

THE WHITE HOUSE

WASHINGTON

October 29, 2007

The Honorable Daniel Inouye  
Chairman  
Committee on Commerce, Science, and Transportation  
U.S. Senate  
Washington, D.C. 20501

Dear Chairman Inouye:

The safety and security of the American public is the top priority of this Administration, and we appreciate your commitment to protecting the American public from hazardous products. The President demonstrated his dedication to this issue with the issuance of Executive Order 13439 on July 18, 2007, establishing the Interagency Working Group on Import Safety to comprehensively assess the safety landscape and to identify potential enhancements. The Working Group submitted a Strategic Framework to the President on September 10, 2007, and will follow with an Action Plan in mid-November that will include legislative, regulatory, and administrative proposals to work towards implementing further protections for the American people.

We appreciate the intent of S. 2045, the Consumer Product Safety Commission (CPSC) Reform Act of 2007, to make products used by Americans safer. However, we have serious concerns with a number of provisions in the legislation as currently drafted. One of our major concerns is the provision dictating mandatory compensation for whistleblowers between 15 and 25 percent of any civil penalty imposed. The Administration believes this provision will impede enforcement actions and may actually impair safety efforts. Coupled with the vast increase in the civil penalty cap to \$100 million, employees will have a significant financial incentive to bypass internal company avenues designed to remedy product safety concerns as they arise. The Administration is concerned that employees will delay reporting safety concerns to the proper authorities until a claim for significant civil penalties may be brought against the employer. Moreover, by having a significant financial interest in the outcome of the enforcement proceeding, the whistleblower employee may be perceived to be a less credible witness by judges and juries, thereby impeding the prosecution of meritorious cases. By providing a personal financial stake of this magnitude - up to \$25 million - the provision could also produce a serious risk of meritless claims by "bounty hunters," with an adverse impact on our economy.


In addition, enforcement of CPSC safety standards, which cover a broad array of products, should be exclusively reserved to CPSC, and not delegated to individual State Attorneys General. There is an existing requirement for CPSC to cooperate with states and other Federal agencies in carrying out its enforcement duties, *see* 15 U.S.C. § 2078, and this mechanism allows for CPSC to receive input from other interested state and Federal entities while also providing uniform and consistent enforcement of safety standards throughout the nation. Allowing

individual states to enforce these standards on their own will cause significant uncertainty in the marketplace as the safety status of individual products may vary depending on the jurisdiction. For similar reasons, we have significant concerns with provisions of the bill that would mitigate the preemptive effect of Federal safety standards, thereby disrupting the uniformity of such standards and allowing states to impose additional standards that may be onerous for manufacturers to satisfy.

Although we have to oppose S. 2045 in its current form, we support the increased attention to the wellbeing of our Nation's consumers that S. 2045 intended to address. Our Working Group on Import Safety addresses many of these same concerns and more, and we look forward to working with you to address our concerns and to implementing the recommendations of the Working Group. The Administration's forthcoming Action Plan to implement the recommendations of the Interagency Working Group on Import Safety will provide a comprehensive examination of the whole import production and distribution process.

Thank you again for your concern on this very important issue. We look forward to sharing our comprehensive import safety strategy and to working with you to enact legislation that provides a thorough plan for protecting our Nation's consumers. We would ask Congress to consider recommendations included in the Action Plan developed by the Working Group as S. 2045 moves forward through the legislative process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allan B. Hubbard".

Allan B. Hubbard  
Assistant to the President for Economic Policy and  
Director, National Economic Council