



March 19, 2007

The Honorable Mark Pryor  
Chairman  
U.S. Senate Commerce, Science and Transportation Subcommittee on  
Consumer Affairs, Insurance and Automotive Safety  
508 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Pryor:

On behalf of Safe Kids Worldwide, I am writing to express our strong support for the U.S. Consumer Product Safety Commission (CPSC). We do believe, however, that this critical Agency that does so much with so little, can be improved so that it can better serve its mission to protect our nation's children and families. Safe Kids submits the following comments and suggestion to the Subcommittee hoping to help guide it in its efforts to reauthorize the CPSC.

## **I. Background: Accidental Childhood Injury and Safe Kids Worldwide**

Accidental injuries are a leading cause of death for all Americans, regardless of age, race, gender, or economic status. Annually, an average of 27,100 deaths and over 33.1 million injuries are related to consumer products. Unfortunately, children make up a large portion of these tragic numbers. Each year, more children die from unintentional injuries than from all childhood diseases combined. Many of these injuries are preventable and some of these preventable injuries are associated with hazardous or dangerous products.

The CPSC has a critical role in keeping children and families safe from injury or death related to consumer products. It is the only federal Agency that identifies and acts on a wide range of consumer product safety hazards, overseeing everything from toys to bikes to household products. Its multi-faceted programs and initiatives are vital components of a national effort to prevent childhood injuries – the number one killer of children ages 14 and under.

Safe Kids Worldwide is the first and only national nonprofit organization dedicated solely to the prevention of unintentional childhood injury. Launched in 1987, Safe Kids' nationwide grassroots network of over 600 state and local coalitions and chapters have provided hands-on assistance to families to help prevent these needless tragedies from occurring in the first place. The on-going work of Safe Kids coalitions, and partners like the CPSC, has helped lead to the

decline of the unintentional injury death rate from 1987 to 2000 – a 45 percent decline for children ages 14 and under.

## **II. Specific Comments: CPSC’s Core Functions, Capabilities, Strengths, and Needed Improvements**

As the CPSC monitors the safety of over 15,000 types of consumer products, Safe Kids knows that it is charged with an enormous responsibility to keep families safe from injury and death. The CPSC must regulate these products, recall them when necessary, educate the public about safe use and behavior, and stay current on new injury product trends. Safe Kids recognizes that the CPSC over the last few years has been extremely effective given its small budget and large statutory mandate. Overall, Safe Kids believes that the CPSC serves its core functions very well, and has many capabilities and strengths that help protect the public. However, there are some areas that can be improved upon with either additional resources or changes to its authorizing statute.

### **A. Unique Data Collection Capability**

The CPSC’s data collection is unique among all federal agencies and is one of its most important functions. A key component is its National Electronic Injury Surveillance System (NEISS), a national probability sample of hospitals in the U.S. and its territories. Using NEISS, injury data from hospital emergency rooms is collected and analyzed to identify patterns of occurrence and risk groups for specific injuries. This valuable information forms the basis for preventive measures and educational programs. The Agency should continue this important function. Safe Kids applauds the evolution of NEISS throughout the years, such as increasing the number of hospitals used in the sample and the expansion of the system to capture data on all injuries, including those not associated with consumer products. We hope that the CPSC works in the future to improve this useful data collection tool. For example, more children’s hospitals could be added to the database.

In addition, the CPSC “Safety Hotline” provides a vital link between the government and America’s consumers to report a product complaint or report a product-related injury. Despite its small budget, the CPSC maintains this toll-free hotline that permits consumers to: 1) report an unsafe product; 2) report a product-related injury; 3) find out whether a product has been recalled; 4) learn how to return a recalled product or arrange for its repair; 5) obtain information on what to look for when buying a consumer product; and 6) receive information on how to safely use a consumer product. State and local Safe Kids coalitions, and other grassroots organizations, have used the hotline to both report potentially dangerous products and to collect information on unsafe products. The hotline is an invaluable resource to groups like Safe Kids that are in the business of communicating critical safety messages to the general public.

Information gathered from the NEISS system, the “Safety Hotline”, and other sources, such as death certificates and special investigations, guide the Commission in setting priorities for identifying potentially hazardous products that may warrant future investigation or action. This data provides the CPSC with critical basic information that may eventually lead to a product

modification or the development of voluntary or mandatory safety standards. Additionally, the information is used by outside organizations, like Safe Kids, to aid in the development of injury prevention initiatives. The Agency's data collection techniques do, however, need to keep up with fast paced technology advances and Safe Kids believes that the CPSC's present budget does not afford it the ability to improve those capabilities. Congress should provide those resources.

## **B. Adequate Testing Labs**

Several years ago, several Safe Kids staff members toured the CPSC testing lab located in Gaithersburg, Maryland. The CPSC, among other things, uses this lab to test thousands of consumer products to ensure that they comply with existing voluntary or mandatory standards, or to determine whether or not they pose an unreasonable risk of injury to the American public. Safe Kids staff was impressed by the commitment and expertise of CPSC lab personnel, but was surprised by the poor quality of the lab's conditions. The CPSC, while fulfilling their mission, has done so with less than adequate technical facilities. We believe that the CPSC should have a lab that, at the very least, competes with those found in the private sector and that Congress should authorize and appropriate the funds necessary to upgrade the facility. If the CPSC staff can access a well-equipped lab, this most certainly will translate into better and safer consumer products.

## **C. Effective Market Oversight**

The CPSC has the mandate to ensure that companies that produce or sell consumer products comply with the laws, regulations, and standards that protect consumers and children from hazardous products. The CPSC's ability to recall dangerous or defective products allows the Agency to remove products that could injure or kill children if left on the market. It is important to note that since 1973, the Commission's use of its recall authority has resulted in the initiation of thousands of recalls or other corrective actions involving millions of products. These recalls have included baby rattles, pacifiers, cribs, toys bearing lead paint, flammable clothing, and bike helmets. While America's children live in a safer environment because of the CPSC's market oversight efforts, budget restraints may prevent the CPSC from properly policing the marketplace for dangerous products. By necessity, the CPSC is recalling more products than ever. It is receiving more Section 15 reports than at any other time in its history, especially from some of our nation's largest retailers. This increased activity demands appropriate resources – resources that the Agency right now does not have.

The Agency's field and compliance staff, in our view, are stretched to the limits. These CPSC departments, at their present staffing levels, will not be able to keep up with this increased activity and safety will suffer. For instance, more and more products are now being sold on the Internet. It is the CPSC's sole responsibility to police this electronic marketplace for recalled, dangerous products being sold online after a recall has been announced. Presently, CPSC Investigators conduct surveillance only on weekends and in their spare time. This is not nearly enough given the huge expansion of this type of commerce. In addition, more and more products are entering the marketplace through imports, especially from China. This influx of products

presents the CPSC with the challenge of increased custom product import oversight. Congress should provide the resources in order to allow the CPSC to better police the consumer product marketplace in all its forms.

#### **D. Effective Public Education**

The CPSC uses a wide range of tools to spread many important safety messages that are critical to the prevention of product-related injuries. Each time the CPSC educates a parent, an adult or a child about the proper use of a product, it is helping to create a safer environment for America's children. Safe Kids applauds the CPSC for its widespread and effective Neighborhood Safety Network initiative, which provides timely and useful public education materials to our organization and the public at large.

Grassroots-based organizations, such as Safe Kids, are especially effective in spreading safety messages to underserved and hard-to-reach populations. It has been a pleasure working with the CPSC on different initiatives and hopes that the CPSC continues these types of cooperative relationships with our organization and with other groups. These partnerships will help to ensure that educational campaigns more effectively reach their target population.

#### **E. Encouragement of Market Solutions**

The CPSC should continue to emphasize market-oriented solutions to product safety hazards. In the past, the Commission has convened meetings with industry and consumer groups to address hazards associated with a variety of children's products, including multi-use helmets, baseball safety equipment, movable soccer goals, and bleachers. These meetings allow for industry, government, and consumer groups to exchange ideas in a productive environment that lead to widely accepted solutions to product hazards – without unnecessary regulation or legislation. It seems that it has been a long while since the Agency convened one of these stakeholder meetings. Safe Kids would encourage the Agency to reinstate these meetings for appropriate risk areas and products.

#### **F. The Commission Should Consider Select Use of Product Registration Cards to Improve Recall Effectiveness**

The CPSC previously denied a petition that requested the Agency to require registration cards "for all products intended for children." This general definition applied to a wide universe of products ranging from toys to art supplies to clothing to children's books to cribs. This requirement, in our view, would have not only been overly burdensome on manufacturers, but also could have decreased the value of registration cards as they are used in the marketplace today. The CPSC was technically justified when it denied the petition. Safe Kids believes, however, that there may be a need for an expanded role and use of product registration cards. Safe Kids suggests at least two types of products that may benefit from a registration card requirement:

➤ **Items Intimately Interwoven in a Child’s Daily Life**

Safe Kids believes that registration cards may be of value when accompanied with items such as cribs, bunk beds, strollers, high chairs, baby walkers, changing tables, and play yards – products that are intimately interwoven in a child’s daily life. These types of consumer products have special characteristics, in that a child often interacts with them for a substantial period of time. Additionally, many of these products are designed by intent or by practice to allow for a child to be left unattended for several moments or for an even longer duration. If the Commission was to determine that one of these products posed an unreasonable risk to the child, and subsequently required a recall, Safe Kids believes that it would be particularly important to notify consumers as quickly as possible. Registration cards would assist in that process.

➤ **Products with a Safety Purpose**

Mandatory registration cards may have some value when attached to products that are designed to fulfill a safety purpose, such as baby monitors, bike helmets, safety latches, baby gates, catcher’s masks and other sports safety equipment, smoke alarms, and carbon monoxide detectors. Consumers purchase these products to serve a preventive role in order to protect their children and families from deaths and injuries. If the Commission determines that one of these products is not adequately fulfilling that safety purpose, it is critically important to remove that product from the marketplace as soon as possible. We cannot have consumers relying on a safety product when the product itself fails to fulfill its intended purpose. Again, in those circumstances, it would be particularly important to notify consumers quickly about the defect.

**III. Suggested Congressional Considerations**

The CPSC must be active guardians of consumer safety. We cannot wait for deaths and injuries to happen before we act. We must spend our time, effort, and resources now in order to prevent the incidents from ever occurring. Accordingly, Safe Kids offers the following points for the Subcommittee to consider.

**A. Overall Budget Increase**

The CPSC monitors the safety of over 15,000 product categories – including kitchen appliances, sporting equipment, safety devices, home furnishings, and art materials – just to name a few. Safe Kids believes that the Commission does the best it can with a \$62 million annual budget – clearly not enough money given the CPSC’s breadth and depth of products under its jurisdiction. Safe Kids urges the Subcommittee to authorize additional funding, so that the Agency can better fulfill its broad mission (i.e., better marketplace policing, more effective consumer education, improved testing of products). Specifically, the President’s budget request for this Agency does not allow it to fully implement its critical mission.

President Bush's Fiscal Year 2008 budget includes an appropriation of \$63,250,000 for the CPSC, an increase of \$880,000 from Fiscal Year 2007. Although Safe Kids recognizes that this is an apparent increase over last year, in effect, and given this Agency's recent inadequate budgets, we believe additional funds are needed given the CPSC's broad jurisdiction over so many consumer products. In particular, the CPSC is not currently in the position to proactively respond to emerging product safety issues. Safe Kids believes that in order for the CPSC to be active guardians of consumer safety, it needs the budget support to do so.

In addition, the President's budget includes a request for 401 full-time employees. This staffing level would be the lowest ever for the Commission. Salaries represent the largest portion of the CPSC's budget. However, the CPSC has gradually had their staffing levels reduced over the years due to budget constraints. This has resulted in fewer and fewer CPSC staff members to carry out the Agency's increasing responsibilities to keep children and families safe from defective and hazardous products. Additionally and significantly, the President's request for the CPSC is much less than the proposed \$66.858 million request that the Agency itself voted for in the fall of 2006. At that time, the CPSC voted unanimously to approve the CPSC Executive Director's recommendation to request a \$4.468 million increase over the President's Fiscal Year 2007 request. The Executive Director's recommendation also included 420 full-time staff positions which she felt was needed to at least continue the Commission's core functions. Safe Kids believes that the Commission itself knows best its budgetary needs and the President should have (and Congress should) give great deference to the CPSC's own assessment and budget needs. Congress now has the opportunity to do just that. Safe Kids hopes that the Senate considers increasing the President's budget request so that the Commission not only keeps pace with their current duties, but is able to expand their activities as needed. The Subcommittee can start that process by reauthorizing the CPSC at a higher budget level.

## **B. Allowing Election of Remedy Under Section 15 Does Not Necessarily Serve the Public Interest**

Once the Commission determines that a product distributed in commerce presents a substantial hazard and that remedial action is required to serve the public interest under Section 15 of the Consumer Product Safety Act, the CPSC may order the manufacturer of the dangerous product to elect (at the product manufacturer's discretion) to either:

- A. Bring the merchandise into conformity with requirements of the applicable consumer product safety rule; or
- B. Replace the product with a like or equivalent product; or
- C. Refund the purchase price (less a reasonable allowance for use).

*(Consumer Product Safety Act, Section 15d)*

This discretionary election may not always serve the public interest. For instance, if the CPSC is recalling a \$75 toaster that poses a serious electrocution or fire and burn hazard, the manufacturer, once ordered to remedy, may elect to refund the purchase price less a reasonable allowance for use. The refund on a toaster that has been in the marketplace for five years may have a refund value of \$10. This refund may not be a motivating enough factor to encourage the consumer to remove the dangerous product from their household. In this case, the public may be better served by a different remedy – such as receiving a replacement item that is of similar quality or having the recalled product repaired. Safe Kids believes that CPSC compliance officers should ultimately decide what constitutes an appropriate remedy given the totality of the circumstances. Congress should consider a technical change to Section 15 of the enabling statute that empowers the CPSC to police the manufacturer’s elected remedy option.

**C. Senate Commerce Committee should Again Increase of Civil Penalties under the Consumer Product Safety Act**

In the 108<sup>th</sup> Congress, the Senate unanimously voted to increase the CPSC’s civil penalty authority to \$20 million. Safe Kids urges Congress to again consider an increase in the civil penalty allowed by the Consumer Product Safety Act. In the Act’s present form (under Section 20), any person who knowingly engages in a prohibited act, as outlined in Section 19, is subject to a civil penalty not to exceed approximately \$1.65 million. In some cases, and in particular when larger companies are involved, the \$1.65 million cap may not be enough of an economic deterrent to prevent the company from engaging in an unlawful act. For example, a company that has \$50 million worth of product in the marketplace may be willing to incur the civil penalty instead of reporting a defect or injury as required under Section 15 in hopes of avoiding a recall. Congress should consider increasing the civil cap to an amount that better represents a deterrent. In order to avoid an unduly harsh and unfair penalty, if Congress chooses to increase the cap, consideration could be given for different caps for different companies based on gross revenues. For instance, bigger companies could have bigger caps, and smaller companies could have smaller caps. Alternatively, an increase in the cap could also be raised for only the most serious violations of Section 19.

**D. Pool and Spa Safety Should be a Priority for Congress and the CPSC**

The Senate Commerce, Science and Transportation Committee and the full Senate passed the *Pool & Spa Safety Act* during the 109<sup>th</sup> congressional session. This legislation will soon be introduced in the House by Representative Debbie Wasserman Schultz (D-FL), and would provide incentive grants for states that pass pool and spa safety laws that meet CPSC guidelines. In addition, the bill would provide for a CPSC-executed national pool and spa safety education program as well as a product safety standard for pool and spa drain covers. If the *Pool & Spa Safety Act* is signed into law, the CPSC will have an excellent tool to help address the prevalent issue of accidental childhood drownings and will need additional resources to ensure that they are able to meet these congressional obligations. The CPSC would need to: a) establish standards for eligible state laws; b) award grants to qualified states; c) conduct a national drowning prevention education program; d) conduct a rule-making to create a drain cover

standard; and e) provide reports to Congress about the effectiveness of the grant program. A sufficient budget level would be necessary for the CPSC in order for the Agency to fulfill any future congressional responsibilities contained in the *Pool & Spa Safety Act*. Safe Kids hopes that Congress passes the *Pool & Spa Safety Act* in the 110<sup>th</sup> Congressional session. This process should begin with members of this Subcommittee again reintroducing the bill and ushering it to a full Senate vote.

#### **E. Fixed Site Amusement Park Rides Should be Considered a “Consumer Product”**

Safe Kids urges Congress to amend the Consumer Product Safety Act to include fixed site amusement park rides as a consumer product under CPSC jurisdiction. In its present form, Section 3 of the Consumer Product Safety Act defines a consumer product as, among other things, “any mechanical device which carries or convey passengers...for the purpose of giving its passengers amusement...*and which is not permanently fixed to a site.*” (Emphasis added.) This definition is commonly referred to as the “roller coaster loophole.”

Safe Kids supports Congressman Ed Markey’s National Amusement Park Ride Safety Act (not yet introduced in the 110<sup>th</sup> session), which among other things, closes the “roller coaster loophole.” This loophole prevents the CPSC from investigating any amusement park ride accident in any park in America. Instead, all authority has fallen by default to the states – many of which do not have the resources to oversee these activities – leaving regulation largely to the parks themselves. However, even if state-by-state regulation were adequate, the fact that no one with 50-state authority has the ability to investigate deaths or serious injuries in amusement parks means:

- Accidents in one state may be repeated on similar rides in other states – resulting in possible tragedies that could have been prevented but for the loophole;
- Injury and accident trends are not identified because there is no independent government source of data;
- When safety repairs are ordered by one state, they are not required in any other state.

The Markey bill would restore fixed site amusement park ride jurisdiction to the CPSC (jurisdiction that was removed from the Commission in 1981). The bill would allow the CPSC to investigate accidents; develop an enforced action plan to correct problems if found; and act as a national clearinghouse for incident and defect data.

If Congress in its wisdom chooses to restore this jurisdiction to the CPSC, Safe Kids urges the Subcommittee to authorize and Congress to appropriate adequate funding to the Agency to carry out this new policing effort. Safe Kids recognizes that if CPSC jurisdiction were expanded to include these facilities, the Commission would need a substantial increase in funding to ensure its proper implementation.

#### **IV. Conclusion**

The CPSC has used its relatively small budget and staff to accomplish an incredibly important task – keeping children safe from defective and hazardous products. As product-related injuries still exist and can be prevented, the CPSC is needed now more than ever to protect consumers, families, and children.

Safe Kids Worldwide is available to answer any questions that you or the Subcommittee might have relating to our comments or other issues that may be raised in the future. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Alan Korn', written over a horizontal line.

Alan Korn, J.D.  
Director of Public Policy & General Counsel

*Safe Kids Worldwide is a global network of organizations whose mission is to prevent accidental childhood injury, a leading killer of children 14 and under. More than 450 coalitions in 16 countries bring together health and safety experts, educators, corporations, foundations, governments and volunteers to educate and protect families.*