

NAM CPSC Coalition



October 30, 2007

The Honorable Daniel Inouye, Chairman
The Honorable Ted Stevens, Ranking Member
Senate Committee on Commerce
560 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Inouye and Ranking Member Stevens,

The undersigned members of the NAM Coalition on the Consumer Product Safety Commission (CPSC) have serious concerns with S. 2045, the Consumer Product Safety Commission Reauthorization Act, which we understand that your Committee will mark-up on October 30th. Though we appreciate your leadership on this issue, in its current form, we are unable to support S. 2045 and urge you to make considerable changes to the bill at the mark-up.

The NAM Coalition on the CPSC represents manufacturers, distributors, importers and retailers of consumer products. All of the members of our Coalition are committed to selling safe consumer products. The Coalition supports the important mission of the CPSC and has advocated for increasing its budget and resources. The marketplace needs to be free of unsafe consumer products that could pose a risk of injury to consumers, particularly to our most vulnerable population, our children.

We appreciate your goal to craft legislation to reauthorize and restructure the CPSC to reflect the needs of consumers while factoring in the changing global economic playing field. However, after reviewing S. 2045, the Coalition identified several provisions that we believe will have unintended consequences. As you know, we followed your instruction to submit legislative language to both the majority and minority. However, we understand a decision was made to not include these suggested amendments in your perfecting amendment. We ask the Committee to amend S. 2045 at mark-up to address the following concerns:

1. Consistent national product safety standards are crucial, especially for small companies that cannot effectively monitor varying state interpretations of federal product safety laws and regulations. Under S. 2045, fifty different State Attorneys General will be able to sue manufacturers and distributors for actions that they each interpret and allege to be consumer product safety violations. This will result in inconsistent enforcement actions against companies in different states and would be especially harmful for small companies, requiring them to shift major resources toward litigation instead of product safety. It would also cause massive consumer confusion by leading to the recall of a product in one state but not others, or recalls of the same product with different corrective actions in different states.

2. By abolishing federal preemption of future CPSC regulations, the bill would create impediments to interstate commerce. Existing federal law contains a well thought out process for states with stronger safety standards to request an exemption from federal preemption. The fact that that states are not using this well defined process is evidence that no changes in this regard are necessary. CPSC rules must remain the law of the land for all fifty states to encourage uniformity and safety.
3. S. 2045 would subject U.S. companies to up to \$100 million in penalties if the CPSC alleges, after the fact, that the company failed to make a timely recall report and would subject U.S. company employees to imprisonment even if they had no actual knowledge that their conduct could be illegal. The CPSC has had relatively few civil penalty cases in its history because the goal has been to negotiate voluntary corrective actions that benefit consumers rather than add to an already overly burdened legal system. The proposed penalty increases will promote litigation rather than cooperation, and in turn will lead to much more delay in taking action to address unsafe products and protect the public.
4. The bill would give employees a powerful incentive to report preliminary, erroneous or unsubstantiated information as an alleged “product safety violation” in order to collect up to \$25 million as a share of civil penalties that may subsequently be assessed against the company. The bill would also create a new right that would allow millions of employees of consumer product manufacturers, distributors and retailers – as well as related federal employees –to prevent a pending disciplinary action or termination by claiming knowledge of a “product safety violation,” with the maximum sanction of \$1,000 for making a false allegation.
5. The bill ends all protection from disclosure (other than for traditional confidential business information) of company specific data under Section 6. It appears a firm's only recourse when notified of an imminent disclosure that is inaccurate or unfair under the circumstances is to place in the file an explanatory memorandum. Not every report of a potential problem results, or should result in, a recall. There are often situations where companies, in conjunction with CPSC staff, report problems, examine causes and issues, and conclude that the situation does not require a recall to protect consumers. Eliminating protections from disclosure would unduly alarm consumers, harm companies, and serve as a deterrent to the sharing of information provided voluntarily.
6. Industry is committed to product safety, including limiting the exposure of children to potentially toxic materials. Toxicity is a function of both the inherent toxicity of a material and the potential that consumers will be exposed at levels of concern. This is why the concept of accessibility is inherent in toxicological evaluations of lead and other substances. Limits on contaminant lead in children's products at levels deemed protective of children's health already exist in the form of both regulations and guidance applied by the CPSC. We are deeply troubled by the arbitrary change in proposed limits on lead in the proposed legislation without the input of the toxicological community. Congress specifically enacted Section 28 of the CPSA to provide for the creation of Chronic Hazard Advisory Panels to consider such issues. If Congress wants to establish lower levels for contaminant lead in children's products, a direction to convene a CHAP and initiate a rulemaking on the basis of

its recommendation would be the appropriate way to address this issue. Restrictions on any material must be grounded in sound science. The proposed legislation fails that test. The result is the worst kind of policy change: an adverse impact on industry without offsetting benefits to safety.

To its credit, the CPSC is considered the global leader in the area of product safety due to its domestic programs and international initiatives. Other nations are setting up programs based on the CPSC model. Its continued global leadership requires many of the improvements that you have written into the proposed legislation. Some proposals, however, would lessen the CPSC's focus on safety and put that leadership in jeopardy.

In conclusion, we are very concerned that S. 2045 does not effectively address product safety. Appropriately amending this legislation to retain and strengthen the core mission of the Consumer Product Safety Commission must be the main goal of this legislation.

Sincerely,



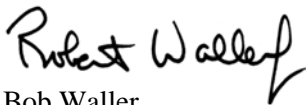
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President and CEO
National Association of
Manufacturers



Richard M. Doyle, CAE
President and CEO
International Sleep Products
Association



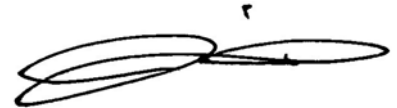
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Bob Waller
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Charles M. Stockinger
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Jack W. Klump
President
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Association



Andy Counts
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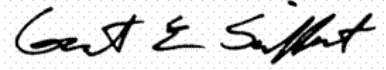
Joseph M. McGuire, CAE
President
Association of Home Appliance
Manufacturers



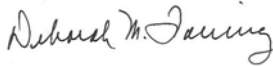
Steve Slagle
President and CEO
Promotional Products
Association International



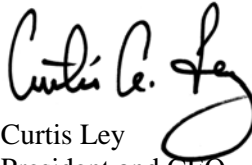
Evan R. Gaddis
President and CEO
National Electrical
Manufacturers Association



Grant Seiffert
President
Telecommunications Industry
Association



Deborah M. Fanning, CAE
Executive Vice President
The Art & Creative Materials
Institute, Inc.



Curtis Ley
President and CEO
Manufacturing Jewelers and
Suppliers of America

Ernie Rosenberg
President and CEO
Soap and Detergent Association



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Consumer Specialty Products
Association



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Ralph J. Vasami
Executive Director
Window Covering Manufacturers
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Mary K. Alexander
Chair
Joint Industry Group



Richard A. Coon
President
Recreation Vehicle Industry
Association



Kevin Burke
President & CEO
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Cal Dooley
President & CEO
Grocery Manufacturers
Association

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