



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE STAY OF ENFORCEMENT OF CERTAIN OF THE TESTING AND
CERTIFICATION REQUIREMENTS OF THE CONSUMER PRODUCT SAFETY
IMPROVEMENT ACT OF 2008
January 30, 2009

The Consumer Product Safety Improvement Act (CPSIA) embodies a bold and, for some, painful shift in how product safety is assured in this country. Prior to the high profile recalls of 2007 and 2008, many consumers wrongly assumed that products, particularly ones designed for children, were pre-tested by the government before they entered the marketplace. They were shocked to learn that not only was there no pre-market testing by the government, but many products were not even adequately tested by the manufacturers of the products. Consumer outrage at this state of affairs made Congress decide that, at least for children's products, manufacturers had to have their products tested by third party testing laboratories and certify that their products met all applicable safety standards. This provision applied to all manufacturers, regardless of their size. Now it is the business community's turn to be shocked.

The Consumer Product Safety Commission's (CPSC) safety requirements have always applied to all manufacturers of children's products, even the small crafter who makes products at home. But until the enactment of the CPSIA, the government had not required all manufacturers to affirmatively prove that their products complied with those requirements by having them tested. From the outpouring of letters, emails and phone calls to the agency, it is clear that many smaller manufacturers did not know that there were any federal standards that applied to their products, had no idea how to have their products tested and may never have heard of the CPSC, or if they had, did not think this agency had any relevance to their business. Their reaction made a number of things clear:

- That the new electronic media channels, particularly the blogs, are tremendously useful tools for disseminating important information to small businesses, but that they can also be a channel for spreading confusing misinformation,
- That the Commission has not done enough to make the home crafters and other smaller businesses aware of their pre-existing obligations under the law, That the new law (CPSIA) has done what the Commission had not been able to do, get the attention of many, many of these smaller manufacturers with respect to their responsibility to assure the safety of their products, and
- That the vast majority of these smaller businesses, while they may not know the specific rules that apply to their products, are likely making safe products, or they would have come to our attention.

Many of the smaller businesses do have legitimate concerns about how they will comply with the new law and the cost of the new testing and certification requirements. However, their fears are being fueled to some extent by others who, through an aggressive misinformation campaign, are trying to create a groundswell of panic that will lead to the repeal of the testing and certification requirement entirely.

The goal of the testing and certification provision is a sound one: to make sure every manufacturer of a children's product, no matter their size, regardless of where they are located, knows the standards that apply to their products and takes the appropriate steps to ensure compliance with those standards *before* the products are put into the hands of consumers. The closer we get to that goal, the fewer recalls our agency will have to undertake and the fewer injuries we will see to children.

Therefore, it is not an easy thing for me to vote to support a delay in enforcing the testing and certification requirements, but I think there are legitimate reasons for doing so. One important reason is to give the larger manufacturers and retailers an opportunity to create a market for pre-tested components—the kinds of things many large companies use in their products, but that are of particular interest to small crafters. Just one example are sewing components like zippers, buttons and snaps, which are the items in children's apparel most likely not to meet the new lead content limits.

Major retailers appear to be on track to comply with the new law's requirements. They are demanding complying components from their suppliers and it is reasonable to think that their demands will lead to a supply of pre-tested and certified components that will be available for the small home-based manufacturers. These components may first be available in those retailers' crafting or notions departments. However, I foresee a huge market for craft and sewing and other components used by smaller manufacturers in making their products. There will be businesses that will supply that market, but they need time to develop.

The Commission also needs time to determine whether and under what circumstances component testing could be used as a surrogate for whole product testing. Assuming such an avenue is legally and practicably supportable, it could provide businesses (large and small alike) with an alternative to testing the finished product through the use of component parts already pre-tested and certified by the component part maker. While the Commission may not have the authority to require component part makers to test and certify their products, the demands of their customers will force them to bring their products into compliance. Some component manufacturers also need time to adjust their manufacturing processes to eliminate the random failures of their products to certain of the safety standards, which some companies are reporting.

Small businesses also need more guidance from the Commission. We are working on filling that need, but the additional time that this stay will provide will enable us to give common sense information to help the small crafters feel comfortable in making and marketing their products without fear of violating the law.

This stay of enforcement does not stop the testing and certification requirements from going into effect, nor does it suspend the underlying product safety requirements. Thus, if during the stay period a company does not test and certify, our agency will not take enforcement action against the company on that ground. However, if the company puts a violative product into the market and that product causes injury to a child, rest assured that we will take whatever action is necessary to protect the public. This may seem like a Catch 22 to some people, but it really will not be for most of the smaller manufacturers who are so worried about the law's application. If they have a history of making products that have caused no harm, as so many assure us in their communications, then they have no reason to fear this interim period. The Commission is not interested in putting small manufacturers out of business; we just want them to make safety one of their guiding principles. If there is one message a small manufacturer should take from the Commission's action today it is this: If you have been making products without receiving any safety-related complaints, you should go on making and selling your products. You should, however, begin to look for and demand that the components you buy are certified as not containing lead or banned phthalates, as your demands can help to bring the component market into compliance. You also must familiarize yourself with all of your obligations under the various laws this agency administers. It is my hope that during this stay our agency will provide **detailed** guidance, particularly for the home-based manufacturers, on how to comply with requirements of the law.

I would expect the companies that can do testing and certification, and who have positioned themselves to comply with the law, will do so regardless of the stay. They should not use this stay as an excuse to delay what they are already doing or have planned to do. It is their compliance that will help develop the market for pre-tested, certified components. While the agency was not able to craft a workable small business exemption, this stay will help small businesses adjust to the new world of product safety. I do not foresee voting for an extension of this stay, so it behooves all manufacturers to prepare for the February 10, 2010 date when the testing and certification requirements will be enforced.

I am aware that some people will be unhappy with this stay, but I fear that without it, the forces that would like to do away with the testing and certification requirements will use the panic they have helped create to accomplish their goal. It should also be understood by all that although the Commission's staff is extremely capable, they are few in number and they must be given adequate time to research, solicit, analyze, and develop all the information and data pertinent to these issues. It is this work that will provide the underpinning for sound recommendations to the Commission on future courses of actions with respect to implementing, and providing guidance for the implementation of, the requirements of the CPSIA.

It is my hope that Congress will act quickly to give our agency the additional funding we need to enable us to move forward swiftly and aggressively to implement and enforce the CPSIA and to provide businesses with the guidance they have been seeking.