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ENVIRONMENT AND PUBLIC WORKS
JOINT ECONOMIC COMMITTEE

United States Senate
WASHINGTON, DC 20510

January 26, 2009

Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Nord:

As you know, I was a strong supporter of the Consumer Product Safety Improvement Act (CPSIA). This law will protect our kids and it is particularly important to me and the State of Minnesota since a Minnesota four-year-old, Jarnell Brown of Minneapolis, died from swallowing a charm made almost entirely of lead. At the same time, with legislation as detailed and sweeping as the CPSIA, it should come as no surprise that certain clarifications and adjustments need to be made through the administrative process. Such clarifications and adjustments are needed now as many small retailers and manufacturers are struggling to understand the practical and legal impact of this law on their businesses. There appears to be a lot of concern about the law's third-party testing requirements that I hope can be practically clarified by your Commission as soon as possible.

First, as we discussed, I support excluding natural materials from the CPSIA's third-party testing requirements and I was pleased that the Commission proposed an exemption of certain natural materials – such as wood and cotton – from these testing requirements. But the proposed list is incomplete. I urge the Commission to construe broadly any natural product exemption to include, at the very least, *all* materials derived from natural sources that are scientifically known not to contain lead.

Second, I urge the Commission to adopt a component-based testing regime so that toy and clothing manufacturers need not re-test components of their products that have already been tested -- such as zippers, plastic buttons, snaps, and so forth. By eliminating testing redundancies, component-based testing can reduce dramatically the testing costs on small toy and clothing manufacturers. For small manufacturers that produce batches of toys with limited products per batch, the component testing method will reduce the cost burden; testing components helps to alleviate the cost burden small manufacturers would shoulder vis-à-vis large toy manufacturers.

Third, as you'll recall, before the CPSIA, many foreign-produced and unsafe All Terrain Vehicles (ATVs) were entering the U.S. market and posing a danger to our kids.

To their credit, U.S. ATV manufacturers strongly supported the ATV-related safety provisions of the CPSIA and these manufacturers are prepared to comply with all provisions of the new law. As you know, the CPSIA allows for an exclusion of a material or part from the content limits if the material will not result in the absorption of any lead into the body or have an adverse impact on public safety. The brake components, battery terminals, and certain other components in ATVs would appear to come under this exception and I urge the Commission to make this type of determination as soon as possible.

Fourth, as you know, on January 8, 2009, the Commission made clear that sellers of children's used products, like other retailers, do not have to test their products to meet the new law's requirements. As has been the case for years, retailers of either new or used products cannot sell products that violate the law, but the new law does not contain any additional testing burden for them. I ask that you continue to make this clear to the thrift and consignment stores. I also believe that some of the other suggested clarifications will assist them.

Fifth, I encourage the Commission to determine that unadorned children's books and clothing are not subject to third-party testing requirements. Such a determination would also provide guidance to consignment shops and resellers, as these stores typically sell large quantities of apparel and used books.

And finally, I urge the Commission to make as many decisions as soon as possible and offer guidance to interested parties before the February 10 deadline.¹

In sum, I urge the Commission, once again, to implement pragmatic, common sense regulations that *both* ensure children's safety *and* spare countless businesses unnecessary disruption. Thank you for your consideration.

Sincerely,


Amy Klobuchar
U.S. Senator

¹ To the extent the Commission's proposed rules governing exclusion close after the February 10 deadline for compliance, I urge the Commission to consider granting waivers or extensions, where appropriate, to impacted businesses that do not present any real risk to children.