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TOY INDUSTRY ASSOCIATION (TIA)

SUBMITTED TO

U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

HEARING ON

**“STRENGTHENING PUBLIC HEALTH PROTECTIONS
BY ADDRESSING TOXIC CHEMICAL THREATS”**

JULY 31, 2013

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Overview

Chairman Boxer, Ranking Member Vitter, and Members of the Senate Committee on Environment and Public Works, the Toy Industry Association (TIA) appreciates the opportunity to provide testimony during this hearing on the issue of reforms to the Toxic Substances Control Act (TSCA) and to also voice our support for S.1009, the Chemical Safety Improvement Act (CSIA).

TIA is the not-for-profit trade association for inventors, producers, importers, and retailers of toys and youth entertainment products sold in North America. Our Association represents more than 600 members – from large to small toy companies – that account for more than 85% of the nearly 3 billion toys sold in the United States each year ... these toys generate nearly \$22 billion in domestic toy sales. The U.S. toy industry directly supports more than 320,000 jobs and more than \$12 billion in wages annually; nearly one-third of these jobs are provided by small businesses.¹

TIA recognizes that parents are concerned about chemicals used in everyday products and we fully support efforts to enhance public confidence in the safety and management of chemicals through the modernization of TSCA. Federal action is also urgently needed to address the emergence of new individual state regulations that are resulting in an unworkable patchwork of varying requirements across the nation and that are already significantly impacting innovation and the distribution of toys.

We commend the bipartisan sponsors of S.1009 for their interest in assuring that chemicals and products are safe. TIA and its members share this interest. Toy safety – and assuring that children are safe while at play – is the toy industry’s top priority. This is why we support the *single* strong, protective national toy safety framework now administered by the U.S. Consumer Product Safety Commission (CPSC). Providing a similar framework for TSCA is necessary to create an equally strong safety program for chemicals used in products across the nation.

For this reason, and for the safety of all consumers and children, we urge the Committee to rely on a risk-based approach in reforming the Toxic Substances Control Act that provides uniformity across state boundaries.

Toys are Designed and Regulated for Safety

Every time a member of our industry places a new or existing product on the shelf, we renew our commitment to toy safety.

TIA and its members have a long history as leaders in toy safety requirements. We created the first national toy safety standard, now known as ASTM F963, nearly 40 years ago. In fact, next month will mark the fifth anniversary of Congress mandating that toy safety standard as federal law.

¹ From the *Toy Industry Association Economic Impact Study 2012*, John Dunham and Associates. Developed using standard econometric models maintained by the Minnesota IMPLAN Group using data from industry sources, U.S. Department of Commerce – Bureau of Economic Analysis, and Dun and Bradstreet, Inc.

Following the implementation of the Consumer Product Safety Improvement Act (CPSIA) in 2008, Senator Richard Durbin (D-IL) stated, “The industry realizes that maintaining consumer confidence is critical... They held themselves to a higher standard. I am really pleased.” More recently, CPSC Chairman Inez Tenenbaum stated, “I am pleased to report that the state of toy safety is strong—it is strong thanks in large part to the actions of many of you in industry.” She also added, “Strong toy standards support the production of safer toys in the marketplace.”

Toymakers are constantly ensuring that the materials used in toys are safe and provide the desired function for a toy or toy component. TIA’s members perform rigorous safety assessments and required third-party testing prior to the marketing and sale of their products. These tests consider the chemicals found in the toy, possible exposure to substances within the product, and potential impacts on a child. Hundreds of health and safety requirements are reviewed and tested each time a product is developed.

In addition to meeting stringent internal company safety requirements, all toys sold in the U.S. must also comply with numerous federal safety and environmental regulations under a variety of laws, mandatory standards and regulations, including:

- The Consumer Product Safety Improvement Act (CPSIA) of 2008 and its update in 2011
 - The U.S. national toy safety standard, ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (made mandatory under Section 106 of the CPSIA)²
- The Consumer Product Safety Act (CPSA)
- The Child Safety Protection Act (CSPA)
- The Federal Hazardous Substances Act (FHSA), and
- The Toxic Substances Control Act.

Under this network of requirements, it is illegal to sell toys or children’s products containing substances considered to be harmful and to which children might be exposed.

But the toy industry will not rest in its ongoing efforts to develop and implement strict, risk-based safety requirements for its products. Via the ASTM standardization process, toy industry representatives work alongside medical experts, consumer representatives, government agencies and other stakeholders to continually review new and emerging risks to children and update the standard to keep pace with product innovation. Together, these experts develop science-based requirements that will become the new mandatory standards³ for the entire toy industry. Recent examples include the new, more stringent limits that were set for heavy metals (such as cadmium) in toys.

The ASTM Subcommittee on Toy Safety has become known for its ability to identify emerging hazards and quickly develop risk-based standards to address them. The toy safety standards produced through this public- and private-sector partnership have served as a model for other jurisdictions around the globe.

² Consumer Product Safety Improvement Act, Sec. 106, Public Law 110-314 – August 14, 2008 [15 USC 2056b].

³ *ibid*

The Impact of State-Based Chemical Regulation Programs

Since the toy industry's products come in contact with children each day, we have been uniquely impacted by the handful of states that have implemented chemical regulation programs. Even small differences in definitions and interpretations can dramatically inflate testing costs and compliance procedures, but these differences lead to **no improvement** in toy safety.

Ensuring compliance with differing state-based chemical restriction and reporting requirements has resulted in the creation of extensive data collection and submission systems by companies, additional product testing, and extensive staff planning. For product manufacturers – especially small and medium sized companies – the resource burdens of these programs escalate over time. Reviewing and certifying products to different requirements in each state has jeopardized the viability of many small businesses and hindered their ability to expand and create jobs.

For example, in Washington State, the Children's Safe Products Act reporting program has been documented to cost the toy and children's product industry up to \$27.6 million the first year, followed by \$2.8 million annually in subsequent years⁴ just for testing data needed to comply with the program. Non-risk-based chemical reporting does not improve a parent's understanding of the safety of a product but it does result in unnecessary compliance costs for the toy company.

State-based efforts to regulate "chemicals of concern" in consumer products also place a burden on state government agencies. In California, where "Green Chemistry" legislation became law in 2008, it was estimated during passage of that law that implementing the program would cost the state \$7.3 million over the first five years.⁵ In Maine, estimates show that the hidden fiscal burden associated with the implementation of their chemical regulation program would range from \$900,000 to \$1.6 million in initial start-up costs and then an additional \$900,000 to \$2.2 million annually. Again, these costs are only those incurred by state agencies ... not the cost to product manufacturers.

TIA and its members support efforts that improve toy safety and are committed to those efforts regardless of the cost. However, children's safety is better served through a federal approach to evaluating risks from chemicals than from a patchwork of state requirements.

Benefits of a Unified National Chemicals Management Program

Revising TSCA as drafted in S.1009 ensures that products and chemicals are uniformly safe for intended uses across all 50 states. A nationwide approach under S.1009 would:

- Address safety and risk issues from chemical uses nationwide;
- Eliminate impediments to interstate commerce that would otherwise increase the cost of products;
- Allow manufacturers to redirect resources to focus on truly ensuring safety – not data compliance;

⁴ Washington Council of Ecology, *Final Cost-Benefit and Least Burdensome Alternative Analysis*, Page 11. 11-07-022.

⁵ California State House Appropriations Committee Fiscal Summary, AB 283. Available at: http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080807_131956_sen_comm.html

- Create a more predictable regulatory environment via one national policy;
- Establish a clear risk-based U.S. scheme of chemical regulation that can be a model for global chemical regulation; and
- Allow state and local governments to focus on higher priority issues to improve public health.

TIA believes that chemical and product safety can be best approached at the federal level due not only to the availability of additional federal resources and expertise, but also from use of existing scientific data and risk-based approaches by the Environmental Protection Agency (EPA).

Importance of Uniform National Requirements for Interstate Commerce and Global Competition

Limited preemption is important under TSCA because this law could establish strong, uniform national standards for chemical substances. Without preemption, a modernized TSCA could create more uncertainty than it resolves. On complex issues that impact a broad array of consumer goods produced and sold in interstate commerce, a national scheme of uniform standards is the most effective way to assure that manufacturers, distributors and retailers in each state adhere to the same requirements. Disparate and inconsistent state and local requirements on nationally distributed substances (and products incorporating those substances) unduly burden interstate commerce, confuse consumers and reduce consumer choice.

Global commerce has expanded significantly since TSCA was enacted in 1976. State laws and regulations that might have made sense when markets were primarily local now result in conflicting requirements in an age where markets are regional, national, and global. Modern economic realities require Congressional action to establish a uniform federal U.S. chemical regulatory system. Strengthening TSCA's preemption provisions is consistent with this need. Limited preemption, as proposed in S.1009, is consistent with regulation of the toy industry under the CPSA, CPSIA and FHSA.

Product safety is not a local issue – it is a national obligation. Children in all 50 states should be protected by the same effective product safety standards. In a globally competitive marketplace, the federal government should assert its right to regulate interstate commerce via the establishment of uniform national requirements. Only with such action can a fair playing field be established that does not impose undue burdens upon product producers from different states and localities.

Support for a Risk-Based Approach to Chemicals Management

TIA supports strong risk-based regulations for toys that are enforced consistently across the nation.

Therefore, TIA supports S.1009, the proposal to reform TSCA that was introduced by the late Senator Lautenberg and received with broad bipartisan support, because it has a risk-based approach to decision-making that is based upon sound science.

Additionally, S.1009 directs EPA to rely on a “weight of evidence” approach that uses credible and authoritative scientific data to demonstrate harm in its assessments, determinations, and regulatory actions. This risk-based approach is also consistent with how toys are regulated by the CPSC.

TIA also supports TSCA reform as proposed by S.1009 because it will provide additional information about chemicals in the materials used to make toys. This will improve our industry’s ability to make toys even safer.

S.1009 offers the best path forward to achieving a reasonable national program that looks at risks from chemicals and their uses in products.

Conclusion

The Toy Industry Association and its more than 600 members share the Committee’s interest in the safety of toys and protecting the health of children. As an industry of parents and care-givers, we would like to reiterate that the safety and well-being of children will always be our top priority.

TIA asks that the Committee support a uniform and risk-based approach to TSCA reform that includes uniformity and limited preemption.

TIA supports S.1009 because it offers a path that will:

- (1) Improve the toy industry’s ability to make toys even safer by creating a single, uniform system that will address the current inconsistent patchwork of state-by-state regulations,
- (2) Make chemicals management decisions through the use of a weight-of-evidence approach and under a risk-based threshold, and
- (3) Result in greater information about the risks from chemicals in products and the environment.

Chairwoman Boxer, Ranking Member Vitter, and Members of the Committee, we again appreciate this opportunity to provide our perspective on this critical issue. The toy industry is committed to working with you to develop practical, scientifically-sound reforms to TSCA that strengthen protections for children and the environment and foster innovation by the toy industry in the global marketplace.

We would be happy to address any questions that Members of the Committee might have with regard to our interest in this topic and proposed TSCA reform legislation.