

Congress of the United States
House of Representatives
Washington, D.C. 20515

February 4, 2009

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

The Honorable Thomas Moore
Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Acting Chairman Nord and Commissioner Moore:

Thank you for your response, Acting Chairman Nord, to our letter of January 16, 2009.¹ We appreciate the update on what the Commission is doing to implement the Consumer Product Safety Improvement Act (CPSIA). Thank you also, Commissioner Moore, for your response, providing an explanation of the Commission's actions and inaction in recent months and offering insight into where the Commission may be headed in the months ahead.² We write to you in light of the Commission's recent decision to stay key aspects of the law and to urge you to take immediate further action.

Late on Friday, January 30, 2009, the Commission issued a one-year stay of enforcement of certain testing and certification requirements under the CPSIA.³ As we have stated, the concerns raised with implementation of the CPSIA are real and legitimate. This lengthy stay is unfortunate and we would have preferred to see the Commission provide more targeted relief. But we also understand that there is need for action. The stay appropriately does not affect the lead and phthalate limits in the law, which everyone agrees are critical to protect children.

¹ Letter from Nancy Nord to John D. Rockefeller, Henry A. Waxman, Bobby L. Rush, and Mark L. Pryor (Jan. 30, 2009).

² Letter from Thomas Moore to John D. Rockefeller, Henry A. Waxman, Bobby L. Rush, and Mark L. Pryor (Feb. 3, 2009).

³ Consumer Product Safety Commission, *CPSC Grants One Year Stay of Testing and Certification Requirements for Certain Products* (Jan. 30, 2009) (online at www.cpsc.gov/cpsc/pub/prerel/prhtml09/09115.html).

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Now the Commission can and should take further action before the February 10, 2009, deadline to (1) establish a clear timeline for its decisionmaking in the coming year, spelling out what the Commission will need to accomplish in order to fully implement the law and (2) address continued confusion in the marketplace. Without such actions in the next few days, this stay of enforcement may serve only to delay the safety accomplishments of the law without providing practical guidance to those who need it the most.

Timeline of Activities

The Commission should lay out a clear timeline for its actions in the coming year immediately. In the Notice of Stay of Enforcement of Testing and Certification Requirements approved last Friday, the Commission stated its belief that “the stay will give us the time needed to develop sound rules and requirements as well as implement outreach efforts to explain” the law’s requirements and applicability.⁴ The Notice identifies several specific issues that staff must address in the coming months, including possible exemptions from the testing requirements for inherently low-risk items, guidance on determining inaccessibility of component parts, and possible exemption of certain electronic devices from the lead limits.⁵ We agree that these and other matters “present complex scientific, technical, and procedural issues” and we believe that the Commission must resolve them carefully and methodically, based only on sound scientific evidence.⁶

This is precisely why the Commission must set a clear and realistic plan for dealing with each of these matters. The timing and sequence of the Commission’s decisions will have enormous impact, even before the stay expires. For example, the Commission is establishing a process through which low-risk materials and products may be exempted from the testing and certification requirements. Such a process must be finalized in time for various industries and stakeholders to make use of it before the testing requirements come into effect. In addition, now that it is clear that component part testing will be allowed in some circumstances, the complex issues regarding component part testing must be addressed with certainty well in advance of the new deadline for testing and certification, not only to enable manufacturers to adjust their own testing methods but also to allow the overall market to shift toward precertification of component materials. Such a shift is inevitable when the Commission finalizes its component part testing rule and will provide great relief to small businesses and hand crafters. However, the shift will not occur until the Commission acts.

⁴ Consumer Product Safety Commission, *Notice of Stay of Enforcement of Testing and Certification Requirements*, at 13 (Jan. 30, 2009) (online at www.cpsc.gov/library/foia/foia09/brief/stayenforce.pdf).

⁵ *Id.* at 6.

⁶ *Id.* at 6-7.

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Unfortunately, the January 30, 2009, stay of enforcement was issued without any real indication of when the Commission plans to address the important matters before it. Without a clear plan of action and timetable for decisionmaking, this stay of enforcement threatens to become a long-term derailment of the law, with no assurance that the critical safety net promised by the law will ever come into effect. Therefore, the Commission should publish a timeline before February 10, 2009, outlining its planned actions in the coming year and laying out specifically how these actions will result in smooth and effective implementation of the law when the stay expires.

Immediate Enforcement Guidance

In addition to a timeline, the Commission also must address continued confusion in the market, particularly with regard to the new requirements that take effect on February 10, 2009. As Acting Chairman Nord's statement on the stay acknowledged, the stay alone is not enough to address this confusion.⁷ Rather than look to Congress, however, the Commission should immediately use its authority to provide the same type of clear and specific guidance that has resolved similar questions of implementation in the past.

We specifically ask that you issue guidance on four major issues before February 10, 2009: overall enforcement policy; application to thrift stores; application to ordinary children's books and libraries; and application to fabrics and apparel. Such guidance will not require rulemaking or other protracted action by the Commission, and each requested action is achievable in the immediate future.

First, the Commission must issue a clear, accessible statement of overall enforcement policy, similar to that issued on December 15, 2008 with respect to enforcement of the new pool safety requirements.⁸ Such a statement would provide specific, easily understandable guidance about how the Commission will focus its enforcement efforts on high-risk areas. Small businesses, hand crafters, and a variety of other businesses that are confused about the immediate impact of the law on their operations will appreciate knowing the Commission's direction in this area.

⁷ Consumer Product Safety Commission, *Statement of Acting Chairman Nancy Nord on the Stay of Enforcement of Certain Testing and Certification Requirements of the Consumer Product Safety Improvement Act of 2008* (Jan. 30, 2009) (online at www.cpsc.gov/cpscpub/prerel/prhtml09/09115nord.pdf).

⁸ Consumer Product Safety Commission, *Virginia Graeme Baker Pool & Spa Safety Act CPSC Enforcement Position* (Dec. 15, 2008) (online at <http://www.cpsc.gov/businfo/pssaenforce.html>).

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Second, the Commission must provide specific, written guidance to thrift stores on how to comply with the law. We understand that the Commission already provides a compliance handbook for thrift stores and that Commission staff have worked to update that handbook based on the new law. This updated handbook should be distributed in order to offer precise guidance to a sector that faces much confusion about this law. The handbook would dispel the misconception that thrift stores and other retailers cannot comply with the law without testing or discarding mass volumes of inventory.

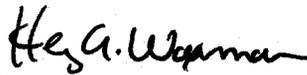
Third, the Commission should provide clear, accessible guidance on the law's application to ordinary children's books, as well as its application to libraries. Great confusion has surrounded this area of implementation and the Commission should issue plain-language guidance without delay. We understand that the Commission is considering an exemption to the testing and certification requirements for ordinary books, and we urge the Commission to decide that issue quickly and carefully, based on sound scientific evidence. While this rule is under development, expedited interim guidance could be beneficial to both retailers and libraries.

Finally, the Commission must address the issue of children's clothing and products made from fabrics. Again, we recognize that the Commission is considering an exemption from the testing requirements for certain fabrics and children's apparel, and we urge the Commission to conclude this consideration as quickly as possible, based on the available science. As with books, however, it is necessary to provide immediate guidance to those who make and sell such products and materials, including resellers such as thrift stores and charities.

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Acting Chairman Nancy Nord described the stay of enforcement as "a limited 'time-out'" that will give the Commission time to act on an array of critical issues. We are disappointed that the Commission did not resolve these issues before now and found it necessary to delay the law's critical safety net for a year in order to do so. But even if the stay of enforcement is now a necessary response to the current situation, it is not enough. By itself, the stay neither provides adequate assurance to consumers that the law will be carried out as soon as the stay expires nor provides adequate assurance to businesses that the law will be carried out in a workable manner. We urge the Commission to fill these gaps immediately, before the February 10, 2009, deadline, as is fully within its authority and responsibility.

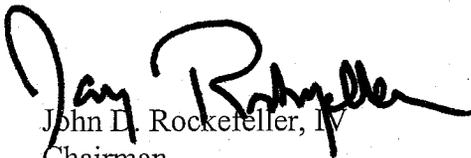
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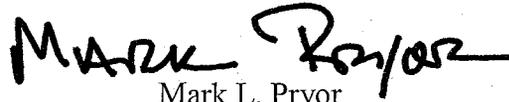
Henry A. Waxman
Chairman
Committee on Energy and
Commerce



Bobby L. Rush
Chairman
Subcommittee on Commerce,
Trade, and Consumer Protection



John D. Rockefeller, IV
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Mark L. Pryor
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