MAY 11, 2000

ANNOUNCEMENT OF INITIATIVES TO IMPROVE THE SAFETY OF CHILDREN'S PRODUCTS

Date: Friday, May 12, 2000
Time: 11:15 AM
Location: Roosevelt Room
From: Heather Howard, Ann O'Leary and Eric Morse

I. PURPOSE

To demonstrate your commitment to children's health and safety by highlighting proposed legislation to strengthen the penalty authority of the Consumer Products Safety Commission and by announcing a campaign to increase reporting of dangerous products.

II. BACKGROUND

At this event, you will announce legislative and non-legislative proposals to improve the safety of consumer products. Also speaking will be: Ann Brown, Chair of the Consumer Product Safety Commission, Brittany Cipriotti, a Manassas, Virginia mother whose two children were injured when the stroller they were riding in collapsed, Dr. Marilyn Bull, an Indianapolis pediatrician who chairs the American Academy of Pediatrics' Injury and Poison Prevention Committee, and Rep. Lois Capps, co-chair of the School Health and Safety Caucus.

Overview

A *USA Today* investigation recently found that at least 17 manufacturers of children's toys failed to warn the government or the toy owners of complaints about the safety of their products. According to *USA Today*, "an analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved." For example, the Commission recently announced a $400,000 penalty against Hasbro, which waited until it had 12 reports of handles unlatching on infant carriers (resulting in seven skull fractures) before telling the Commission about the problem.

The Commission needs tougher penalties to deter companies from withholding complaints about their products. Currently, the Commission's penalty authority includes 1) civil penalties, which are capped at $1.6 million (the total fine is $7,000 per product, multiplied by the number of products sold, up to $1.6 million), and 2) criminal misdemeanor penalties, including imprisonment of up to one year and fines capped at $50,000.

The civil penalties are adjusted for inflation every five years, and were last adjusted in 1999. Even so, the cap is absurdly low. It is triggered when the number of products sold exceeds 228; the majority of cases the Commission handles involve, at a minimum, thousands of products sold. Under the criminal provisions of the statute, the Commission may charge anyone who "knowingly and willfully" violates the law, including the reporting requirements, "after having received notice of noncompliance." Thus, in effect, the criminal provisions only apply on a second offense. Given the high standard of the statute (knowledge of the law and willful violation), the Commission argues that the second offense requirement is unnecessary and hampers their ability to enforce the statute and protect consumer safety.

An additional problem is that, under current law, a company with a defective product that is being recalled has the right to select the remedy (repair, replacement, or refund), even if that remedy does not provide the most protection to consumers. Recently, General Electric came under fire for offering rebates for new GE dishwashers, rather than offering to fix the defective ones.

Announcements

Legislative proposal
The administration is proposing, through a Presidential transmittal letter, legislation to strengthen the penalty authority of the Commission. Increased penalties would provide obvious incentives for companies to avoid manufacturing defective products, as well as to come forward earlier when problems are detected, thus preventing harm to consumers. The legislation, which Representative Markey and Senator Hollings will be introducing, would: 1) lift the overall cap on civil penalties; 2) make criminal violations a felony and remove the second offense requirement; and 3) provide CPSC the authority to overrule the recall remedy chosen by the product manufacturer if the remedy does not provide the most protection to the consumers.

Non-legislative proposal
You will also launch immediate efforts to protect the health and safety of children and families. You will announce a partnership between the CPSC and health care providers – who see firsthand the injuries caused by defective products -- to increase reporting of dangerous products that cause injuries and even deaths. A broad range of health care professionals – the American Academy of Family Physicians, the American Academy of Pediatrics, the American Medical Women's Association, the American Nurses Association, and the Emergency Nurses Association -- have committed to a campaign to encourage their member health providers to report injury causing products to the CPSC. In addition, the National Safe Kids Campaign, an organization devoted to preventing childhood injuries, will activate its state and local coalition members to visit the places product recalls often don't reach – thrift shops, day care centers, schools, and hotels – to help uncover for dangerous products.

These groups will promote the campaign to increase reporting of dangerous products in their newsletters, web sites, and e-mail updates, and have also agreed to work with the CPSC to disseminate information about product recalls. For example, the American Academy of Pediatrics has committed to promoting this campaign to pediatricians in *AAP News*, the Academy's newsmagazine, which is sent to 55,000 members monthly, as well as to posting information on the Academy's official web site, with a direct link to CPSC's product reporting web site, and to notifying pediatricians regularly about product recalls in the magazine's "Health

Alerts." The Academy will also promote this effort to families in *Healthy Kids*, the Academy's parenting magazine.

III. PARTICIPANTS

Meet and greet: 11

Ann Brown, Chair, CPSC
Rep. Lois Capps
Rep. Eliot Engel
Rep. Lane Evans
Brittany Cipriotti, a mother of two from Manassas, Virginia, and a professional day care provider. Her two children were injured when the stroller they were riding in collapsed.
Mary Foley, RN, President, American Nurses Association
Kathy Robinson, Board of Directors, Emergency Nurses Association
Omega Silva, MD, President Elect, American Medical Women's Association
Marilyn Bull, MD, Chair, Committee on Injury and Poison Prevention American Academy of Pediatrics
Heather Paul, Ph.D., Executive Director, National SAFE KIDS Campaign
Jeff Human, American Academy of Family Physicians

Audience

Health professionals supporting the campaign
Consumer groups

IV. SEQUENCE OF EVENTS

11:00-11:10	MIX and MINGLE - Cabinet Room
11:15 am- 11:55 am	**CONSUMER PRODUCT SAFETY EVENT** The Roosevelt Room -Upon arrival to the Roosevelt Room, HRC proceeds directly to podium with program participants. -HRC makes remarks. -Upon the conclusion of the remarks, HRC introduces Ann Brown. -Ann Brown, Chair—Consumer Product Safety Commission (CPSC), makes remarks and introduces Brittany Cipriotti. -Parent Brittany Cipriotti makes remarks and introduces Dr. Marilyn Bull. -Dr. Marilyn Bull, Chair—American Academy of Pediatrics Committee on Injury and Poison Prevention, makes remarks and introduces Rep. Lois Capps. -Representative Lois Capps, Chair—School Health and Safety Caucus, makes remarks. -HRC makes brief concluding remarks and departs.

V. PRESS PLAN

- Pool press for the announcement.
- After the announcement, the Members of Congress, Ann Brown, Brittany Cipriotti, and the health professionals joining the campaign will proceed to the stake-out.

VI. REMARKS

- Provided by Laura Schiller.

ATTACHMENTS

- Press paper
- Presidential transmittal letter

FOR IMMEDIATE RELEASE
May 12, 2000

CONTACT: LISSA MUSCATINE
ERIKA BATCHELLER
JENNIFER SMITH
202/456-2960

FIRST LADY HILLARY RODHAM CLINTON ANNOUNCES EFFORTS TO IMPROVE THE SAFETY OF CHILDREN'S PRODUCTS
May 12, 2000

First Lady Hillary Rodham Clinton today will announce new Administration efforts to improve the safety of consumer products, particularly those that may be harmful to children. The First Lady, joined by Ann Brown, chairman of the U.S. Consumer Product Safety Commission (CPSC), and a broad range of health professionals and consumer advocates, will unveil legislation to strengthen the penalty authority of the CPSC, and announce a public-private campaign to help the CPSC identify dangerous products.

This proposal is in response to recent reports of manufacturers repeatedly failing to warn the government promptly about defective products that have injured children, as required by consumer product safety laws. In the last five years alone, the CPSC has assessed penalties against 21 companies for failing to report serious defects. The products – including cribs, infant carriers, toys, and household products – caused hundreds of injuries, ranging from burns to fractures, and in some cases death. For example, the CPSC recently assessed a $400,000 penalty against a major manufacturer for failing to immediately report serious injuries caused by a defective handle lock on an infant carrier. The manufacturer received 9 complaints of injury – seven of which had resulted in skull fractures – before reporting the problem to the CPSC. Many of these injuries could have been avoided if hazards had been promptly reported to the CPSC.

STRENGTHENING CONSUMER PRODUCT SAFETY LAWS

The First Lady will highlight a legislative proposal, sent to Congress today by the President, that calls for tougher penalties against companies that fail to promptly report dangerous product defects. The bill also would take steps to make product recalls more effective. Specifically, the legislation would: 1) lift the overall cap on civil penalties assessed by the CPSC; 2) make criminal violations of consumer product safety laws a felony instead of a misdemeanor; and 3) give the CPSC the authority to overrule the recall remedy proposed by a company if it is not in the public interest.

Increased civil and criminal penalties will provide a stronger incentive for companies to promptly notify the CPSC of product flaws so the agency can take timely action to protect consumers. Tougher penalties also will be more commensurate with the impact of product safety violations, which can result in death or serious injury to children.

CAMPAIGN TO INCREASE REPORTING OF DANGEROUS PRODUCTS THAT HARM CHILDREN AND FAMILIES

The First Lady will also announce immediate efforts to protect the health and safety of children and families by increasing reporting of unsafe products to the CPSC. Unfortunately, in about half the cases involving the most significant hazards – where the product causes death or serious injury -- companies have not reported the problem to the CPSC. As a result, the agency relies heavily on consumer complaints to uncover information about dangerous defects.

The First Lady will launch a partnership between the CPSC and health care providers around the country to identify products that are harming consumers, especially children. A broad range of health care professionals – the American Academy of Family Physicians, the American Academy of Pediatrics, the American Medical Women's Association, the American Nurses Association, and the Emergency Nurses Association – will conduct a national campaign to encourage their member health providers to report injury-causing products to the CPSC. In addition, the National Safe Kids Campaign, an organization devoted to preventing childhood injuries, will activate its state and local coalition members to visit the places product recalls often don't reach – thrift shops, day care centers, schools, and hotels – to identify hazardous products still in use.

THE CLINTON ADMINISTRATION'S COMMITMENT TO CONSUMER PRODUCT SAFETY

The Clinton Administration has strongly supported the work of the CPSC and its mission to protect the health and safety of our nation's children and families. Since the President first took office in 1993, the CPSC's budget has increased 24 percent. In addition, the First Lady has had a longstanding interest in children's well being and has participated in several CPSC initiatives to improve the safety of children's products. In 1995, she helped launch the CPSC's "Baby Safety Showers" initiative, which educates expecting and new parents on baby safety. Last year, she kicked off a national campaign to alert parents and caregivers to safety hazards in child care settings.

PROGRAM

Meet and Greet (11) (Save 7 seats)

Ann Brown, Chair, CPSC
Rep. Lois Capps
Rep. Eliot Engel
Rep. Lane Evans
Brittany Cipriotti, a mother of two from Manassas, Virginia, and a professional day care provider. Her two children were injured when the stroller they were riding in collapsed.
Mary Foley, RN, President, American Nurses Association
Kathy Robinson, Board of Directors, Emergency Nurses Association
Omega Silva, MD, President Elect, American Medical Women's Association
Marilyn Bull, MD, Chair, Committee on Injury and Poison Prevention American Academy of Pediatrics
Heather Paul, Ph.D., Executive Director, National SAFE KIDS Campaign
Jeff Human, American Academy of Family Physicians

Speakers

HRC
Ann Brown
Lenni Brett Cipriotti (Brittany)—Parent
Dr. Marilyn Bull Bruins—Pediatrician
Rep Lois Capps (D-CA)

Steakout (10)

Ann Brown, Chair, CPSC
Rep. Lois Capps
Rep. Eliot Engel
Rep. Lane Evans
Brittany Cipriotti
Mary Foley, RN, President, American Nurses Association
Kathy Robinson, Board of Directors, Emergency Nurses Association
Omega Silva, MD, President Elect, American Medical Women's Association
Marilyn Bull, MD, Chair, Committee on Injury and Poison Prevention American Academy of Pediatrics
Heather Paul, Ph.D., Executive Director, National SAFE KIDS Campaign

ATTENDEES

Members (6)
- Rep. Lois Capps (D-CA)
- Rep. Eliot Engel (D-NY)
- Rep. Lane Evans (D-Ill)

Stacie Paxton
Clare Dowling
Jessica Robinson
Jenny Bottegal

CPSC staff (4)

Ann Brown
Pamela Gilbert
Michael Solender
Alan Schoem
Russell Rader

Consumer advocates (3)

National Safe Kids Campaign (see below)
Consumer Federation of America
Consumers Union
  Sally Greenberg
Public Citizen
PIRG
  Rachael Weintraub
International Association of Arson Investigators
  Stephen Austin

Professional organizations (9)

American Academy of Pediatrics (2)
  Dr. Marilyn Bull
  Janis Guerney
American Academy of Family Physicians
  Jeff Human
American Medical Women's Association
  Omega Silva
American Nurses Association
  Mary Foley
  Stephanie Reed
Emergency Nurses Association
  Kathy Robinson
National Safe Kids Campaign
  Heather Paul
  Alan Korn
International Association of Arson Investigators
  Stephen P. Austin

Cipriotti family (5)

Lenni Brett Cipriotti (Brittany) (mom)
Mark Cipriotti (Dad)
Ellen Huffstutler (grandmother)
Ross Cipriotti (3 ½ years old)
McKenzie Cipriotti (2 years old)

William Gave Carroll (2 years old)

OMB Staffer (1)

Jennifer Forshey

AGENDA

First Lady Hillary Rodham Clinton speaks
Ann Brown speaks
Brittany Cipriotti speaks
Dr. Marilyn Bull speaks
Rep. Lois Capps speaks
The First Lady closes

PROGRAM—28 audience attendees
5 speaker participants

Meet and Greet (11)
Save 7 seats

Heather Paul, Ph.D., Executive Director, National SAFE KIDS Campaign
Jeff Human, American Academy of Family Physicians
Mary Foley, RN, President, American Nurses Association
Kathy Robinson, Board of Directors, Emergency Nurses Association
Omega Silva, MD, President Elect, American Medical Women's Association
Rep. Eliot Engel
Rep. Lane Evans
***Ann Brown**, Chair, CPSC
***Brittany Cipriotti**, a mother of two from Manassas, Virginia, and a professional day care provider. Her two children were injured when the stroller they were riding in collapsed.
***Marilyn Bull**, MD, Chair, Committee on Injury and Poison Prevention American Academy of Pediatrics
***Rep. Lois Capps** (D-CA)

Speakers (5)

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Dr. Marilyn Bull—Pediatrician
Rep Lois Capps (D-CA)

Stakeout (10)

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Stacie Paxton
Clare Dowling
Jessica Robinson
Jenny Bottegal

CPSC staff (4)
- Ann Brown
- Pamela Gilbert
- Michael Solender
- Alan Schoem
- Russell Rader

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- National Safe Kids Campaign (see below)
- Consumer Federation of America
- Consumers Union
  - Sally Greenberg
- Public Citizen
- PIRG
  - Rachael Weintraub
- International Association of Arson Investigators
  - Stephen Austin

Professional organizations (9)
- American Academy of Pediatrics (2)
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  - Janis Guerney
- American Academy of Family Physicians
  - Jeff Human
- American Medical Women's Association
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- American Nurses Association
  - Mary Foley
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Ross Cipriotti (3 ½ years old)
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William Gave Carroll (2 years old)

OMB Staffer (1)
Jennifer Forshey

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

May 11, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: Jacob J. Lew

SUBJECT: Presidential Transmittal of the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000"

I am forwarding a legislative proposal - entitled the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000" - for your transmittal to Congress. This legislation would increase the civil and criminal penalties that the Consumer Product Safety Commission (CPSC) can impose upon firms that do not inform the CPSC when they have sold a product that could impose a substantial hazard to consumers. The legislation would also help make some product recalls more effective.

This package contains two originals and eight copies of: the Presidential transmittal message to the Congress; the legislative proposal; and a fact sheet.

These materials were prepared by the CPSC and have been reviewed by the Departments of Justice, Commerce, Labor, Health and Human Services, State, and the Treasury and the Federal Trade Commission, the Small Business Administration, and the Office of the U.S. Trade Representative. The materials have also been reviewed by the White House Domestic Policy Council and this Office.

Attachments

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit today for immediate consideration and prompt enactment the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000." This legislative proposal would increase the penalties that the Consumer Product Safety Commission (CPSC) could impose upon manufacturers, distributors, and retailers of consumer products who do not inform the Commission when the company has reason to believe it has sold a product that does not meet federal safety standards or could otherwise create a substantial product hazard. The proposal would also improve product recalls by enabling the Commission to choose an alternative remedy in a recall if the Commission finds that the remedy selected by the manufacturer is not in the public interest.

Under current consumer product safety laws, manufacturers, distributors, and retailers of consumer products are required to inform the CPSC whenever they have information that one of their products: (1) fails to comply with a CPSC product safety standard; (2) contains a defect that could create a substantial product hazard; or (3) creates an unreasonable risk of serious injury or death. After a company reports this information to the CPSC, the Commission staff initiates an investigation in cooperation with the firm. If the agency concludes that the product presents a substantial product hazard and that a recall is in the public interest, the staff works with the company to conduct a product safety recall. Of course, the sooner the Commission hears about a dangerous product, the sooner the agency can act to remove the product from store shelves and inform consumers about how to eliminate the hazard. That is why it is critical that companies inform the Commission as soon as they are aware that one of their products may present a serious hazard to the public.

Unfortunately, in about half the cases involving the most significant hazards – where the product can cause death or serious injury – companies do not report to the Commission. In those cases, the agency must get the information from other sources, including its own investigators, consumers, or tragically, from hospital emergency room reports or death certificates. Sometimes years can pass before the agency learns of the product hazard, even though the company has known all along. During that time, deaths and injuries continue. Once the agency becomes aware of the hazard without the cooperation of the firm, many companies continue to be recalcitrant, and the staff must conduct its own independent investigation. This often includes finding and investigating product incidents and conducting extensive laboratory testing. This process can take a very long time, which means that the most dangerous products continue to stay on store shelves and in consumers' homes longer, placing children and families at continuing risk.

CPSC can assess civil penalties against companies who fail to report a dangerous product. Criminal penalties are also available in particularly serious cases. In fact, in 1999 the agency assessed ten times the amount of civil penalties assessed ten years ago. But, even with this more vigorous enforcement, too many companies still do not report, especially in cases involving serious harm.

This legislative proposal would enhance CPSC's civil and criminal enforcement authority. This would provide an added incentive for companies to comply with the law so that we can get dangerous products out of stores and consumers' homes faster.

The legislative proposal would also help to make some product recalls more effective by allowing the CPSC to choose an alternative remedy if the Commission finds that the remedy chosen by the manufacturer is not in the public interest. Under current law, a company with a defective product that is being recalled has the right to select the remedy to be offered to the public. The proposal would continue to permit the company to select the remedy in a product recall. However, under the amendment, the Commission may determine (after an opportunity for a hearing) that the remedy selected by the company is not in the public interest. The Commission may then order the company to carry out an alternative program that is in the public interest.

The Consumer Product Safety Commission helps to keep America's children and families safe. This legislative proposal would help the Commission be even more effective in protecting the public from dangerous products. I urge the Congress to give this legislation prompt and favorable consideration.

A BILL

To amend title 15, United States Code, regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under the Consumer Product Safety Act and the Federal Hazardous Substances Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE

This Act may be cited as the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000."

SEC. 2. REPAIR, REPLACEMENT, OR REFUND

(a) Section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)) is amended –

(1) by striking "If" in the first sentence and inserting "Subject to the last paragraph of this subsection, if"; and

(2) by adding at the end the following:

"If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or retailer has elected to take under subsection (d)(1), (2), or (3) is not in the public interest, the Commission shall order the manufacturer, distributor or retailer to take whichever other action or actions specified in subsection (d)(1), (2), or (3) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (d)(1), (2), or (3) are in the public interest, the Commission shall order the manufacturer, distributor or retailer to take whichever of those actions the manufacturer, distributor or retailer elects."

(b) Section 15(b) of the Federal Hazardous Substances Act (15 U.S.C. 1274(b)) is amended –

(1) by striking "If" in the first sentence and inserting "Subject to the last paragraph of this subsection, if"; and

(2) by adding at the end the following:

"If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or dealer has elected to take under subsection (b)(1), (2), or (3) is not in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever other action or actions specified in subsection (b)(1), (2), or (3) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (b)(1), (2), or (3) are in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever of those actions the manufacturer, distributor or dealer elects."

(c) Section 15(c)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1274(c)(2)) is amended --

(1) by striking "If" in the first sentence and inserting "Subject to the last paragraph of this subsection, if"; and

(2) by adding at the end the following:

"If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or dealer has elected to take under subsection (c)(2)(A), (B) or (C) is not in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever other action or actions specified in subsection (c)(2)(A), (B) or (C) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (c)(2)(A), (B) or (C) are in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever of those actions the manufacturer, distributor or dealer elects.".

SEC. 3. CIVIL PENALTIES

(a) Section 20(a) of the Consumer Product Safety Act (15 U.S.C. 2069(a)) is amended to read as follows:

"(a) Amount of penalty

"(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $7,000 for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violations shall constitute a separate offense.

"(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a) –

"(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

"(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

"(3) (A) The penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

"(B) Not later than December 1, 2005, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register the authorized penalty amount that shall apply for violations that occur after January 1 of the year immediately following such publication.

"(C) The authorized penalty amount shall be prescribed by increasing the amount referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

"(i) in the case of a penalty amount less than or equal to $10,000, the nearest multiple of $1,000;

"(ii) in the case of a penalty amount greater than $10,000, the nearest multiple of $5,000.

"(D) For purposes of this subsection:

"(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which –

"(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

"(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.".

(b) Section 5(c) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)) is amended to read as follows:

"(c) Civil penalties

"(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed $7,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense.

"(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4 –

"(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substance involved; and

"(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

"(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

"(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

"(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

"(6) (A) The penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

"(B) Not later than December 1, 2005, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register the authorized penalty amount that shall apply for violations that occur after January 1 of the year immediately following such publication.

"(C) The authorized penalty amount shall be prescribed by increasing the amount referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

"(i) in the case of a penalty amount less than or equal to $10,000, the nearest multiple of $1,000;

"(ii) in the case of a penalty amount greater than $10,000, the nearest multiple of $5,000.

"(D) For purposes of this subsection:

"(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which –

"(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

"(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.".

SEC. 4. CRIMINAL PENALTIES

(a) Section 21 of the Consumer Product Safety Act (15 U.S.C. 2070) is amended to read as follows:

"(a) Any person who knowingly violates section 19 of this Act shall be fined under title 18, United States Code, or be imprisoned not more than one year, or both, if such person is an individual, or fined under title 18, United States Code, if such person is an organization (as the term "organization" is defined in 18 U.S.C. 18). Any person who knowingly and willfully violates section 19 of this Act shall be fined under title 18, United States Code, or be imprisoned not more than three years, or both, if such person is an individual, or fined under title 18, United States Code, if such person is an organization.

"(b) Any individual director, officer, or agent of a corporation who authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of subsection (a) shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).".

(b) Section 5(a) of the Federal Hazardous Substances Act (15 U.S.C. 1264(a)) is amended to read as follows:

"(a) Criminal penalties

"Any person who violates any of the provisions of section 4 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine under title 18, United States Code, or to imprisonment for not more than one year, or both, if such person is an individual, or to a fine under title 18, United States Code, if such person is an organization (as the term "organization" is defined in 18 U.S.C. 18); but for offenses committed willfully, or for second and subsequent offenses, the penalty shall be imprisonment for not more than three years, or a fine under title 18, United States Code, or both, if such person is an individual, or a fine under title 18, United States Code, if such person is an organization.".

"CONSUMER PRODUCT SAFETY COMMISSION ENHANCED ENFORCEMENT ACT OF 2000"

FACT SHEET

The President today transmitted to the Congress the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000." The legislation would increase the civil and criminal penalties that the CPSC can impose upon firms that do not inform the Commission when they have sold a product that could pose a substantial hazard to consumers. The legislation would also help make some product recalls more effective.

Eliminate the cap on civil penalties for violations of product safety laws

Under current law, the CPSC cannot assess more than $1,650,000 for a related series of violations against a company that knowingly violates consumer product safety laws. The legislation would eliminate this maximum civil penalty. Many of the cases in which the Commission seeks civil penalties involve very large corporations that can easily absorb a $1.65 million fine. More substantial civil penalties would provide a needed incentive for those companies to notify CPSC of defective products so that the agency can take timely action to protect consumers. Other agencies have civil penalty authority with no "cap" on the amount of the penalty for a related series of violations, including the Federal Trade Commission.

Increase the penalty for a "knowing and willful" criminal violation of product safety laws from a misdemeanor to a felony and eliminate the requirement that the agency give notice to the company that is criminally violating the law

The legislation would increase the potential criminal penalties for a "knowing and willful" violation of consumer product safety laws from a misdemeanor (up to one year in prison) to a felony (up to three years in prison). It would also increase the maximum monetary criminal penalty in accordance with existing criminal laws. These heightened penalties are commensurate with the seriousness of product safety violations, which can result in death or serious injury to children and families. Other agencies have authority to seek substantial (felony) criminal penalties for knowing and willful violations of safety requirements, including the Food and Drug Administration for prescription drug marketing violations and the Department of Transportation for the transportation of hazardous materials.

The legislation would also eliminate the requirement that the Commission give notice of noncompliance before seeking a criminal penalty for a violation of the Consumer Product Safety Act. The notice requirement makes it all but impossible to pursue a criminal penalty for violations of the Act, even in the most serious cases. The threat of a criminal felony prosecution would create an additional strong incentive for companies to report product defects to the Commission.

Give CPSC the authority to overrule the remedy chosen by a manufacturer for fixing a defective product in a product recall when the Commission determines that the remedy is not in the public interest

Under current law, a company with a defective product that is being recalled has the right to select the remedy to be offered to the public. The company can choose repair, replacement, or refund "less a reasonable allowance for use."

The legislation would continue to permit the company to select the remedy in a product recall. However, the legislation would allow the Commission to determine (after an opportunity for a hearing) that the remedy selected by the company is not in the public interest. The Commission may then order the company to carry out an alternative program that is in the public interest.

Sometimes companies choose a remedy in a recall that does not further public safety. For example, if a manufacturer chooses to refund "less a reasonable allowance for use" the purchase price of a product that has been on the market for a long time, the amount due consumers may be so small that there is no incentive for the consumer to take advantage of the recall. This is especially true where the hazardous product is still useful to the consumer and the cost of replacement is substantial. Companies may choose an insubstantial refund even though people have been at risk for a number of years, thousands of products are still in use, and injuries are continuing to occur. In this example, a refund would do little, if anything, to stop consumers from using the dangerous product and the public interest would not be served.

Penalties for Failure to Report 1996-2000

Over the past 5 years, CPSC has fined 21 firms for failing to report nearly 360 injuries and four deaths associated with hazardous products.

Firm	Penalty	Hazard	Injuries (before report)
		2000	
Black & Decker toasters	$575,000	fire	73 fires/2 injuries
Baby's Dream cribs	$200,000	fingertip amputations	9 amputations/crushed fingers
Hasbro infant carriers	$400,000	skull fracture	8, 7 were skull fractures
Lancaster Col. candles	$150,000	fires and burns	142 flare ups, 20 burns, 55 property damage
		1999	
Carter Bros. go-karts	$125,000	death	1 death, 1 skull fracture
Shimano bicycle cranks	$150,000	fractures and lacerations	630 failures, 22 including fractures and lacerations
Central Sprinkler fire sprinklers	$1.3 million paid into a trust	burns	17 fires, 4 injuries
		1998	
Binky Griptight pacifiers	$150,000	suffocation	no injuries
Century Products cribs and strollers	$225,000 $166,000	suffocation impact injury	1 death 29 injuries
COA Inc.cribs	$300,000	suffocation	no injuries
Safety First bed rails	$175,000	suffocation	25 injuries
		1997	
Brinkmann smokers and fryers	$175,000	lacerations, fire	1 death, many lesser injuries
CSA Inc. exercisers	$100,000	impact injury	52 incidents, many injuries
Hartman hair dryers	$60,000	fire	no injuries
Nutone stereos	$110,000	fire	12 fires, no injuries
Toro riding mowers	$250,000	impact injury	31 incidents. some serious injuries
		1996	
JBI Inc. playground equipment	$225,000	protruding hardware	70 injuries including 40 fractures
Singer Sewing juicers	$120,000	flying parts	19 incidents, 10 injuries
National Media juicers	$150,000	flying parts	9 injuries
Taito America arcade games	$50,000	metal pad	70 injured/fractured wrists/arms
Cosco toddler bed guardrails	$725,000	strangulation	25 entrapments, 1 death