

Consumer Electronics Retailers Coalition



June 26, 2009

Inez Moore Tenenbaum
Chairman
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Comments concerning the Commission's agenda and priorities for fiscal year 2011 and revisions to the strategic plan.

Dear Chairman Tenenbaum

Congratulations on your recent Senate confirmation and assuming the duties of Chairman. Please accept the following comments submitted on behalf of the Consumer Electronics Retailers Coalition on the Consumer Products Safety Commission's 2011 strategic plan.

The Consumer Electronics Retailers Coalition (CERC) is a public policy organization consisting of the major retailers of consumer electronics products and two of the nation's major retail industry trade associations. Our members are among America's favorite places to shop for electronic devices which make our lives more productive and enjoyable.

CERC members have combined to focus our unique and expert market perspective on the critical policy issues facing the consumer electronic retail industry and our customers. Individually our members operate in all 50 states and territories, collectively employing over three million people nationwide.

All of our retail members are committed to the health, safety and satisfaction of their customers. Our members take great pride and care selecting the products and services offered to our customers, especially products marketed to children. Our members have been working individually and through CERC to help the Consumer Products Safety Commission (CPSC) and its staff understand the nature of components used in consumer electronics and the complexity of the retail supply chain.

We share a desire to successfully implement the Consumer Products Safety Improvement Act (CPSIA) in a way that maximizes safety without unnecessarily disrupting commerce.

CERC would like to offer itself as a resource for guidance and expertise as CPSC considers appropriate as the Commission works on addressing current and as yet unforeseen issues in the electronics marketplace. As such, CERC would like to respectfully offer comments and recommendations related to:

- 1) Electronic device waiver;
- 2) Regulatory clarity, guidance and exceptions;
- 3) A constructive approach to enforcement;
- 4) Recognition of the product, publication and selling cycles; and
- 5) Global harmonization of standards.

CERC has appreciated the courtesies and helpfulness of CPSC Counsel and staff as the agency works to implement a new law and prepare for the arrival of new Commissioners and staff. CERC and its members seek to be a constructive partner with the CPSC in successfully implementing the Consumer Product Safety Improvement Act (CPSIA) and protecting the health and safety of all Americans.

1) Maintain Electronics Device Waiver

Maintenance of the lead exemption for electronic products promotes safety of general use products while balancing commercial realities and technical feasibility as intended by the Congress.

a) Inaccessible Parts

Congress appropriately provided an exemption from lead level standards for electronic devices in the CPSIA. By providing for a waiver, the CPSC fulfilled an important Congressional mandate. CERC was pleased to provide constructive comments as the CPSC reviewed this issue. Maintaining the exemption is appropriate and safe for consumers.

Although metal alloys containing lead are fairly common components in electronic devices, most of the lead contained in these types of products is inaccessible and pose very minimal if any risk of exposure. Many component parts that contain lead are rendered inaccessible by a cover or enclosure. Typical examples include components on a circuit board. Lead solder, one of the main components on a circuit board, is used to secure components to printed circuit boards and/or to solder wires to other components and connectors.

Because of the product's outer casing, in most cases, significant effort (i.e. removal of screws, sonic welds, or glue) is required to access these components. The lead present in a circuit board is inaccessible. Metal alloys containing lead in contact in battery compartments are also inaccessible especially when the compartments are enclosed with screw covers or other technique which makes the contacts difficult to access.

There also may be cases where lead is in a product component such as a glass or crystal element which poses either no risk where contact can transfer lead to skin or mouth or where the component by its very nature does not leach lead. These types of product components should also be determined to be "inaccessible" and exempt. In fact, lead in glass used in picture tubes actually protects viewers from exposure to x-ray radiation.

b) Technical Infeasibility

Given its experience in the marketplace, CERC and its individual members would respectfully like to offer its expertise and guidance as CPSC deems appropriate to come to a common and workable understanding of what is and is not technically feasible with respect to lead content.

Industry experience and practical necessity has demonstrated that there is in fact a technical infeasibility in removing all lead from general use electronic internal parts and/or products. Substitutes for many of the alloys which contain lead are either not available or have characteristics that are not optimal for use in electronic devices because of conductivity or brittleness. For example, alloys are the primary example of accessible component parts containing lead.

Various alloys use lead to achieve certain properties necessary to form or make the part, including steel, aluminum, and copper-based alloys are used in numerous children products. Common examples of such products include: battery contacts; audio and video connectors; battery chargers; and AC adapters. On another front, for example brass alloy which is particularly malleable, can be cast and machined and is a commonly used metal.

It can be molded into usable products more accurately and at a faster rate, making it particularly useful in small metal parts, and in antenna parts for electronic devices ranging from radios to remote-controlled cars. Component parts of this nature should also be exempt from meeting the CPSIA lead standard because it would not be technologically feasible for them to do so.

c) General Use Products

Most electronic products are for 'general use' and are in fact never marketed toward, or intended for use by, children. Indeed, under CPSIA, the term "electronic devices"

encompasses more than children's products and seeks to move regulation into what can be considered 'general use' products.

2) Regulatory Clarity, Guidance and Exceptions

Clear understanding of rules and regulations is fundamental to compliance with those rules and avoidance of the risks that the rules were designed to prevent. CERC is interested in working with the CPSC to ensure that rules and regulations are clear and practical to allow for consistent compliance.. As you know, clearly establishing with precision what is and what is not covered by a regulation will always best benefit consumers, industry, and government. Clarity results in improved and efficient compliance with regulations needed to avoid wasteful legal and operational costs that would, ultimately, be passed onto consumers.

We applaud the Commission's continued efforts to offer clear guidance as is practical which can be relied upon by requestors. In alignment with the CPSC's mission to promote safety in consumer products, CERC believes it is better to avoid the safety risks associated with product safety problems with proper regulatory compliance. Clear, well-defined rules with which CERC's membership can practically comply, furthers the mission of safety in the consumer marketplace.

CERC members play by the rules and as such we do not want to compete with those bad actors in the marketplace that do not. Cooperative efforts, clear rules and clear communications will always enhance compliance as well as general consumer and children's safety.

At the end of the rulemaking the CPSC should also consider providing affected parties an opportunity for an exception or exemption which could be requested and expeditiously granted or denied upon due consideration. Again, CERC would be delighted and honored to act as an industry resource, offering its marketplace expertise as deemed appropriate by CPSC.

CERC would also respectfully like the opportunity to offer its input as new regulations are proposed and implemented with respect to the practical implications of the timing of the effective dates of regulations. It is important to give retailers and manufacturers a reasonable amount of time to comply given complex supply systems.

As industry leaders, our genuine goal is to best serve consumers. In the end, that convergence of common interest will benefit all stakeholders, including the Commission.

3) A Constructive Approach to Compliance and Enforcement

Retailers genuinely want to offer the best, safest products possible. It is critical to retailers' reputations with consumers that they do so. All members of CERC, expend

considerable and necessary amounts of resources to screen products and suppliers, ensure that sales staffs are fully trained on product requirements and labeling. Every CERC member maintains a high level of vigilance on product safety. Each and every day our consumer electronic retailers remove known dangers from the stream of commerce and respond quickly to both voluntary and mandatory product recalls.

CERC members want to be a constructive partner in the effort to keep all Americans safe. It is worth noting that the CPSIA represents one of the most comprehensive reforms of consumer product safety legislation in decades. The Obama Administration also brings new commitment to consumer protection and safety. We welcome and encourage a full and open dialog between the CPSC and retailers to get an even better sense of our common interests and to demonstrate the depth of commitment we have to our customer's health and safety.

Given that modern retail supply chains are complex and retail organizations are rather large, when considering approaches to enforcement, it is critically important to distinguish between a simple human error and an effort to blatantly disobey the rules of the CPSC. In enforcing and interpreting the new and existing consumer protection laws, CERC urges the CPSC to adopt an approach to enforcement which is aimed at achieving compliance rather than focused on punishment.

As to the issues of enforcement and penalties CERC would like to respectfully offer the following based on its industry experience. As the CPSIA is being implemented and complex rules are being promulgated, tested and refined, CERC believes that enforcement efforts should focus first on achieving compliance through education and information.

CERC offers an excellent conduit for industry education and outreach. Necessary penalties should be reserved for more extreme cases of conscious violations of the rules. CERC recommends that additional considerations to be taken into account before civil penalties are assessed and with respect to the level of penalty, including:

- The objective clarity of the regulation involved;
- The timing of the regulation in relationship to the alleged violation;
- Whether a prior warning had been issued;
- The actual risk to consumers related to the violation;
- The opportunity to resolve the alleged violation through cooperative measures; and
- Whether the alleged violation represents an isolated error, conscious violation or systemic risk.

CERC believes that the object of the enforcement process should be first and foremost to encourage timely compliance with the clear rules as established by the CPSC and Congress.

4) CPSC Should Recognize Product, Publication and Selling Cycles

One of the largest challenges that the retail sector faces with government regulations, mandates or requirements at all levels is that the timing of new requirements often fails to take into account the natural product, selling and publication cycles of retailing. We believe that the effectiveness and efficiency of regulation could be dramatically improved as we better work with regulators to more fully communicate these cycles. One obvious example would be the implementation of major systematic regulatory change during the end of year holiday selling season.

It is the work of CERC and our members to more fully communicate with the CPSC that proposed and/or necessary warnings or statements which must be included in printed materials or on websites, for example need adequate lead times. This also holds true for manufactures and retailers to implement product changes or labeling changes.

Where regulatory changes do not involve actual risk of harm, CERC would recommend that the CPSC should set product, packaging or labeling changes on a “manufactured after date” basis and allow for the sell through of safe products and take into account the product cycle when obligations become effective. CERC strongly believes in protecting the safety of our customers and children.

5) Global Harmonization of Standards

As you know, the consumer electronics market is global in nature. It would be useful to seek a global harmonization of consumer product safety issues. Common or at least compatible standards between the United States and the European Union (EU) would be an excellent way to start. Safety should know no borders. The US and EU can learn from each other and should work closely together to ensure that safety standards are not used as an artificial trade barrier. Such an approach is not only good trade policy, it is good safety policy. Consumers need to have confidence that safety policies; product warnings and product recalls are based on sound science, not political expediency.

Conclusion

CERC appreciates the opportunity to comment on the CPSC’s strategic plan for 2011. All of our members have a deep commitment to consumer and child safety. We welcome the opportunity to work cooperatively with the CPSC to preserve and advance product safety and act as an industry resource providing education and resources to our shared goal to protect the safety of consumers.

Sincerely,

Christopher A. McLean
Executive Director

Consumer Electronics Retailers Coalition
317 Massachusetts Avenue, NE, Suite 200
Washington, DC 20002
(Tel.) 202.292.4600
chris@cercteam.com