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March 24, 2009

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

**Submitted via Email to [section108definitions@cpsc.gov](mailto:section108definitions@cpsc.gov)**

*Re: "Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108"*

Dear Sir or Madam:

The Consumer Healthcare Products Association (CHPA) appreciates the opportunity to provide comments on the "Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108." Founded in 1881, CHPA is a national trade association representing leading manufacturers of over-the-counter, non prescription medicines and dietary supplements.

In its request for comment, the Consumer Product Safety Commission (CPSC) solicits written comments on the Commission's general approach to determining which products are subject to the requirements of the Consumer Product Safety Improvement Act (CPSIA) section 108 related to the sale of products containing specified phthalates. As noted in the request for comment, the requirements of section 108 apply to subsets of "consumer products" as defined by the Consumer Product Safety Act (CPSA). *See* CPSA, P.L. 92-573, § 3(a)(5). As further noted in the CPSC's request, certain products, including foods and drugs, are excluded from the definition of "consumer products." *See* CPSA, P.L. 92-573, § 3(a)(5)(H), (I).

CHPA supports the CPSC's recognition of the statutory exclusion of food and drug products from the definition of "consumer products." While other more general sections of the CPSIA not restricted to "consumer products" may be applicable to medicines and dietary supplements or their packaging, provisions of the law limited to "consumer products," such as section 108 of the CPSIA, clearly do not apply to these product categories.

More broadly, many provisions of the CPSIA apply only to "children's products" (e.g., third party testing requirements). "Children's products" are specifically defined as a subset of "consumer products." CPSA, P.L. 92-573, § 3(a)(2). As referenced above, foods and drugs are expressly exempted from the definition of "consumer products," and therefore CPSIA requirements related to "children's products" also do not apply to pediatric drugs and dietary supplements.

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We stated this position in CHPA's October 29, 2008 letter to CPSC regarding CPSIA section 102 certificate requirements and believe that a Frequently Asked Questions (FAQ) document posted by CPSC on December 10, 2008 confirms CPSC's support for our position (<http://www.cpsc.gov/about/cpsia/faq/102faq.html#102q10>). CPSC's FAQ document explicitly states that "CPSC does not regulate children's drugs and their accompanying dosing devices such as dosing cups or separate dosing droppers. These products are excluded from the definition of "consumer product" under the Consumer Product Safety Act."

CHPA supports the Commission's ongoing efforts to provide guidance with an opportunity for public comment on issues related to the CPSIA. CHPA members thank the CPSC for the opportunity to provide our comments on this important issue. If the Commission has any questions or if CHPA can be of any assistance, please let us know.

Kind regards,

A handwritten signature in black ink, appearing to read "Andrew C. Fish". The signature is written in a cursive, flowing style.

Andrew C. Fish  
Senior Vice President, Legal and Government Affairs