the toy association
Inspiring Generations of Play

1200 G Street NW • Suite 200 • Washington, DC 20005
t. 202.459.0354 • e. info@toyassociation.org

May 23, 2023

The Honorable Alexander Hoehn-Saric
Chair
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Comment on Proposed Draft Guidance for Estimating Value per Statistical Life
(Docket Number CPSC-2023-0013)

This letter is being submitted in response to the Notice of Availability (NOA) on behalf of The Toy Association and its 800+ members – representing manufacturers, importers, designers, retailers, inventors, and toy safety testing labs, all working to ensure safe and fun play for families. Toy safety is the number one priority for the industry, as evidenced by the fact that the industry and The Toy Association have been global leaders in toy safety for decades.

The Toy Association recognizes the benefit and standard practice to apply a Value per Statistical Life (VSL) as an analytical tool in calculations applied to estimate cost-benefit analyses carried out as part of the regulatory process. The concept of a statistical life is used for analytical purposes and does not represent the value of any *individual* life; of course, to an individual the value of their life or that of a child is incalculable. It is important for the VSL to be consistently and reasonably determined in a manner that is supported by facts and science when used to estimate dollar values to support regulatory activity in a representative manner.

The Commission's proposal to issue a different value for an arbitrary specific section of the population ('children') violates the basis for valuing regulations across a population. Since VSL calculations are based on wage profiles (or expected wage profiles) of impacted populations, a regulation that benefits lower wage workers would therefore have a lower estimated VSL than one impacting higher wage workers. This does not mean that any one individual's life is worth more than another, just that the statistical valuation differs.

The NOA makes no mention of what is considered to be the threshold (age) between 'children' and 'adult'. The Consumer Product Safety Act (CPSA) considers children's products to apply to children age 12 and younger[1]. ASTM F963 (incorporated by reference in 16 CFR 1250[2]) applies the definition of a toy to children ages under 14 years of age. A child is not an 'adult' until 18 to vote, and 21 to drink alcohol. Which one of these (or other) parameters constitute the Commission's assumption of what is taken to be 'child' as opposed to 'adult'?

If a standardized VSL is applied in an analysis, then it, by definition, represents the value for every individual in the population. The Commission's proposal that a 'child' (undefined as

[1] 16 CFR §1200.2
[2] 16 CFR 1250

highlighted in the preceding paragraph) has a VSL double that of an 'adult' (again & by extension, undefined) is a fallacy and represents an artificial exaggeration of a calculated risk analysis value.

As has already been pointed out by Commissioner Feldman in his statement issued pursuant to the NOA being published in the Federal Register[3], "No other government agency uses this novel method for calculating VSL. As [CPSC] staff notes, the Office of Management and Budget (OMB) **specifically cautions against using age-adjustment factors** due to mixed evidence on age and VSL." (emphasis added). Commissioner Feldman's statement reflects the recognition within the NOA itself that the current best practice guidance by the Office of Management and Budget (OMB) recommends "…avoiding age-adjustment factors due to mixed evidence on age and VSL…"[4].

The statement in note 1 of the NOA that the OMB guidance is 20 years old, and there has been 'new research'[5] since that date, is disingenuous since such a statement is not supported by evidence or information that the 'new research' is either materially different or additional to what has been considered previously, nor whether the OMB has reviewed said evidence for consideration or not. The simple assertion of "new research' does not in and of itself lessen the validity of the existing guidance, and it also bears mentioning that the reference to the OMB Circular in the note acknowledges that there was *mixed evidence observed when compiling the original guidance*.[6] Without evidence to the contrary, it is possible that the 'new' information could be repeating observations made prior to the issuance of the OMB Circular.

Furthermore, the analysis that CPSC is using to justify the proposal to double the value of the life of a child at twice that of an adult fails to provide a supporting basis for the proposed change itself. The 2018 report by Industrial Economics, Inc. (IEc)[7] for the CPSC, used to frame the proposed VSL amendment, examines a handful of papers of which several are prepared by the same set of authors and does not support the conclusion that a VSL for a child is double that of an adult[8]. The IEc report, after examining just four papers which were selected for the VSL valuation, all of which use stated preference analysis where individuals are asked to value potential risks in dollar terms, indicates that there is a large degree of variance on how parents differently value their own lives versus the lives of their children. Additionally, the authors also suggest that a number of the differentials observed are not statistically significant, meaning that the differentials *do not differ from zero*.

The papers referenced in the IEc report examine drastically different populations, ranging from parents in Milan, Italy, to parents in Orlando, Florida to a non-representative sample of parents across the United States. None of the studies cited examine product safety regulations or the types of injuries that might be experienced from a child using a product.

Also relevant is the important fact that all of the papers examined in the report were based on surveys of parents. It is not improper to suggest, nor unexpected, that a parent will value the life

---

[3] Statement of Commissioner Peter A Feldman Requesting Comments on CPSC Value of Statistical Life Proposal, March 23, 2023
[4] Federal Register Vol 88 No. 57 p17826, Note 1
[5] Id.
[6] Id.
[7] Raich, Williams et. al., *Valuing Reductions in Fatal Risks to Children*, prepared by Industrial Economics, Incorporated for the Consumer Product Safety Commission, January 3, 2018.
[8] Id.

of their offspring at a higher level than their own. However, the basis for the Commission's proposal is based on the overly simplified arithmetic average of statistically unsupported results from just four individual examples of completely different population groups. This does not provide, and does not lead to, a data-driven or scientifically justifiable rationale to support the arbitrary doubling of an established and commonly utilized VSL for the overall population.

Even if there were to be a strong supporting basis for applying different VSLs for children and adults, the CPSC proposal ignores the follow-on inconsistency that a single multiplication factor fails as soon as one considers the differences between an infant as opposed to a toddler, a pre-teen, or a teenager. If one follows the assumption being made, all of the VSLs should be different since they apply to distinctly different sectors of the population of 'children'. How is a child at 17 years of age given the same VSL as a baby, at a value twice that of an 18 year old? Note also that this example takes 18 years of age as the threshold for determination as an adult, since this information has not been provided by the Commission.

In summary, The Toy Association requests that the Commission withdraws the proposal to apply a VSL for 'children' at twice the assigned value currently being applied & recognized by CPSC and other Federal agencies. If the Commission intends to apply a variable VSL for younger portions of the population, The Toy Association requests that (1) there is a full, applicable and scientifically significant study of all relevant available information related to the determination of one or more VSLs allowing for the differences between people (children) of different ages rather than using an unsupported and arbitrary multiplication factor simply framed by a vague differential, and (2) to clarify what is considered to be a 'child' and an 'adult' with relation to any VSL that would be utilized.

We thank you for your attention to our comments. If you would like to further discuss any of the issues raised, please let me know.

Regards,

Jos Huxley
Senior Vice President of Technical Affairs
The Toy Association
jhuxley@toyassociation.org