

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 1, 2013

The Honorable Inez Moore Tenenbaum
Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Tenenbaum:

As you are aware, Public Law No. 112-28, enacted in August 2011, directed the Commission to seek public comment on “opportunities to reduce the cost of third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard or regulation.”¹ The law further obligated the Commission to review those comments within a year after enactment and authorized it to prescribe new or revised third-party testing requirements if the Commission found such measures would reduce testing costs while assuring compliance.² If the Commission determined that it lacked authority to implement any opportunity for reducing testing costs, it was “to transmit a report to Congress reviewing those opportunities, along with any recommendations for any legislation to permit such implementation.”³

The Commission’s November 2011 notice elicited many ideas for reducing testing costs.⁴ The CPSC staff reviewed the public input and highlighted some 16 opportunities for Commission consideration, all of which it presumably thought would qualify for implementation consistent with the statute.⁵ In October 2012, the Commission voted to pursue nine of these ideas subject to budget constraints. Nearly one year later, however, the Commission has yet to implement *any* of the cost-reduction opportunities identified by the public in response to the October 2011 notice, nor has the Commission reported that it lacks authority to implement any of those opportunities.

We are concerned that the Commission is not dedicating the appropriate resources to this congressionally-mandated priority. Given the importance of this issue to thousands of

¹ 15 U.S.C. § 2063(d)(3)(A)(as amended).

² *Id.* § 2063(d)(3)(B).

³ *Id.* § 2063(d)(3)(C).

⁴ 76 Fed. Reg. 69596 (Nov. 8, 2011).

⁵ Staff Briefing Package (Aug. 29, 2012).

companies struggling with the costs of testing, we request that you provide answers to the following questions no later than October 21, 2013:

1. When does the Commission intend to implement the nine cost-reduction opportunities it selected in October 2012 from the staff's longer list? Please provide a schedule for implementation of each item. Please indicate which key tasks the staff has already performed for each item (apart from seeking more information from the public), which key tasks remain, and when the Commission expects to finalize implementation in each case.
2. Several of the nine opportunities prioritized by the Commission involve determinations that a particular material will rarely or never contain a restricted substance. When the Commission proposed a similar type of determination in 2009 (in that case involving lead content), it also granted immediate temporary relief in the form of an enforcement policy pending the final determinations. See Release No. 09120 (Feb. 6, 2009). In other words, the Commission allowed the immediate use of certain materials without third-party testing even though the staff had not completed its work on the determinations. Please indicate whether testing relief could be accelerated through a similar approach here. If you consider such interim relief inappropriate in this case or beyond your authority, please explain your view.
3. In the prior determinations on lead content, the Commission addressed precious and semiprecious gemstones at the same time as natural wood and fibers (*e.g.*, cotton and wool). It seems certain that wood, cotton, and wool are more commonly used in children's products than precious jewels. Could some testing relief be accelerated by prioritizing determinations for materials that are more commonly found in children's products?
4. Are there any natural materials as to which the staff's prior analyses can be relied upon to support determinations without further delay? For example, if wood, cotton, and wool contain little or no lead, is it also likely that they contain little or no mercury, barium, selenium, or other heavy elements? Does prior CPSC empirical testing shed light on this subject?
5. Please identify those testing-cost reduction opportunities identified by staff in August 2012 that the Commission did not vote to pursue. For each item, please explain the grounds on which the Commission declined to pursue those opportunities. If any such opportunities were rejected on the grounds that the Commission lacks authority to implement them, please include a summary of the Commission's legal analysis for each such opportunity in your response. For any of those opportunities the Commission has not rejected, please indicate when it intends to pursue such opportunities.
6. The staff did not recommend Commission consideration of all the cost-reduction opportunities proposed by the public. Please identify any opportunity the staff declined to recommend owing to its belief that the Commission would lack authority to implement

the opportunity. Please include a brief explanation as to why you believe the Commission lacks legal authority to implement those opportunities.

7. If you believe that the Commission lacks authority to pursue any cost-reduction opportunities identified pursuant to Public Law No. 112-28, please address whether you would favor legislative action augmenting the Commission's authority to allow greater cost reduction.

Thank you for your prompt attention to this request. If you have any question concerning this matter, please contact the subcommittee staff at (202) 225-2927.

Sincerely yours,



Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade



Leonard Lance
Vice Chairman
Subcommittee on Commerce,
Manufacturing, and Trade



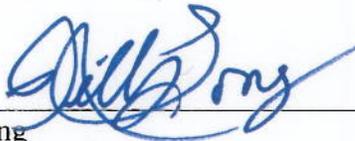
Marsha Blackburn
Vice Chairman



Brett Guthrie
Member



Adam Kinzinger
Member



Billy Long
Member



Pete Olson
Member

Cc: The Honorable Nancy A. Nord
The Honorable Robert S. Adler
The Honorable Marietta S. Robinson
The Honorable Ann Marie Buerkle