



Reauthorization of United States Consumer Product Safety Commission

Senate Committee on Commerce, Science and Transportation
Subcommittee on Consumer Affairs and Product Safety

June 17, 2003

Testimony of Robert Polk on behalf of the
National Association of State Fire Marshals

Senator Fitzgerald, Members of the Committee, my name is Robert Polk. I appear before you on behalf of the National Association of State Fire Marshals. Our association represents the most senior fire safety officials of the 50 states and District of Columbia. Our mission is to protect life, property and the environment from fire and other hazards. We receive virtually all of our resources from federal and state government agencies. We thank you for this opportunity.

Yesterday, I retired from a challenging and incredibly rewarding 31-year career as a firefighter, paramedic, fire chief, emergency services director – most of it in Illinois and Florida – and, for the past three years, as the State Fire Marshal for the great state of South Carolina. I have been asked for the time being to remain as chairman of our Association's Consumer Product Fire Safety Task Force, and it is in that capacity that I address you this morning.

The United States Consumer Product Safety Commission's authorizing statutes were written decades ago and have been amended rarely in the intervening years. Compared to virtually all of the other federal regulatory agencies, the Commission has received relatively little attention from the Congress, industry, news media or even the advocacy community. There were years when our association was the only organization to testify before the Commission's annual hearing on priorities.

My personal view is that a passive Commission has opened the doors wide to the trial bar. Case in point: we have a 50-year-old wearing apparel fire safety standard that is so weak that newspaper is able to pass it. This standard has absolutely no value to fire safety, or to

the textiles producers who are routinely sued for fires involving products that pass the federal requirement. The Commission has the authority – and, we believe, the information it needs – to set a real standard. The Commission has potentially made a step forward in addressing this issue through its recent collaboration with State Fire Marshals, the American Burn Association and the Shriners on the new Children’s Fire Burn Injury Reporting System, which will include analysis of garments worn by children who have been burned.

The National Association of State Fire Marshals believes that the statutory tools available to the Commission – the Consumer Product Safety Act, the Flammable Fabrics Act, the Federal Hazardous Substances Act and the other laws that give the Commission its powers – are more or less adequate if they are used.

The Commission is what it is. But, in my remaining time, I would like to share our vision of what it *could* be.

Consumer product safety is no less important than the credibility of financial reporting or the production of tires – both of which have been the subject of intense Congressional scrutiny in recent years. This Committee has distinguished itself many times on the subject of corporate integrity. Once again, we are talking about the integrity of the private sector.

In simple terms, we believe the Commission should make it as easy as possible for the tens of thousands of consumer product manufacturers and retailers who are committed to doing the right thing. But, by the same token, the Commission should make it far tougher on the few companies – and, in some instances, whole industries – that knowingly make hazardous products, conceal data on reportable incidents and generally disregard their responsibility to public safety.

How might we make it easier for responsible companies to do the right thing?

We would begin by using every tool at our disposal to facilitate the international trade of products that are made with integrity, regardless of where they are manufactured. Safety, health and environmental requirements differ from nation –to nation, state –to state and even city –to city. This patchwork penalizes the companies that respect the rule of law, and yet we have the means to establish true, serious and integrated safety, health and environmental standards for consumer products. Where Commissions in other administrations have ignored global markets, this Commission seems intent upon working on these issues.

Such an approach would require greater collaboration with other government agencies. The Commission should work more closely with the office of the US Trade Representative (USTR), the Customs Bureau, the Environmental Protection Agency, the State Department and other agencies defining trade policy. In an ever-globalizing market, we need to bring all of our resources to bear in order to make sure that average Americans are not exposed to unsafe products.

In addition, we collectively must do more to strengthen and then defend voluntary standards development and compliance programs. Organizations like the National Fire Protection Association, Underwriters Laboratories (UL), American Society for Testing and Materials (ASTM), American National Standards Institute (ANSI) and the International Code Council have developed hundreds of requirements that save lives and protect property every day. But – in the interest of maintaining the credibility of these requirements – the Commission might provide more oversight and guidance.

For example, how is it that we have roughly 20,000 fires a year involving electrical appliances that are expected to meet UL requirements? Those fires resulted in 100 deaths and 730 serious injuries in 1998, which is the most recent year for which statistics are available.

It should be noted that some industries prefer mandatory national requirements. The American Furniture Manufacturers Association recently took this position in a letter to the Commission dated May 2, 2003.

Now to address the other part of our recommendation: How might we make it far tougher on those companies and industries that ignore their obligation to make and sell safe products?

First, we would add industry associations to the list of organizations accountable for product safety. In many cases, industries work together to improve standards. The International Sleep Products Association has done a wonderful job with new mattress fire safety requirements. But other associations work against public safety. The Consumer Electronics Association has attempted to discourage any consideration of standards that would prevent fires from external sources – for example, a candle tipping over onto a “boom box” in a child’s room. In tests conducted and funded by electronics producers this past January at UL, the industry observed a computer keyboard ignited by a birthday candle.

We respect the right to commercial free speech, but Section 15 of the Consumer Product Safety Act might be amended to include an affirmative duty on trade groups to report to the CPSC when they come into possession of information that may suggest a product is unsafe. It stands to reason that if individual companies are obliged to report unsafe products to the Commission, so too should the groups that represent their interests.

Second, if we intend to facilitate trade of properly made consumer products, we must also use every legal means possible to prevent cheap, non-compliant, dangerous products, components and materials from entering into this country. The National Association of Manufacturers recently listed Chinese-made imports among its greatest concerns. We would agree, but no one expects the Chinese to do much, and the U.S. Customs Bureau is spread thin with its many responsibilities. Closer collaboration between the Commission and agencies like the Office of the US Trade Representative may help. Naturally, ensuring that the Commission has the resources it needs remains vital.

Beyond working toward safer imports, we believe additional steps can be taken with respect to our nation's largest retailers, who effectively define the choice of products available to American consumers. The law already holds retailers accountable for the safety of the products they sell. However, when one examines the limited penalties that the Commission may seek from those that manufacture or sell unsafe products, it is easy to see why some remained undeterred.

Take, for example, Wal-Mart. The recent lawsuit and civil penalty of \$750,000 imposed by the Commission represented the first time a retailer was punished for failing to report a safety problem, where the retailer was not also an importer or private labeler. However, the penalty amount was, in context, minuscule – equivalent to about one hour's profit earned by Wal-Mart in 2002.

A firefighter or police officer who does something wrong can lose a couple of weeks of pay. One hour of lost earnings isn't much of a statement to anyone, especially large corporations.

The statutory limitation on fines that can be assessed by the Commission is woefully inadequate if it intends to get the attention of large retailers and manufacturers. Furthermore, the Consumer Product Safety Act makes no provision for special penalties in the event of an industry-wide attempt to deceive consumers. The current civil and criminal penalty scheme in effect rewards larger companies.

The Commission has most of the basic statutory tools it needs to help responsible companies. However, in the thirty-one years since the Consumer Product Safety Act was first adopted, we have witnessed drastic changes both in the U.S. market and global market place. If Congress is serious about ensuring the safety of the products that we use every day, we must pursue innovative solutions to 21st Century problems. Enhanced inter-agency cooperation, revamped civil penalties and ensuring the Commission has sufficient resources are essential steps that Congress must take.

I thank the Committee for holding this hearing and would be happy to take any questions.