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# Testimony

**of Rosario Palmieri**

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National Association of Manufacturers

*before the Subcommittee on Commerce, Trade & Consumer  
Protection      Committee on Energy & Commerce  
U.S. House of Representatives*

*on the Consumer Product Safety Enhancement Act*

April 29, 2010



**COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS  
BEFORE THE**

**SUBCOMMITTEE ON COMMERCE, TRADE & CONSUMER PROTECTION  
COMMITTEE ON ENERGY & COMMERCE  
U.S. HOUSE OF REPRESENTATIVES**

**APRIL 29, 2010**

Chairman Rush, Ranking Member Whitfield and members of the Subcommittee on Commerce, Trade & Consumer Protection, thank you for the opportunity to testify today about the Consumer Product Safety Enhancement Act (CPSEA) on behalf of the National Association of Manufacturers (NAM).

The NAM is the nation's largest industrial trade association, representing manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single congressional district providing good, high-paying jobs. The United States is the world's largest manufacturing economy. It produces \$1.6 trillion of value each year, or 11.5 percent of GDP and employs nearly 12 million Americans working directly in manufacturing. For more information about the NAM, visit [www.nam.org](http://www.nam.org).

The mission of the NAM is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media, and the general public about the vital role of manufacturing to America's economic future and living standards.

My name is Rosario Palmieri and I am the Vice President for Infrastructure, Legal and Regulatory Policy for the NAM. I also chair the NAM CPSC Coalition which is a

group of consumer product manufacturers, component part manufacturers, sectoral manufacturing trade associations, and retailer associations that work together on product safety legislative issues and policy matters before the Consumer Product Safety Commission (CPSC). Today, I am testifying on behalf of the NAM only and not for the entire coalition.

On behalf of the NAM and the millions of men and women working in manufacturing in the United States, I wish to express support CPSEA.

Manufacturers of consumer products and their component parts are committed to producing safe products and ensuring a well-functioning and credible product safety regime – one that gives all stakeholders the confidence they need that products meet all applicable safety standards and regulations. This requires having clear and comprehensive rules, combined with a predictable and transparent enforcement regime, so that businesses can make decisions with a reasonable understanding of how to comply with those rules. Our members are responsible for millions of jobs in large and small businesses spread throughout the country. More importantly, our employees are also consumers, and we also demand that the products we buy – for our families and for ourselves – are safe and compliant.

In the wake of intolerable lapses in children's product safety, the Consumer Product Safety Improvement Act (CPSIA) was passed in 2008. The NAM supported provisions in that law that would give the CPSC more staff and financial resources to deal with the dramatic rise in imported consumer products and globalized supply chains. The implementation of that law, however, has not been smooth and significant unintended consequences have cost manufacturing jobs in industries producing safe products.

Starting in December 2008, the NAM in coalition with other manufacturing and retail associations began to petition the CPSC for relief and grants of exemption from the

lead content limits set to be imposed starting in February 2009. Our first petition requested immediate determinations of exclusions for inaccessible component parts of electronic products; exclusions for materials with low or no lead content like paper, textiles, and precious gems; and exclusions for materials with lead content above the limits that would present no risk of exposure or health effects like in recycled steel, brass, and glass.

In January 2009 some modest determinations of natural materials that could be excluded from testing were made in a proposed rule. The NAM and coalition members requested an emergency stay of the effective dates of the lead content limits on January 28, 2009. Without completed rules on inaccessibility, electronic parts, natural materials exclusions, or a petition process for exclusion of safe products with lead over the limits, millions of dollars worth of products on shelves would have been rendered unsalable and likely destroyed causing enormous economic dislocation. A few days later in early February 2009, an interim final rule was issued for inaccessible component parts and electronic products to render those exceptions immediately effective. And just days before full implementation of new lead content limits came into effect on February 10, a stay of enforcement was issued for testing and certification requirements with some limitations.

Although this appeared to limit some of the damage due to the lack of clarity in implementing this new law, much of the pain had already been felt. Retailers already had started to implement their own requirements and reviews of inventory and manufacturers had begun to eliminate safe products or halt production and distribution. A stay of enforcement might have been comforting, but the CPSC reminded everyone that while products did not have to be tested and certified they still had to comply with the new standards. The CPSIA also gave new enforcement powers to State Attorneys

General that were not bound by any stay issued by the agency. Many safe products were now illegal and the confusion only continued.

Unfortunately, a final rule on low lead determinations for natural materials was not made until August 2009. A process for petitioning the Commission for exclusions based on the safety of products that contained lead above the limits was not put in place until March. And throughout the summer of 2009 the CPSC denied every petition for exclusion that came before it because the words “any absorption” were interpreted to mean zero absorption.

A petition was filed by the writing instrument manufacturers to exempt ball point pens and was denied. A petition was filed by bicycle manufacturers to exempt children’s bikes and was denied. A petition was filed by the fashion jewelry industry to exempt crystal and rhinestones and was denied. A petition was filed by the motorcycle, ATV, and snowmobile manufacturers to exempt youth model motorized vehicles and was denied. A process the CPSIA created to allow for safe products that did not meet the new lead content limits to continue to be sold failed to grant a single exclusion.

Many of these products, however, were granted a stay of enforcement while additional review was conducted. This also allowed manufacturers and retailers to continue to petition Congress for meaningful relief in the form of legislative changes to the CPSIA. All of that coupled with an extension of the stay of enforcement on testing and certification for another year brings us to the efforts of Chairman Waxman, Ranking Member Barton and other Democrats and Republicans to correct these unintended consequences in statute.

Multiple bills have been introduced in the House and Senate to grant specific exclusions for books and youth model motorized vehicles. Some bills have sought relief for thrift stores and the donated goods industry. And some bills have sought broader procedural changes to the exclusion process, testing requirements, or retroactive

application of the provisions. The NAM has supported many of these approaches to granting meaningful relief for manufacturers.

We applaud Chairman Waxman, Chairman Rush and their staff for the efforts so far to draft legislation that amends the CSPIA to fix these problems. We thank Ranking Member Barton and Ranking Member Whitfield and their staff for the efforts to address these challenges in legislation. We are hopeful that bipartisan cooperation will result in the swift adoption of legislation to allow manufacturers to continue to produce and sell safe children's products.

The CPSEA will begin to eliminate several of those unintended consequences I discussed earlier. Currently, products that present no risk to children from lead content like bicycles, motorcycles, ATVs, and snowmobiles have been effectively banned for sale. This legislation would amend the exclusion process to allow these products to once again be sold and be affordable. The NAM and its members appreciate the agreement of the Chairman and staff to further define critical words in the legislation such as "practicable" and "measurable adverse impact" in Committee Report language to give the CPSC the clear direction to apply reason, common sense, and sound analysis to decisions about granting exclusions. The CPSC must be able to review petitions for exclusion/exceptions immediately upon passage of this legislation. Any delay or necessity for the CPSC to write new rules to govern this process will put more manufacturing jobs at risk.

The unfortunate example of the misinterpretation of the words "any absorption" to mean zero under the current statute reminds us that maximum clarity is necessary to enable the CPSC to act according to Congress' intent. The word "practicable" has a dictionary definition that would not lend itself to facilitate the exclusion process. We appreciate that you are willing to clarify in Committee Report language that "practicable" has the same definition as it is applied in *Motor Vehicle Manufacturers Association of the*

*United States, Inc. v. State Farm Mutual Insurance Co.*, 463 U.S. 29, 54-55 (1983). This means that a modification to a product requesting an exclusion/exception under this provision of the CPSEA would be deemed impracticable if the cost of compliance is unreasonable or excessive in contrast to the expected safety benefit. This grants the CPSC the authority and discretion to grant reasonable exceptions to the lead content limits. The further definition of “measurable adverse effect on public health or safety” to be consistent with the state-of-the-science on lead exposure and health effects consistent with the guidelines of the Food & Drug Administration and Centers for Disease Control will provide for the protection of children’s health while allowing reasonable exceptions for safe products.

Additional language in that exception process, however, eliminates products that can be placed in the mouth or ingested despite the requirement that it not create an adverse impact on children’s health. This provision is unnecessary to protect children from the harmful effects of lead.

Since passage of the CPSIA, concerns have been raised about the Act unintentionally and temporarily prohibiting certain phthalates in the plastic coating in electronic product wiring. This legislation recognizes that a component part can present no risk to children if it is inaccessible. It would extend similar treatment to inaccessible phthalates as the original Act did for inaccessible lead and relieve those parts from the content and testing requirements.

The legislation also recognizes the dramatic disruptions to the supply chain from retroactive application of lead content limits and applies the August 2011 reduction to 100 ppm lead (where technologically feasible) prospectively as recommended by the CPSC Commissioners.

This legislation also corrects the problem presented to charities in the donated goods industry. Testing and certification requirements for older, unique items resulted in

the destruction of many safe children's products that could have been put to good use. It will allow manufacturers and retailers to again donate safe children's products to charities.

Critically, the CPSEA does not attempt to expand the CPSC's authority unnecessarily, regulate undefined new threats, or reopen debates from the enactment of the 2008 legislation. This legislation is urgently needed, and delays associated with such controversial provisions could prevent needed relief from coming in time to preserve manufacturing jobs that have been hard hit in this recession.

Thank you for your efforts to correct these and other unintended consequences of the CPSIA. The NAM urges swift passage of the CPSEA to begin those corrections and to preserve critical manufacturing jobs.

Mr. Chairman, thank you for the opportunity to testify today and I will be happy to respond to any questions.

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