

**Testimony for U.S. House of Representatives Committee on Small Business,
Subcommittee on Investigations and Oversight
The Consumer Product Safety Improvement Act and Small Business
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At the request of The Honorable Mary Fallin, Oklahoma's 5th District

First, please accept my sincere gratitude for inviting me to address this committee. The Consumer Product Safety Improvement Act of 2008 (CPSIA), well intentioned to enhance the level of safety in the products Americans purchase for our children, has had massive consequences. The legislation's broad scope has impacted thousands of products for which the measured concerns are not material. Your willingness to review the implications for small businesses in particular is very much appreciated. Indeed my comments today are very consistent with the sentiments expressed last week by the distinguished Chairwoman of the House Small Business Committee, the Honorable Representative Nydia Velázquez. In her letter to the Director of Office of Management and Business, Peter Orszag, last week she wrote, "All too often federal agencies overlook the unintended impact their regulations have on small businesses. To create an environment that fosters entrepreneurship, the regulatory system must be responsive to small business needs." I hope you agree my testimony underscores that message. It is an honor to be included in your esteemed roster of witnesses.

Our company, McCubbin Hosiery, is a family business started by my grandfather 57 years ago. We design, market, and distribute children's and ladies hosiery. Our products are sold in a number of national and regional retail outlets. Our customer base includes Nordstrom, Dillard's, Stride Rite, Kmart, and Payless ShoeSource, as well as hundreds of small independent retailers. McCubbin Hosiery has weathered changing consumer trends, economic volatility, and numerous changes to federal, state and local laws throughout the many years. The CPSIA has the potential to be more devastating to legions of small and medium sized American companies than the challenges we have endured over our past five decades.

I was specifically asked to comment regarding the impact of the law on our business to date; the implications we anticipate in the coming year; and recommendations I would make regarding the CPSIA. Therefore, I will focus on the three aspects of this law we expect affect us most:

- Section 101 - Lead content limits; lack of demonstrated necessity for testing textile products
- Section 102 - General Conformity Certification; impractical expectation of one certificate per style per shipment on a replenishment/high SKU count business
- Section 103 - Tracking label requirements; contrary to rulings of other federal agencies, and potential disclosure of confidential information

IMPACT TO DATE

Since the act's passage many of the problems we have encountered are due to ambiguities and differing interpretations of this law. The Consumer Product Safety Commission (CPSC) is facing a daunting task answering the deluge of questions from companies doing business across the supply chain. While we appreciate the enormity of the task they are being asked to coordinate we await guidance and rulings that are not keeping pace with deadlines. Retailers very quickly responded to the legislation's implications immediately pushing back on suppliers. Without clear and uniform standards retailers expect suppliers to conform with numerous and individualized requirements formulated from their own interpretation of the CPSIA. We have received dozens of different forms, letters, and guides from our customers asking us to demonstrate our compliance with the laws according to how each retailer has interpreted the legislation. This lack of standardization and fear based on what may happen if they, the retailers, are found to be non-compliant has forced us to undertake a number of different testing and certification measures as we try to respond on-the-fly. The resulting confusion on the part of our staff and our suppliers has caused delays and expenses beyond our budget expectations.

With any legislation as sweeping as CPSIA it is imperative each party has sufficient time to review and digest the changes. Parts of the CPSIA provided only 90 days from publication to implementation; simply not enough time to make intelligent decisions.

Thus far we have been most impacted by the lead content testing requirements.

- We were told early on by industry experts both in the United States and internationally that there are no reliable lead content tests for textiles engendering a scramble to execute any test that would work and could be considered "reasonable".
- Reputable testing labs throughout Asia and the United States differed on their interpretations of what specifically should be tested. Consequently, for a period of about three months we tested all yarns used in every sock at tremendous expense.
- The overwhelming demand on lab time at our origin locations resulted in delayed shipments, increased transportation costs to expedite goods, and strained relations with both customers and suppliers.

The CPSC's decision to issue a one year stay from the lead content testing and certification requirements was tremendously welcomed by the industry; however, according to the retailing community the stay changes nothing. There remains no standard and retailers continue to ask us to test. More definitive relief must be communicated from CPSC to retailers on this issue.

The Hosiery Association, The Hosiery Technology Center and industry executives met with 22 Congressional Offices in March to ask for a decision on excluding unembellished hosiery from lead content testing due to the exhaustive analysis which has been exercised at the request of the CPSC. To date, we have not received a response to our request. Consequently, we continue to spend unbudgeted dollars testing for lead that is not in our products to begin with. We believe this exclusion and other common-sense refinements will enable the CPSC to better serve the public interest.

IMPLICATIONS IN THE COMING YEAR

Section 101 - Lead Content Limits –

This section classifies children's products containing more than the allowable limit of lead as banned hazardous substances. This is a worthy and reasonable proposition. However, it has been laid upon the apparel industry, in blanket fashion, without regard to any historical evidence or suggested likelihood that harmful amounts of lead are found in the products. In short, we are being asked to search, at considerable expense, for something that does not exist nor has been alleged to exist. We anticipate this redundant testing will cost us in excess of \$500,000 in the first 12 months.

Further, the current understanding of the law allows for application of this standard to goods already in stock at the retailer's locations as of the effective date. This interpretation would open an avenue for retailers to destroy or return this stock and demand reparations due to non-compliance. Returns of this magnitude could be ruinous to both small and large business owners. In our case, this would all be for products that have never been shown to pose a danger in the first place.

Lead is known to be harmful when ingested or inhaled; neither of which is a concern when discussing hosiery (or textiles in general). In January the CPSC held a public meeting for the Apparel industry to share its findings surrounding lead testing. Attendees included representatives from: The American Apparel and Footwear Association; Wal-Mart; JC Penney; The Children's Place; the National Cotton Council; the Hosiery Technology Center; and the Retail Industry Leader's Association. The presenters offered the results of their exhaustive textile testing over the preceding months. The overwhelming evidence presented demonstrated zero failures of textile items tested. Further, the Hosiery Technology Center's comprehensive testing consistently demonstrates, across the spectrum of hosiery content from diverse origins, lead content test results of less than 63ppm.¹ Simply stated, it has not been demonstrated that lead content in hosiery products poses any manner of safety concern. Yet this law mandates the industry establish an on-going testing process for a non-existent concern. The financial burden is both immediate and ongoing; it unnecessarily impacts business, and ultimately the consumer.

1) Due to retroactive application of the standard if we are unable to prove the goods we have already shipped comply with the lead content limits retailers will return the goods from their floors and their warehouse. Across the industry the consequence to the supplier community will be so devastating many will be forced shutter their doors. Understand the inventory, perfectly good in every respect and completely safe, would be instantly relegated unmarketable. It is doubtful any suppliers have built into their budgets the anticipation of taking back a season's inventory from every one of their retail outlets. Also bear in mind retailers will suffer from bare shelves; their customers denied access to products until the pipeline is recharged.

2) As currently interpreted, testing is required on each color of yarn used in each style of sock each and every time we purchase the item (even if purchased from the same yarn supplier in the same colors previously used and successfully tested). In a replenishment-driven industry such as

hosiery this expense may add 20% to the base cost of the product; again testing for a condition that frankly does not exist.

Section 102 – General Conformity Certification

This section of the law has been interpreted to mandate that every time we make a shipment each article contained therein must be accompanied by a General Conformity Certificate (GCC) identifying each “rule, ban, standard, or regulation applicable to the product” and certifying each product complies with all regulations. This certification is independent of testing. Even if none of the products in the shipment require testing, a GCC must be available.

Our active customer list contains over 7,000 unique entries. Each of our retail customers strives to keep as little inventory as possible; they want to replenish it as often as they can. This results in multiple shipments to them throughout the year. Conversely, manufacturers demand orders in large quantities as infrequently as possible. Distributors like us are caught in the middle of these two opposing forces.

Keeping this balance means we ship small orders to individual store locations across the US on a weekly basis; and we buy from our suppliers in bulk, tens of thousands of pieces at a time.

Further, as we are a fashion driven enterprise our active item list could total as many as 3,000 different products at any given time. Ensuring accuracy and availability of a GCC for every incoming order, and matching that information to a GCC for every item on every order shipped to our customers will result in creation of tens of thousands of certificates annually. This is a daunting prospect for any small business.

Section 103 – Tracking labels

The apparent intent of this section provides for the identification of the specific manufacturing facility for every given item, and to maintain transparency through to the end-consumer. While this goal appears innocuous we believe it would actually be harmful for our business.

The relatively short window leading up to this requirement and the other changes mandated by CPSIA in the interim have resulted in some confusion regarding the final requirement. We have seen opinions from the CPSC that marking only the packaging of items will not meet the requirement of the law as packaging does not allow for “permanent” marking. However, the nature of our products does not allow for sewn in or printed on labeling. As you may know, most hosiery is exempt from the Care Labeling Rules enforced by the Federal Trade Commission (FTC) due to the “utility or appearance” being “substantially impaired by a permanently attached label”. We believe it is reasonable to expect the CPSC to come to a similar conclusion, regarding tracking labels, however, even with the deadline looming we can not be certain of that.

As we experienced last year with the uncertainty surrounding the lead content testing, retailers are pressing suppliers for an immediate resolution to the tracking label demand. We are hopeful the outcome of the CPSC’s May 12th public hearing regarding this requirement will resolve the concerns and answer the questions we all seem to have. Until there is consideration how permanent tracking labeling for hosiery can (or should) be executed we cannot predict the financial impact.

RECCOMENDATIONS

I respectfully submit the following recommendations to help alleviate the unintended and damaging consequences of the CPSIA on our country's Small Businesses. I will limit my comments to the three areas discussed above.

Section 101 - Lead Content Limits

I believe based on the evidence presented above, a move should be made to exclude textile products from lead content testing requirements. At the CPSC's public hearing on textiles in January credible and overwhelming evidence was presented demonstrating statistically negligible levels of lead exist in textiles. Over the course of thousands of tests performed by different companies on different fiber contents from diverse countries none were found to exceed the lowest limit established in CPSIA.

Section 102 – GCC

Allowing this document to be prepared on an annual basis for each style (and each supplier of said style) in a company's offering would vastly simplify compliance with this law without changing the intent. Retailers would still be confident their suppliers are sending them goods that are in full compliance with all standards and regulations under this system. Suppliers would still be responsible for certifying their adherence to the law. And, ultimately the consumer will purchase items with the full confidence the products are safe and risk free. As a matter of practice, when changes are made to the source content of the product or to the manufacturing facility used the products should be recertified.

Section 103 – Tracking labels

The CPSC should follow the precedence established by the FTC with regard to consumer labeling laws allowing legally required labels for hosiery to be included on the packaging only. In September 2008 the FTC confirmed their earlier position in a letter to the Hosiery Association; they stated, "attaching a label to a hosiery item such as a sock or stocking would result in an uncomfortable, unattractive or damaged article". They confirmed labeling of such articles is impractical because the items don't have waistbands, are too fragile, or are sold in pairs.

Further, the tracking information should be acceptably presented in a manner that allows the importer or domestic manufacturer to internally identify the specific factory or mill used without revealing confidential sourcing information.

SUMMARY

Small businesses applaud the efforts of the United States Congress to ensure the safety of all citizens. In the instance of the CPSIA, however, unclear and belated interpretation is causing unintended, punitive consequences for our business and thousands like us. Children's products existing in commerce for years should be judged based on their history of consumer safety. The CPSC has expressed severe doubt about their ability to implement the "vast expansion" of

oversight called for in this law given the “extremely short deadline”.² Where there is no history of problems, common sense exclusions from the regulations should apply. These exclusions will allow the CPSC to focus their enforcement efforts in areas that yield the greatest return for the public good. When the CPSC is expected to enforce these limits on every children’s product in the country, whether or not it poses a viable threat to safety, their enforcement ability is diluted to the point that the overall marketplace ultimately becomes less safe. There is, as detailed above, sufficient evidence to withdraw the lead content testing requirement from all textile articles.

Retroactive application of these safety standards could ruin hundreds of small businesses that have acted responsibly throughout their history of manufacturing and distributing products with no suspicion of deleterious lead content. Importers and wholesalers will be forced to prove the innocence of their products despite the reality there is no evidence these goods have ever posed a safety threat. And, ultimately, it is the American consumer who will pay the price through higher prices and the limited selections manufacturers will be forced to pass along due to increased production costs.

Let me assure you we intend to fully comply with this legislation. But, we are imploring you to do all in your power to ensure the laws are clear, effective, and do not cause an unreasonable burden to commerce. You can astutely enhance the provisions of the CPSIA to address the economic concerns of thousands of reputable small business owners without endangering the safety of our children.

1 Hosiery Technology Center’s presentation to the CPSC, January 22, 2009; <http://www.cpsc.gov/about/cpsia/hosiery.pdf>

2 Federal Register Vol 73, No 223/ November 18, 2008: pgs 678328-68332