



March 28, 2018

Office of the Secretary
Attn: Alberta Mills
US Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Comments from U.S. toy industry and The Toy Association, Inc. on CPSC Budget Priorities for FY 2019 and 2020

The Toy Association™, Inc. represents more than 1,000 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – who are all involved in bringing safe and fun toys and games for children to market. Approximately 3 billion toys are sold in the U.S. each year, totaling \$26 billion at retail, and our members account for approximately 90% of this market.

Toy safety is the top priority for the industry and our members have long been leaders in toy safety, dating back to the 1930s. Our efforts include leading the development of the first comprehensive toy safety standard (later adopted as ASTM F963, which in 2008 became a mandatory consumer product safety rule under CPSIA); the industry continues to provide technical input and actively participate in the ongoing review of this "living" standard today, to keep pace with innovation and potential emerging issues. The Toy Association and its members work with government officials, consumer groups, and industry leaders on ongoing programs to ensure safe play.

We appreciate the Consumer Product Safety Commission's (CPSC) continued engagement and outreach to the regulated community and thank the Commission for soliciting input from interested stakeholders on the CPSC's priorities for Fiscal Years 2019 and 2020. Below is an outline of the toy industry priorities we request the Commission take into consideration, not necessarily in order of priority:

Import Surveillance Efforts

CPSC has done an increasingly effective job in capturing violative products at the ports of entry, before they make their way into the hands of consumers. The agency is to be commended for its work in continuing to improve the process at the ports. While improvement is certainly desirable in more surgical targeting and faster release of goods found to be compliant, The Toy Association remains supportive of targeted import surveillance that does not unduly burden legitimate trade.

We urge continued improvement in the implementation of the Risk Assessment Methodology (RAM) to more accurately target violative products at ports of entry while allowing compliant products to flow unimpeded. We would urge that the agency continue to improve RAM targeting to better focus only on the riskiest cargo and ensure that any held shipments are examined in a timely manner, ideally less than five calendar days.

Improvements made to the RAM program will also help in the fight to stop counterfeit goods from entering the U.S., so we would ask CPSC to put ample resources in this area.

The Toy Association's members have struggled with shipments being stopped and detained repeatedly, often for extended periods of time, and then ultimately released without any finding of fault, or in some cases without any examination taking place. Because toys are highly regulated, and mostly imported under a single HTS classification, Chapter 95, toys are targeted more frequently than many other products regulated by CPSC. Since the bulk of toy companies are small businesses, this disproportionate targeting has an outsized impact on their profitability. Detention and examination costs, unhappy customers, missed sales opportunities, and cancelled orders are just some of the issues our members have reported. One suggestion we have previously raised, and wish to propose again, is to allow importers to sample detained shipments for testing at a CPSC-approved private laboratory, as other regulatory agencies currently allow.

Another area we hope CPSC will continue to consider is the idea of a "trusted trader light" program which would reduce the number of inspections an importer faces. As the agency looks to develop such a program, we would urge you to be mindful that any such program should be accessible to large and small companies. Joining the CBP's Trusted Trader program (or even the CTPAT program) is very costly, time consuming, and out of reach for many companies, especially small businesses. We envision those participating in the "trusted trader light" program would be companies willing to go through some extra safety checks to enable an easier entry process. The trusted trader program should also benefit participants by them being subject to fewer data requests. Employing a "trusted trader light" program could decrease the workload for CPSC while at the same time increasing the "hit" rate for identifying violative products, a win-win for CPSC, industry, and consumers.

The Toy Association supports the agency's import surveillance program and encourages continued efforts to increase the efficiency and effectiveness of this program. As CPSC moves to a beta pilot of the e-filing program, we would ask that the agency focus on collecting only information critical to finding dangerous products. As the agency ramps up its participation in the ACE single window program, it is important to consider the amount of time estimated by importers to submit the necessary information for one product. According to a report¹ issued by CPSC last spring on the Alpha pilot, it took participants 10 hours to retrieve all the necessary information needed, then another 10-15 hours per product to manually enter it into the system. This is not an insignificant amount of time. As the agency considers moving forward in determining what certificate information must be submitted, it must bear in mind that the amount of time a company will need to dedicate to this effort would be extremely costly, with very little safety benefit seen by the consumer.

Combat Intellectual Property Infringing Goods

Intellectual Property (IP) infringement has become an increasingly significant issue for the toy industry, due in part to the increased proportion of retail sales concluded online. IP-infringing toys are extremely concerning on a number of levels, especially their potential ramifications for children's safety. Not only is a brand compromised and intellectual property stolen, but it is also likely that the toy has not undergone the rigorous safety testing and certification required to be sold in the U.S., putting children at risk. We urge the agency to continue its diligent efforts, working even more closely with other government agencies to help combat these fake goods. Further scrutiny of e-commerce platforms, and one-off shipments of products coming in unchecked at the ports through courier services and the mail, should be a budget priority for CPSC in the coming years.

¹ eFiling Alpha Pilot Assessment and CPSC Staff's Recommendations for eFiling Beta Pilot, found on March 24, 2018 at: https://www.cpsc.gov/s3fs-public/eFiling%20Alpha%20Pilot%20Evaluation%20Report%20-%20May%2024%202017.pdf?JNhQrli0FpoDjoZSTmpZ7_XRof.cNiO

This year the Government Accountability Office (GAO) conducted a study² where they purchased 43 products on e-commerce sites to check for counterfeit goods. Twenty of the 43 products purchased were found to be counterfeits. GAO made recommendations in this report that were primarily for Customs and Border Protection (CBP) to enact, as they are the main agency charged with reviewing and stopping cargo shipped into the U.S. However, those recommendations are such that it would be wise for CPSC to consider implementing them as well. These recommendations included asking CBP to evaluate its efforts to enhance intellectual property rights enforcement and assess potential additional information sharing with the private sector. The Toy Association and our members stand ready to provide any additional information CPSC or other government agencies require to stop dangerous, counterfeit toys from getting into the hands of our smallest consumers.

Continue to Look for Ways to Reduce Third Party Testing Burdens

The Toy Association and our members have been very pleased with, and appreciative of, the efforts CPSC has taken to date to ease testing burdens. Particularly, the final rule published last year to exempt certain plastics from phthalate and heavy metals testing has been very helpful. This is an effort that we have been encouraging the agency to pursue over the past several years and we hope the agency will act quickly on several of the suggestions made by industry and others last fall. Toy testing is a critical component of product safety assurance. However, toy companies and more specifically, small toy companies, still struggle with crippling costs associated with unnecessary and redundant third-party tests, an unintended consequence of the requirements under CPSIA. We look forward to continuing to work with CPSC staff to find ways to reduce these costs, while still developing safe and compliant toys and games.

Information and Education Programs and Partnerships

CPSC has made many strides recently to increase consumer awareness of safety programs and initiatives, especially on social media. These campaigns could reach an even wider audience with stronger and more stakeholder partnerships. CPSC should continue to look for opportunities and appropriate partners to help improve consumer awareness on current and emerging product safety issues of importance. With the agency's limited budget, this can make better use of limited resources in amplifying a message and its outreach, and further advance the agency's mission of protecting consumers. We urge the agency to consider pursuing meaningful programs to inform and educate the public on issues of consumer safety and utilize all tools and potential partners at their disposal. Last year we were able to partner with CPSC on some holiday messaging and we look forward to doing that again, with additional partnering opportunities in the future. We would urge CPSC to reach out not only to The Toy Association, but also to other industry groups to work together on educational campaigns.

Conclusion

Toy safety is the top priority for the toy industry and we are supportive of CPSC efforts to keep consumers safe from the unreasonable risk of injury or death associated with consumer products. We appreciate this opportunity to provide feedback to the agency and we wish to continue to be a resource for the staff and commissioners.

We would encourage CPSC to focus its staff and resources on the areas and issues for which it holds both expertise and statutory jurisdiction, while allowing other agencies to lead when they hold main authority on an issue.

² Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market, found on March 24, 2018 at: <https://www.gao.gov/assets/690/689713.pdf>

If you have any questions, comments, or concerns, please contact Autumn Moore at amoore@toyassociation.org in our Washington, DC office.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Pasierb". The signature is written in a cursive, flowing style with a large initial "S".

Stephen Pasierb
President & CEO