

November 15, 2012

The Honorable Joseph Lieberman  
Chairman  
U.S. Senate Committee on  
Homeland Security and Government Affairs  
340 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Susan Collins  
Ranking Member  
U.S. Senate Committee on  
Homeland Security and Government Affairs  
344 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator:

As a former Chairman and Commissioners of the U.S. Consumer Product Safety Commission (CPSC), we write to **strongly urge your opposition to S. 3468, the Independent Regulatory Analysis Act of 2012**. This legislation would have a serious and detrimental impact on the CPSC's ability to fulfill its statutory mission to protect the public from consumer products that pose unreasonable risks of death and injury.

The Senate Homeland Security and Government Affairs Committee may proceed to a markup of this bill this month without the benefit of a hearing and a meaningful opportunity for all stakeholders to provide information about the broad impact of this bill.

This is particularly troubling. Based on our experience, we predict that this bill would implement sweeping changes at the CPSC that will seriously impede the CPSC's ability to protect the public. We have concluded that what the bill's sponsors describe as modest changes would in fact fundamentally shift power away from Congress and the CPSC to the Executive Branch. This is the opposite of what Congress intended when it created the CPSC and other independent agencies, which were to be insulated from partisan pressure. The CPSC has always been staffed by technical experts, such as engineers and human factors psychologists, scientists, and economists. These experts use their technical expertise to further the mission of the CPSC – to reduce deaths and injuries caused by potentially unsafe products. Unfortunately, S. 3468 would reverse this long standing structure by subjecting independent agencies' decisions to Executive Branch oversight. S. 3468 would place potential political hurdles in front of the CPSC's ability to protect the public.

The CPSC historically, and still in many instances, relies upon voluntary standards to address product hazards. Only when the voluntary standards are not adequately eliminating or reducing the hazard, does the CPSC proceed to the promulgation of a mandatory standard. In these cases, there is a serious problem that must be addressed, time is of the essence. The longer the mandatory standard takes to be finalized, the longer it takes for consumers to be protected, the more consumers are put at risk and the more consumers are potentially injured. S. 3468 will have dire consequences for consumers, who will directly bear the brunt of the agency's reduced ability to halt or minimize the frequency of serious injuries and deaths associated with certain dangerous products.

The CPSC is already subject to numerous comprehensive cost-benefit analyses requirements as part of its rulemaking process. Since the 1981 passage of amendments to the Consumer Product Safety Act (and under other acts it enforces), the CPSC has been required to conduct an extensive cost-benefit analysis when the CPSC promulgates mandatory safety rules. Under these amendments, the CPSC's current cost-benefit approach is as comprehensive, if not more so, than that set forth in any executive order issued by the Office of the President. The CPSC's existing requirements to perform extensive cost-benefit analyses derive from: section 9 of the Consumer Product Safety Act; section 3 of the Federal Hazardous Substances Act; and section 4 of the Flammable Fabrics Act. Thus, S. 3468 imposes requirements that are redundant with current law.

To do an adequate job protecting consumers from death and serious injury, CPSC must be able to act quickly, decisively, and efficiently. Consumers—and Congress—depend on it. However, the current requirements have led CPSC to promulgate extremely few mandatory safety rules throughout its history. According to our understanding of the last thirty years, the CPSC finalized only nine rules – or about one every 3 1/3 years. Instead of promulgating mandatory standards, the CPSC deferred to voluntary standards or worked with individual companies on Corrective Action Plans for the recall of specific hazardous products. This limited regulatory activity ultimately resulted in numerous recalls of popular and beloved consumer products. This history highlights the CPSC's limited capacity to act expeditiously.

As a remedy, Congress passed the Consumer Product Safety Improvement Act (CPSIA) in 2008. This law was passed in large part because the CPSC was unable to adequately protect consumers from product hazards—it was hampered by its restrictive procedures required for promulgation of mandatory safety standards. S. 3468 would supersede specific statutory requirements under the CPSC's jurisdiction, by requiring an inordinate and repetitive focus on the economic impact of proposed safety regulations – a result that Congress specifically intended to avoid when it passed the CPSIA. In addition, S. 3468 would further hamper the CPSC's ability to carry out its mission by adding a minimum of an eight-month delay due to the Office of Information and Regulatory Affairs (OIRA) review process.

By empowering OIRA to perform an assessment of significant rules promulgated by the CPSC and other independent agencies, S. 3468 would essentially put independent agencies under the control of the Executive Branch. Thus, the legislation would lay the foundation for unprecedented White House influence over independent agencies and could give future administrations the power to stop any independent agency regulations they opposed. Requiring an agency to wait for OIRA to conduct its own analysis would not only add time and expense to the already slow regulatory process but would also give special interests seeking to quash a safety measure, yet another avenue to prevent a rule from being promulgated.

In summary, every day, the CPSC engages in critical work to protect consumers from unsafe consumer products. This requires the CPSC to act in a timely manner. To do its work effectively, the Agency needs to be protected from partisan pressure and be free of time-consuming and redundant analytical burdens.

**S. 3468 is out of step with recent Congressional action. Under the CPSIA of 2008, the CPSC obtained much needed authority to protect the American public and received an explicit instruction from Congress to act expeditiously. Restricting agency authority by S. 3468 is a step backward, and would hamper the CPSC from establishing commonsense standards and important safeguards that protect all Americans.**

**We strongly urge you to oppose S. 3468.**

Sincerely,

R. David Pittle, PhD.  
Commissioner, U.S. Consumer Product Safety Commission, 1973-1982

Ann Brown  
Chairman, U.S. Consumer Product Safety Commission, 1994-2001

Thomas Hill Moore  
Commissioner, U.S. Consumer Product Safety Commission, 1995-2011

Stuart M. Statler  
Commissioner, U.S. Consumer Product Safety Commission, 1979-1986

Cc: Members of the Senate Homeland Security and Government Affairs Committee