ALASKA COMMUNITY ACTION ON TOXICS, ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENT, BLUE GREEN ALLIANCE, EARTHJUSTICE, ECOLOGY CENTER, ENVIRONMENTAL DEFENSE FUND, HEALTHY BABIES BRIGHT FUTURES, LEARNING DISABILITIES ASSOCIATION OF AMERICA, THE ARC OF THE UNITED STATES, UNION OF CONCERNED SCIENTISTS, AND UNLEADED KIDS

May 28, 2024

Alberta E. Mills, Secretary
U.S. Consumer Product Safety Commission
amills@cpsc.gov

Dear Ms. Mills:

On behalf of the 11 organizations listed below, we thank the Commissioners and staff for the opportunity to provide written comments on April 24 and oral comments on May 8. In those comments we asked the Commission to prioritize in its Fiscal Year 2025 Operating Plan three long overdue periodic reviews of its lead-standards as mandated by Section 101 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) and codified at 15 U.S.C. § 1278a. That section directs the Commission every five years to:

- **Lead Paint Ban:** Review the numerical limit and "by regulation revise downward the limit to require the lowest amount of lead that the Commission determines is technologically feasible to achieve."
- **Lead Content Limit in Childrens Products:** Review and revise downward the lead content limit to "require the lowest amount of lead that the Commission determines to be technologically feasible to achieve" for a product or product category, based on the best available scientific and technical information.
- **Methods to Measure Lead in Paint:** Review and revise any methods for measurement of lead in paint "to ensure that such methods are the most effective methods available to protect children's health."

In Tom Neltner's oral testimony, he explained that in 2008 Congress established numerical standards for lead content of 90 parts per million (ppm) in paint and 100 ppm in children's products based on its understanding of the lowest amounts of lead technologically feasible to quantify at the time. The Commission adopted those numerical limits without affirmatively determining what was feasible.[1]

[1] For paint, CPSC adopted the lead limit four months after the CPSIA was enacted without considering what was technologically feasible. See CPSC, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, Final Rule, 73 *Federal Register* 77492, December 19, 2008, https://www.govinfo.gov/content/pkg/FR-2008-12-19/pdf/E8-30238.pdf. Three years later CPSC adopted the 100 ppm limit for children's products stating that "the staff could not recommend that the Commission make a determination that it is not technologically feasible for a product or product category to meet the 100 ppm lead content limit for children's products under section 101(d) of the CPSIA. No such determination has been made by the Commission." CPSC, Children's Products Containing Lead; Technological Feasibility of 100 ppm for Lead

For children's products, the third-party certification has generated a wealth of testing data that the Commission could use to make an affirmative determination of the lowest amount of lead feasible to quantify. The paint manufacturers also have likely conducted significant testing to ensure compliance with the numerical limits. As a practical matter, manufacturers have an incentive to further reduce lead contamination to avoid risk of potential compliance problems.

Therefore, Congress directed the Commission to review the lead standards every five years and make an affirmative determination on what can be achieved. By leveraging the wealth of testing data and progressively strengthening the standards, Congress sought to drive exposure to lead from these products closer to zero, protecting children from the myriad of harms that were becoming all too clear even in 2008. As we explained in our comments, our understanding of those risks has only grown in the intervening years so that the scientific consensus is now that no exposure to lead is safe.

As the excellent comments and testimony by others at the public hearing made clear, the Commission has many competing priorities, including some that threaten immediate harm to children's lives. We support the Commission's work on those issues and maintain that it can (and, indeed, must) fulfill the Congressional mandate regarding its lead standards at the same time. The benefits to children's long-term health from tightening the lead standards are too significant to be delayed another year.

The CPSC's current lead-paint standard permits a dangerous concentration of lead to be present in paint that is sold as "lead-free." Consider the situation of a square foot of paint at the current 90 ppm limit being dry sanded without collection or filtering—a common practice in home maintenance and renovations. The resulting dust could pose a dust-lead hazard on more than 4,000 square feet of floor based on Environmental Protection Agency (EPA) standards at 40 C.F.R. § 745.65.

In the alternative, consider a paint chip about the size of a young child's thumbnail—about 1 gram. A child eating the chip containing lead at the 90 ppm limit would be eating more than 40 times the maximum daily intake for lead set by the Food and Drug Administration.[2]

Given the statutory mandate, we would like to meet with you to discuss:

- What testing information CPSC already has or can obtain from third-party certifiers and manufacturers?
- How much information does the CPSC need to adequately assess technological feasibility to reduce the numerical limits?

Content; Notice of Effective Date of 100 ppm Lead Content Limit in Children's Products, 75 *Federal Register* 44463, July 26, 2011, https://www.regulations.gov/document/CPSC-2010-0080-0047.

[2] Brenna M. Flannery, Karlyn B. Middleton, Updated interim reference levels for dietary lead to support FDA's Closer to Zero action plan, Regulatory Toxicology and Pharmacology, Volume 133, 2022, 105202, https://doi.org/10.1016/j.yrtph.2022.105202. See also FDA, Closer to Zero: Reducing Childhood Exposure to Contaminants from Foods, accessed on May 20, 2024 at https://www.fda.gov/food/environmental-contaminants-food/closer-zero-reducing-childhood-exposure-contaminants-foods.

- Whether CPSC has evaluated methods to measure lead content at levels less than 10 ppm? As Tom Neltner explained in his testimony, preliminary testing by Ecology Center of more than 45 paints with an x-ray fluorescence (XRF) suggests that levels below 10 ppm are achievable.
- If CPSC has or will consider adopting limits on other heavy metals such as cadmium to avoid the risk that companies will avoid selecting alternatives that are also harmful to people?

We thank you again for considering our comments and these requests. We recognize that the Commission is on a tight schedule to finalize the FY2025 Operational Plan, so we suggest that we meet before the end of June. Please contact Tom Neltner at tneltner@unleadedkids.org or 317-442-3973 to schedule the meeting or if you have questions or comments.

Sincerely,

Tom Neltner, Unleaded Kids

Pamela Miller, Alaska Community Action on Toxics

Katie Huffling, Alliance of Nurses for Healthy Environments

Charlotte Brody, Blue Green Alliance

Eve Gartner, Earthjustice

Jeff Gearhart, Ecology Center

Maria Doa, Environmental Defense Fund

Jane Houlihan, Healthy Babies Bright Futures

Tracy Gregoire, Learning Disabilities Association of America

Maureen Swanson, The Arc of the United States

Kristie Ellickson, Union of Concerned Scientists