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PRESERVATION

APRIL 17, 2000

MEMORANDUM FOR BRUCE REED AND MELANNE VERVEER

FROM: HEATHER HOWARD
CC: TOM FREEDMAN
ANN O'LEARY
SUBJECT: TOY SAFETY INITIATIVE

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BACKGROUND

A USA Today investigation recently found that at least 17 manufacturers of children's toys failed to warn the government or owners of toys of complaints about the safety of their products. "[A]n 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." In addition, 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. Just today, the Commission announced the recall of 7 million infant swings, after 6 children died after becoming tangled in the waist belts and strangling.

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.

RESPONSE

I recommend proposing 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. Tougher penalties would also generate more news coverage of Commission actions, which is important to making consumers aware of dangerous products.

Proposed legislation would:

- 1) Lift the overall cap on civil penalties. Even if the \$7,000 per product cap remains (of course, we could raise that as well, but the Commission feels the overall cap is most important), this would result in significantly larger fines in most cases.
- 2) Make criminal violations a felony. This would send a strong message to corporations. It probably would also encourage the Department of Justice, which the Commission believes is reluctant to pursue misdemeanors, to prosecute violations. In addition to making violations a felony, we could remove the second offense requirement.