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

January 21, 2009

The Honorable Nancy Nord
Chairman
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814-4408

The Honorable Thomas Moore
Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814-4408

Dear Chairwoman Nord and Commissioner Moore:

First, we wish to express our appreciation for your excellent service to our country during some of the most trying times for the Consumer Product Safety Commission. Under your leadership, the Commission and its staff have worked to effectuate more recalls over the last three years, and with fewer staff, than at any previous time in the history of your agency.

Recalls are not only evidence of compliance failure by manufacturers but also of the Commission's success in executing its mission to keep consumers and their children safe from harmful products. Your ability to find and recall faulty products is a credit to you and the dedicated Commission staff. We look forward to your continued commitment and vigilance to ensure effective consumer product safety in the United States.

Second, we would like to express our agreement with the Commission's interpretation of the phthalate provisions contained in the Consumer Product Safety Improvement Act (CPSIA). Critics of the Commission's interpretation have expressed a different interpretation of the legislative language that is not reflective of our understanding of the legislative language or its intent.

As we stated repeatedly throughout the Conference for H.R. 4040, a legal product – or chemical substance in this case – should not be "banned" or deemed a "banned hazardous product or substance" absent a finding by the Commission, made in accordance with the procedures established in sections 8 and 9 of the Consumer Product Safety Act (CPSA), and supported by sound science. Throughout consideration of H.R. 4040, we stood vigilantly against marking products with a scarlet letter if there is no repeatable, proven evidence of adverse harm. Further, we staunchly opposed removing products from the marketplace based on hearsay, only to have untested and potentially more harmful alternatives take their place.

We were and continue to be particularly concerned about the case of the phthalate DINP, which the Commission previously studied and deemed safe. It was difficult for us to reconcile such findings with the enactment of an interim prohibition on DINP or other phthalates under the Federal Hazardous Substance Act (FHSA), especially given the legal liabilities attached to a product once labeled a "banned hazardous product or substance." Therefore, we agreed instead to amend the CPSA and institute an interim prohibition on the use of specific phthalates in certain children's products. Of note, the CPSIA requires the Commission to convene a Chronic Hazard Advisory Panel (CHAP) to examine the science relative to the safety of those specific phthalates.

The statutory construction of the phthalate provision is evidence of the conferees' intent to guard against predeterminations in the CHAP process: the conferees placed this provision under the CPSA rather than under the FHSA. Labeling products with legally significant terminology (i.e., a banned hazardous substance) before the CHAP makes a determination would render the scientific review process moot.

We believe the interpretation of the CPSC Office of General Counsel regarding phthalates and its application to existing inventory is an accurate interpretation of the CPSIA and embodies the intent of the conferees. Commission staff was helpful and thorough in educating us on the various terms used throughout the statutes administered by the CPSC and the consequences of the use of these terms. Specifically, the Commission staff presented a detailed tutorial to bipartisan, bicameral committee and conferee staff and legislative counsel during the Conference on the meaning, interpretation, and effect of using the words "rule," "regulation," "standard," and "ban" in those statutes. Congress deliberately mandated the phthalate provisions be treated as consumer product safety standards rather than a ban in order to effectuate a prospective policy.

Thank you for your attention to this matter and we look forward to working with you to ensure the CPSIA is implemented effectively to enhance product safety.

Sincerely,

Joe Barton
Ranking Member
Committee on Energy and Commerce

Cliff Stearns
Member
Committee on Energy and Commerce

Ed Whitfield
Member
Committee on Energy and Commerce

cc: The Honorable Henry A. Waxman, Chairman
Committee on Energy and Commerce

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

The Honorable George Radanovich
Member
Committee on Energy and Commerce