

CPSIA and my Small Business

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Starbright Baby Teething Giraffes

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As a mother of a 2-year-old, I admire Congress' efforts to draft a law that protects children from excessive amounts of lead in toys. Unfortunately the law, as it currently is written, will heavily damage the small Businesses and entrepreneurs who make and sell items for children in this country. I do not believe the law is fatally flawed; however, I think the injection of some common sense provisions would more effectively ensure safe products for children and prevent irreparable damage to small businesses.

The reason that I am giving my testimony is because I, along with several other small business owners, am afraid for what the current draft of the CPSIA means for my business and the important amount of income it brings to our family. Specifically, my business consists of fabricating and selling soft stuffed teething giraffes. My husband is a Ph.D. student, and after being laid off this spring, my primary focus is caring for my child as well as working on growing my business. Furthermore, I do not have a large amount of money and I am not affiliated with any lobbying groups. However, I am using the resources that I can to advocate for small businesses, many of whom rely on this income to sustain their families.

A few of the major problems that this law presents to my business are 1) unit testing, 2) the tracking and labeling requirement, and 3) the fallacy of assuming everything is toxic until proven safe.

Unit testing is cost prohibitive for many small businesses, including my own. I make very small batches of usually 10 or fewer giraffes per fabric choice. I also make one of a kind items and custom items using my customer's own fabric, or fabric taken from my collection. My giraffes would be required by this law as of February 10th, 2010 to be tested for both lead and phthalates. I contacted Elemental Research, LLC (4601

Devonshire Rd, Harrisburg, PA, 17109; Phone 717-540-0212;

www.ElementalResearchLab.com) to quote lead and phthalate testing for my business.

For lead testing, I was quoted \$50 per component. There are 4-5 components per giraffe. For phthalate testing, I was quoted \$400 per component. Cumulatively, the total cost for testing one fabric line of giraffes would be anywhere from \$1,800 to \$2,250. The giraffes sell for \$14-\$18 each depending on the fabric. The added cost of testing would add an additional \$180-\$225 per giraffe (based on 10 giraffes per fabric line) For a custom one of a kind item, the price would have an additional \$1,800-\$2,250 tacked onto the \$14 I charge for customs. Obviously, this is extremely cost prohibitive for the customer.

Considering that the law specifies that if I change any component, the unit would need to be tested again. I created 36 different fabric patterns of giraffes in 2008 (not counting custom giraffes). The total cost of lead and phthalate testing my items would have been \$64,800-\$81,000. I made \$4,500 gross last year. The deficit the testing creates would more than put me out of business, it would bankrupt my family.

Another aspect of the law that directly affects my business is the tracking and labeling requirement. According to the CPSC website FAQ (<http://www.cpsc.gov/about/cpsia/faq/103faq.html>), “Section 103 of the CPSIA provides that the tracking label must contain information that will enable the manufacturer to ascertain the location and date of production of the product and cohort information (including the batch, run number, or other identifying characteristic) and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks.”

Even though the law says “to the extent practicable,” I question how this could be accomplished by a home craft seller or small business such as mine. Keeping in mind that each lot requires new testing, then each lot requires a different label. That would mean that for each giraffe fabric style that I create, including custom work, would require a different label to attach. Consequently, that would force me to start making my own labels because it would be cost prohibitive for me to meet the quantity minimums of a

label printer when my lots are 10 or fewer giraffes. My labels would need to say something to the effect of: "Made by Starbright Baby at Boalsburg, PA July 4, 2009 Batch 15 Run 1, Teething Giraffe Pattern Toy 1." Thus, I would have to change the date, the batch, the run and the name of the toy on each lot I made. It is possible to buy printer-friendly fabric labels; however, after a few washes the ink is gone or faded making it difficult to ascertain what the label originally said. Another way to make the labels would be with a permanent fabric pen and fabric. However, manually creating each label would likely take longer than fabricating the giraffe itself. This labeling standard will be crippling for small business in added cost and time.

The most disheartening thing for me as a small business owner is the assumption of the law that everything is bad and dangerous until proven safe especially since fabric and many natural materials (now exempt but set to expire on Feb 10, 2010) are lead free or have infinitesimally small lead levels; well within the acceptable range. The fabric exemption should be made permanent. Many small businesses do not purchase their fabric wholesale but instead buy from local fabric or quilting shops. In this setting, I can buy one yard of fabric off the bolt to make giraffes that I have to lead and phthalate test. My neighbor could then buy the very next yard on the bolt to make bibs for her small business and she too would have submit for lead and phthalate testing. The upshot is that provides work for a few laboratories but at the expense of many more small business owners.

Another aspect of the testing that is problematic is the broad definition of what needs to be tested for phthalates. According to the CPSC guide for Small Businesses, all "Child Care Articles" need to be tested for phthalates. "A 'child care article' is a product that a child 3 years of age or younger would use for sleeping, feeding, sucking or teething. Bibs, child placemats, child utensils, feeding bottles, cribs, booster seats, pacifiers and teethers are child care articles that are covered by the law and might contain phthalates." (<http://www.cpsc.gov/ABOUT/Cpsia/smbus/cpsiasbguide.pdf>) As it is written, the law would currently require me to test my teething giraffes for phthalates. The problem is that my teethers are made from cotton fabric, cotton thread, stuffed with PLA fiber made from corn, and a cotton label. According to Test Method: CPSC-CH-C1001-09.1

(<http://www.cpsc.gov/about/cpsia/phthalatesop.pdf>) the lab is to “grind” the toy to get a sample to test. Being that the giraffes are cotton fabric, it will prove to be difficult to “grind” off anything. When I spoke to Elemental Research Lab about phthalate testing on my item, they were unsure if they could effectively test my giraffes. Interestingly phthalates are found only in plastic. So requiring testing on cloth items, even if they are intended to go in the mouth of a child under 3, does not make sense.

There are many unintended consequences of this law. If it is kept as-written, thousands of small businesses and crafters will be put out of business in this already tough economic climate. The only products consumers will have to choose from are mass produced items from huge corporations; many from the same companies that imported the lead tainted toys that prompted Congress to take action on this issue. In effect, the companies that irresponsibly imported tainted toys will be rewarded with a larger market share.

The unintended consequences of this law are not just for small businesses. Although these consequences do not directly affect my business, they affect me as a parent and are concerning.

Books: No child has ever proven harmed by a book yet countless books will go into trash/landfills for no reason. Pre-1985 books are not old enough to be vintage or collectible, but so many not reprinted, virtually destroying history and culture.

Libraries: If this law holds, children under 12 will not be able to use libraries. Libraries will have to test books or remove them from the shelves.

Schools and Homeschoolers: Almost everything in a building housing the under 12 crowd will need to be tested or thrown out. Imagine the needless expense for school systems already strapped for resources to teach our children.

Low Income Families: (like mine) in these hard economic times who depend on resale shops and garage sales to provide for their families.

Charities: Project Linus and other hospital charities plus shelters that accept donations will have a difficult time keeping up their good works.

Resale Shops: like Goodwill etc. are all devastatingly affected. Many resellers are pulling children's items from their shelves.

Although recent rules released by the CPSC state that charities and resale shops are exempt from testing, they are still liable if anything is sold that is above the lead and phthalate levels. Many will chose to not carry the items rather than take the risk of running afoul of the law.

There are some very simple ways that this law can be amended to be more practical for all businesses involved in making items for children under 12. (Handmade Toy Alliance <http://sites.google.com/site/handmadetoyalliance/Home/our-proposal-to-modify-the-cpsia>).

- Component-based testing so that suppliers of our raw materials could provide the children's product manufacturer with certification of compliance within the law, which would eliminate the need for redundant and costly unit-based testing. Safety would be improved by driving compliance upstream in the supply chain, catching non-compliant materials prior to distribution, practically eliminating the chance that any given finished unit would be non-compliant.
- Exemptions from testing for materials known by science not to pose a lead or phthalate contamination hazard such as fabrics, certified organic materials, and many natural materials such as wood, paper and bamboo. Manufacturers would be spared the costs of testing these materials and testing labs and the CPSC could better focus their efforts on high-risk materials such as metals and paints.
- Harmonization with European Standards. Accepting the stringent EU standards in the United States as sufficient for the requirements of CPSIA would save countless US businesses that import from or export to the EU from the costs of performing multiple tests. US and EU regulators would be able to work together to oversee the global marketplace.

- Exempt permanent batch labeling of products for hand crafted and micro businesses that have small batch runs. While permanent labeling may be efficient with large runs of plastic products, it would be extremely difficult and cost prohibitive for small batches made from wood or fabric.. The US Small Business Administration Office of Advocacy has backed the Handmade Toy Aalliance position on tracking labels, citing the Regulatory Flexibility Act, a federal law designed to protect small businesses.
- Revisit the retroactivity of the CPSIA based on a risk-based approach.

I applaud Congress for trying to pass legislation that will keep our children safe from dangerous toys. I want safe toys in the hands of my little boy just as much as any parent would. I don't think that the CPSIA as-written will help make that happen. The suggested changes mentioned in this document along with the problems highlighted for small businesses, I hope that Congress, the Small Business Committee, and the Subcommittee on Investigations and Oversight can amend the CPSIA in order to keep our children safe and keep our small businesses in business and strong.