusing situation that is intolerable.

I fear that while this situation persists, my constituent companies will be forced to bear the costs of a product safety system that is not leading to improvements in children's safety or holding any gains for public health. This is particularly difficult for the small businesses who do not produce in bulk and who are not financially equipped to handle these new requirements. As a result, this legislation unfairly impacts many small, family-owned businesses at a time when our entire economy is struggling.

Improving product safety is the ultimate priority for all stakeholders. But we must move forward in an orderly way to reduce the negative impact on the business community. The February 10 requirements must be implemented prospectively and in a way that allows companies an opportunity to learn about, understand, and implement the product safety standards.

Thank you for your consideration.



Sincerely,

ANTHONY D. WEINER
Member of Congress