

**Testimony of  
Joseph M. McGuire  
President  
Association of Home Appliance Manufacturers**

**On Behalf of The  
National Association of Manufacturers**

**Before The  
Senate Commerce, Science and Transportation Committee**

**Subcommittee on Consumer Affairs, Insurance and Automotive Safety**

**Hearing on  
S. 2045, the Consumer Product Safety Commission Reform Act of 2007**

**Thursday  
October 4, 2007**

Mr. Chairman and members of the Committee:

Thank you providing me the opportunity to testify on behalf of the National Association of Manufacturers (“NAM”) regarding S. 2045, the Consumer Product Safety Commission Reform Act of 2007. The NAM is the nation’s largest industrial trade association, representing large and small manufacturers in every industrial sector and in all 50 states.

I am President of the Association of Home Appliance Manufacturers (“AHAM”) which represents the producers of major, portable, and floor care residential appliances and their suppliers. AHAM is a member of the NAM, where I have served in the past as Chairman of the Council of Manufacturing Associations, a division of the NAM comprised of more than 200 trade associations. An additional part of our NAM membership is AHAM’s participation in the NAM CPSC Coalition. It is in that capacity that I appear before you today. On behalf of the Coalition I thank you for your leadership in addressing consumer product safety through this hearing and others and in seeking legislation to improve the effectiveness of the CPSC.

All of AHAM’s 165 members are regulated by the Consumer Product Safety Act (“CPSA”) and the other federal safety laws administered by the Consumer Product Safety Commission (“CPSC”). AHAM and its members work cooperatively with CPSC on policy and individual product issues. It is the appliance industry’s most important regulatory relationship, and justifiably so, because consumer safety is the most critical obligation we have to our customers. The NAM CPSC Coalition also is committed to ensuring that the US marketplace provides safe products to Americans.

The NAM CPSC Coalition supports enhancing the resources and, where necessary, the authority of the Commission to increase its effectiveness. To that end, we have aggressively

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supported increased appropriations for this Commission in this Congress, and advocate that these increased dollars be directed to enhancing the CPSC's personnel dedicated to product testing, evaluation and enforcement and to improved technology and facilities. In fact, we might be the only industry group to lobby the appropriation committees for agency funding, none of which will be spent on or granted to our members. Companies that work with the Commission recognize that it is thinly staffed, that many veteran employees are retiring, and that its information technology and laboratory are grossly inadequate. Modern technology makes it possible for a smaller Commission to be more productive than the larger Commission of the 1970s, but 21<sup>st</sup> Century technology and resources must be put in place.

We also recognize that there is a crisis of confidence in the safety of consumer products in the United States marketplace. Although we believe that the American marketplace is safer than ever, and that the CPSC does a good job in leveraging its resources, the perception is gravely troubling to U.S. manufacturers because their economic viability depends on the confidence of the U.S. public in their products. To some extent, the proportion of recalls from products manufactured in China, for example, reflect its growing market share in key consumer product categories. American consumers have benefited significantly from the efficiencies achieved by manufacturing many consumer products in China and other countries. There are unique challenges ensuring that foreign governments are performing their legitimate regulatory functions.

Well before the publicity about product recalls this last year, AHAM has worked closely with the CPSC and with the Chinese government and industry to enhance the safety processes in Chinese manufacturing. We have been involved in a number of substantive meetings in China with national and regional government officials and manufacturers to emphasize the need to meet government mandatory and industry consensus standards and to build safety evaluation into every aspect of manufacturing and testing. Obviously, we support stepped-up efforts to ensure that Chinese producers throughout the supply chain are meeting the appropriate standards of safety and quality. The Coalition supports expanding U.S.-Sino joint programs and applaud regulatory initiatives such as the recently announced agreements in several product sectors. We believe that these programs are critical to advancing safety and that ongoing funding for international outreach and education is critical to CPSC's mission.

In addition, the Coalition supports a number of general and product-specific legislative measures to increase CPSC's ability to carry out its mission. As I mentioned earlier this includes increased funding. S. 2045 contains a number of provisions our coalition supports and we applaud you and your staff for seeking improvements. However, we also believe S. 2045 contains some burdensome and troubling provisions which would detract from CPSC's mission, significantly add to the litigiousness of our society and undermine the critical open relationship between CPSC and industry. The system generally works well because industry and other groups voluntarily develop new consensus standards and report problems voluntarily to the

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CPSC. But, much of S. 2045, as presently drafted, could very well result in more litigation instead of open dialogues within a relationship of confidence.

Further, when we consider reauthorization and imposing new obligations on industry, particularly imported products, we need to weigh whether we are achieving significant enhancements of safety or whether new non-tariff barriers are being erected. We absolutely agree that imported products should be designed and manufactured just as safely as U.S. products. But, to impose trade barriers without regard to the benefits to American consumers of trade and integrated design, production and distribution of consumer products would be a mistake.

There are proposals in S. 2045, Acting Chairman Nord's "PRISM" proposal, and in proposals developed by NAM members that we believe will, along with greater resources for the Commission, significantly improve the ability of the Commission to carry out its vital mission.

For example, we support a variation of Commissioner Nord's "fast track" rulemaking to adopt as federal mandatory rules selected safety-related provisions of consensus standards. We believe that with greater resources these rulemakings could be conducted under existing law. We can support, for example, eliminating the need for an advance notice of proposed rulemaking and to decrease somewhat the substantive determinations that the Commission must make in adopting in whole or in part certain consensus standards. We recommend this action where there is a solid record that the consensus standard is up-to-date and protective of safety, that a substantial number of firms in the marketplace are not complying with the standard and that there is a substantial basis for believing that making the consensus standard mandatory will significantly increase the safety of the product and decrease possible injuries and deaths.

In order to maintain and not undermine our private sector safety standards structure, we advocate that the legislation make clear that the Commission should only adopt key safety aspects of these standards, expedite revision of the federal standard when the consensus standard has been revised, and rely as much as possible on the standards development organization's interpretations and certifications under these standards.

We also support the concept behind provisions in S. 2045 which would authorize the CPSC to require specified products sold in our marketplace to show conformance through testing with standards. This presents a challenge with some 15,000 products under CPSC jurisdiction. However, we strongly applaud making it a violation of federal law to knowingly and willfully falsely use a mark or claim certification.

Although a globalized market may require the sharing of vital safety data with foreign governments and state and local authorities, this must be done in a manner that protects intellectual property and confidential business information and ensures that it is not used to

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prematurely instigate litigation or to unleash public allegations about non-public investigations. Certainly, firms should supply, if requested and known, to the CPSC information on their suppliers, distributors and retailers.

We can support, with some modification to the legislation, revisions to the CPSC's authority to ban exports of recalled products. However, there are limited cases where foreign countries have protective but different standards. U.S. firms should not be banned from manufacturing and exporting a product compliant with those foreign laws.

In the same vein, we support clarifying that it is a violation to knowingly sell a recalled product or to intentionally build up inventory of a product before new mandatory standards go into effect. Further, importers who repeatedly import unsafe products should not be allowed to participate in our marketplace and CPSC referral to Customs is appropriate. We also support a carefully tailored asset forfeiture provision and less use required of ANPR's in order to expedite rulemakings.

The NAM Coalition supports a number of product-specific proposals which its industry associations and companies have brought forward. Much of this legislation relies on and enhances existing consensus standards and certification programs. The Toy Industry Association and The American National Standards Institute, for example, have a recently announced framework for a new mandatory testing requirement for toys sold in the U.S. That industry is working with the Congress to adopt legislation to ensure industry-wide adherence to mandatory testing, standardized testing procedures, and laboratory certification program for toys. Additionally, The Fashion Jewelry Trade Association advocates a national standard for jewelry modeled after laws in California and Minnesota to address concerns about lead content.

The appliance industry supports federal action to ensure the proper installation of cooking ranges with UL, ANSI and building code mandated anti-tipping products and equivalent devices. Although very infrequent, range tipping accidents can be avoided with the proper installation of these safety devices. Many building codes already require this installation, but we know that there are installers and landlords who often fail to install these devices. In many cases, homeowners resist the installation of the devices. Therefore, my industry proposes that it be a violation of federal law for a person, at least a commercial installer or landlord, to install a range that is not compliant with the UL standard and building code provisions.

I would like now to address provisions of S. 2045 that the Coalition either opposes or has suggestions of modification.

Whether deliberate or not, S. 2045 would eliminate protections of Sections 6(b) of the Consumer Product Safety Act. Section 6(b) supplements the Freedom of Information Act and is specifically tailored to the realities of the information that the CPSC receives and generates

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internally. The CPSC receives a huge amount of information from consumers, doctors, fire investigators, competitors and others which is raw, unfiltered, and upon analysis proves to be either inaccurate – often identifying the wrong product or accident cause – or is unfair, unscientific or technologically flawed. In turn, internal, preliminary evaluations done by the Commission may be based on such incorrect information, necessitating further discussion and review of accurate data.

Now, in and of itself, it is not a bad practice for the Commission to receive huge amounts of data, regardless of its quality, so that it can see early trends and spot incipient problems. In fact, a major initiative of the Commission with some of the largest retailers allows for the submittal of mostly raw and unevaluated consumer complaints and other safety related information to the Commission so that it can be integrated into its data bases. Very little of this information proves to be useful for compliance purposes, but it does give the Commission a better view of what is happening in specific product areas.

Under current law, firms are informed when information about their products is to be publicly released and are provided the opportunity to show that specific documents are of such low validity and accuracy that release would be unfair. Under the pending legislation, this system would be eliminated and many thousands of documents could be released which contain information of no value and little validity but which can be used to gain leverage in litigation, by competitors and for other inappropriate purposes. A huge barrier would be placed in the way of manufacturer and retailer cooperation with the Commission through the special retailer program. It also would impede the day-to-day filings under Section 15 where the Commission encourages firms to submit information even if they do not believe that a substantial product hazard or defect exists. The Commission should continue to ensure that information it publicly releases is not inaccurate or misleading.

Delays in releasing information to the public are mostly due to the Commission's outdated technology and search techniques, which can be improved with increased funding, not the limited opportunity for industry to respond to a proposed release. A high percentage of manufacturers do not even comment on proposed disclosure and the CPSC has "fast track" disclosure authority for imminent hazards. We adamantly oppose the evisceration of Section 6(b).

We oppose the proposal to allow states to enforce the provision of the federal product safety laws through litigation. We support greater resources for the CPSC and other forms of partnership with states. Allowing, however, state officials to bring lawsuits against firms which could be based on totally unproven allegations of failure to comply with the law would create an enormous new field of litigation and erect huge barriers to industry's cooperation with the Commission. We oppose the "Balkanization" of the US market into 50 state CPSCs. Combined with new expanded civil and criminal liability provisions, the result will be confusion

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and litigation. No state official should have the authority to interpret or reinterpret federal regulation or policy as administered by CPSC.

Similarly, we are not aware of incidences where company employees have been punished for bringing consumer product safety allegations to their company's attention. Yet, S. 2045 proposes diverting significant Commission resources into investigating whistleblower retaliation allegations. We support enhancing CPSC resources for tasks needed to promote product safety - field work, research, faster standards, and information dissemination, and education. We oppose a new form of litigation driven by shared penalties, "compensatory damages" and attorney's fees. Developing new forms of federal torts is not the solution to enhancing the safety of products. We already have an extensive litigation in the product liability field and enhancing it will not result in increased product safety.

We understand that many in the Congress believe that the current level of penalties per violation and the maximum cap under the CPSA need to be revised. We believe that the legislation adopted by the House Commerce Committee last week, H.R. 2474, makes an appropriate adjustment to the maximum cap by increasing it to \$10 million while requiring the CPSC to adopt a penalty policy using relevant factors. Today, virtually all these penalties are agreed to voluntarily, but S. 2045 would increase the maximum cap to \$100 million and per violation fines of up to \$250,000. This penalty structure will totally change the existing dynamic where, instead of negotiating with CPSC, private lawyers will spend time advising their clients of the benefits of minimum cooperation with the Commission and other defensive postures. The results would be an unproductive regulatory environment, rife with diversionary litigation when so many dollars are at stake.

The real penalty to companies that violate standards or make defective products is the cost of the recall and the damage to their reputation, not the penalties. The levels of penalties in S. 2045 will be crushing to many small and medium sized US firms, and as a practical matter will not be imposed on foreign firms which manufacture products for export but are not active in our market place.

There are a number of other proposed provisions in S. 2045 which we oppose. For example, it is a violation of due process to dilute the "knowing and willful" requirement while at the same time expanding criminal penalties. Reversing the current preemption of federal consumer product safety standards will only promote the creation of multiple, conflicting and confusing requirements and undermine the need for safety and uniform standards critical to the national and international marketplace.

Some of the proposals require technical fixes and we will gladly work with staff on these. For example, the definition of children's products is so broad that it could inadvertently include

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many non-juvenile, conventional products for adults such as queen or full-sized beds, floor coverings or household furniture routinely used by children 7 years or older.

Several proposals in the legislation would authorize the CPSC to micromanage recalls in areas, such as choice of corrective action remedies, where it is much more productive and efficient to allow the companies to select the best manner to proceed. Nor should “voluntary” recalls become mandatory, thereby undermining the salutary process of encouraging “fast track” voluntary corrective actions.

We believe that our position places safety first but opposes unnecessary new mandates, and litigation. We look forward to working with you and the Committee on adopting beneficial and reasonable CPSC reform in this Congress. I would be glad to answer any of your questions or follow up with any requested information.