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Congress of the United States
House of Representatives
Washington, DC 20515–4306

October 17, 2014

The Honorable Elliot Kaye
Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Mr. Chairman,

I am writing today regarding the ongoing Consumer Product Safety Commission (CPSC) implementation of Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Due to my role as Ranking Member on the House Committee on Energy and Commerce, I served as a lead conferee during final consideration and ultimate passage of CPSIA in the 110th Congress. During deliberation of the bill, we learned that di-isononyl phthalate (DINP) had been reviewed by a scientific panel called the Chronic Hazard Advisory Panel (CHAP) and deemed safe for use in children's toys and products by your agency in 2003. In fact, one of your agency's scientists, Dr. Michael Babich, testified before our Committee on June 10, 2008 during consideration of the legislation and stated, "…that exposure from these products [containing DINP] was too low to present a hazard."[1]

I noted with interest the findings of another CHAP this summer that now recommends a prohibition on DINP in certain products. Given my own review of the CHAP report and understanding of the process, I wanted to share with you the intent of Congress when Section 108 was drafted and what was expected of the CHAP and the agency's subsequent rulemaking.

First, the intent of this provision as written was that the CHAP conduct its evaluation in an open and transparent way. Unfortunately, I understand that the peer review the CHAP requested on its draft report was closed to public comment and the CPSC failed to make even the peer review charge, must less the draft report they were reviewing, public until the final report was released. Given the sweeping and potentially precedent-setting nature of the CHAP report, I do not believe

[1] Safety of Phthalates and Bisphenol-A in Consumer Products, Hearing Before the Subcomm. on Commerce, Manufacturing and Trade Committee on Energy and Commerce of the House of Representatives, 110th Cong. (2008)

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that the CPSC properly followed the guidelines established by the Office of Management and Budget when conducting this process.[2]

In addition, I noted the high significance the CHAP gave to the cumulative risk assessment it conducted in their final recommendations. As you know, this was an aspect that underwent great debate at the Committee and our intent was for the CHAP to consider the cumulative effects of phthalates as a part of their larger review, as outlined in the CHAP's mandate (Sec. 108 (b)(2)(A)). However, recommending a regulatory restriction on a particular phthalate – DINP – based solely on its negligible contribution to a cumulative risk framework goes beyond the intent of the statute. In asking for consideration of the cumulative effect, Congress was not mandating a quantitative assessment such as the one the CHAP chose to undertake. The science of cumulative risk assessment is in its infancy and has many uncertainties. It is admirable that the CHAP took on this difficult subject, but it must be recognized that its methodology was merely a screening level assessment using multiple conservative assumptions.

I am concerned that a decision to regulate an industrial chemical due to a marginal percentage contribution to a screening level cumulative risk assessment, as the CHAP recommended, has potentially far reaching ramifications, many of which are still being debated in Congress. If CPSC is considering following the recommendation of the CHAP, I would like to know the CPSC's position on its legal authority to regulate a chemical that contributes a very small percentage to a cumulative risk assessment. I would also like to know how it intends to meet the charge of Congress that it follow the CPSIA. In addition, I ask the CPSC to carefully review the data and assumptions used in CHAP cumulative risk analysis as well as their validity and appropriateness under the CPSIA requirements.

More importantly, the CHAP's cumulative risk evaluation could set a dangerous scientific precedent since it does not base the assessment on the most recent or relevant scientific data. Given that the CHAP had access to the more recent science available, I am interested in learning why the Panel chose to use Centers for Disease Control (CDC) data that was nearly ten years old.

I appreciate your consideration of my concerns and look forward to receiving the Commission's answers and assurances to the questions posed within this letter.

Sincerely,

Joe Barton
Chairman Emeritus
House Committee on Energy and Commerce

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[2] OMB Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664-2677 (Jan.15.2005).

CC:
Commissioner Robert Adler
Commissioner Ann Marie Buerkle
Commissioner Joseph Mohorovic
Commissioner Marietta Robinson