

**Consumer Federation of America ♦ Consumers Union ♦ U.S. PIRG
Union of Concerned Scientists ♦ Kids in Danger**

October 26, 2007

The Honorable Daniel K. Inouye
Committee on Commerce, Science and Transportation
560 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Inouye:

The Consumer Product Safety Commission's mandate to reduce or eliminate unreasonable risks of injury and death to consumers for more than 15,000 types of products is of utmost importance to the public. In no area is the Commission's ability to do its job effectively more important than when it comes to ensuring the safety of children. The Commission has jurisdiction over virtually all children's toys, clothing, and products, including baby walkers, high chairs and cribs.

Unfortunately, over the years the CPSC has seen its budget slashed and its staff reduced. As a result, it is facing unprecedented challenges in its ability to protect the public. The most glaring example of this critical problem involves children's toys. The recent avalanche of toy recalls, involving Chinese-made toys made with excessive paint lead levels, has exposed millions of children to a highly toxic substance and created a crisis of confidence among individuals and families who feel they can neither trust the toy industry nor the government to protect them from unsafe and dangerous toys.

We can and must do better. S. 2045, as introduced by Senator Pryor, and cosponsored by Senators Brown, Durbin, Inouye, Klobuchar and Bill Nelson is designed to restore the resources and tools the CPSC so desperately needs to better ensure that our products, especially children's toys, are meeting the highest safety standards.

As the legislation moves to the Senate Commerce, Science and Transportation Committee mark-up next week, we urge you to firmly reject industry arguments that seek to weaken S. 2045 by preserving the status quo that benefits corporate interests at the expense of the safety of our children and families

Strengthen the CPSC by increasing its resources

S. 2045 wisely recognizes the importance of increasing authorization levels for the CPSC to allow the agency to increase product testing, enforcement efforts, and to upgrade its laboratories. By increasing staff levels, the Commission will be better able to perform its mission. We also believe that restoring the Commission to five members, as originally required in the Consumer Product Safety Act, will result in a more robust and dynamic Commission that will better serve the public interest.

Require independent third-party testing

We strongly support a CPSC-administered, third party safety certification program for monitoring the safety of all products. S. 2045 will ensure that the public can trust the products released into the marketplace by requiring unbiased, independent testing. The recalls this year alone make clear that the current system of manufacturer testing is not sufficient to keep dangerous products out of our homes. Wholly independent third-party testing as created in S. 2045 will remove the temptation of manufacturers to claim compliance without independent substantiation of those claims. This process will be critical to restoring consumer confidence.

Hold manufacturers, retailers, and importers accountable

Year in and year out, the CPSC imposes fines on companies for failing to report safety hazards, but the practice of failing to report continues. The current cap on fines the CPSC is authorized to impose - \$1.83 million – and the fines that CPSC does actually impose (never as high as the \$1.83 million cap) are low enough that they have become a cost of doing business for a company. While we believe that there should be no cap on possible fines the CPSC could impose, we support S. 2045's \$100 million cap on civil penalties as a reasonable compromise that will act as a strong deterrent for flouting the law.

End CPSC secrecy about unsafe products

Section 6(b) of the Consumer of the Consumer Product Safety Act is yet another mechanism that undermines CPSC's power to keep the marketplace safe. We strongly believe a federal agency has an obligation to disclose to the public when it opens an investigation on a potentially hazardous product. Currently, the National Highway Traffic Safety Agency makes much of this information public; yet the CPSC cannot disclose this information due to Section 6(b). While we would prefer repeal of Section 6(b), we understand the compromise contained in S.2045 will make important safety information available to the very people they are charged with protecting.

Ban lead in children's products

We strongly support a full ban on the use of lead in children's products other than trace amounts. Experts have confirmed that there is no safe level of lead exposure and the use of lead is not necessary in children's products. Serious, acute and irreversible harm can come to children as a result of exposure to lead. The provisions in S. 2045 would expand current lead regulations. Currently only a ban on lead up to 600 ppm exists for paint and surface coatings on children's products. S. 2045 limits the ban on lead on paint on children's products to 90 ppm and lowers the acceptable levels of lead to 200 ppm for jewelry and 400 ppm for all other children's products. We view this as a positive improvement over the status quo but we would continue to urge the Committee to work to reduce the levels of lead even further.

Preserve States' vital role in ensuring product safety

We strongly support S. 2045's attempt to clarify the CPSC's authority in order to prevent the Commission from usurping well-established state regulatory authority and common law claims in the realm of product safety. In addition, we strongly support the provision in S. 2045 to permit State

Attorneys General to bring civil actions on behalf of residents to enforce provisions under CPSC's jurisdiction. State Attorneys General serve an important role in protecting the public, and this provision will help consumers to obtain redress from harms they have suffered and to deter wrongful conduct.

Ensure that whistleblowers are protected

S. 2045's whistleblower provision offers important protections for individuals within companies who uncover wrongdoing, and is a good first step towards enactment of a more comprehensive provision that must ultimately include CPSC employees. Whistleblower protection will help bring to light serious safety issues hidden by unscrupulous corporate executives, and will help ensure that scientists and other professional staff at CPSC may raise concerns about unsafe products without fear of retaliation by agency managers.

There are many more important provisions contained in S. 2045, including **streamlined rule-making procedures, requirements for bonding** to ensure that manufacturers and others involved in a recall can cover the expense of the recall, and requiring tracking labels on products (and, we urge, it also be applied to packaging) to **enhance traceability** of items in the marketplace. We strongly support these provisions. At the same time, we urge the Committee to delete a provision in the bill calling for completion of the furniture flammability rulemaking because of the serious health impacts associated with the fire retardants that would be used to meet the flammability standard. Finally, we ask that you include language requiring the Commission to study and propose mitigation strategies that will address persistent racial disparities involving preventable injuries among minority populations.

We are deeply grateful to the Committee for its efforts to improve the safety of products and toys and willingness to strengthen the CPSC. We urge you to resist any efforts to chip away or weaken what you have set forth in S. 2045 as introduced.

Thank you for your kind attention to this critical matter.

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