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PROTECTING OUR CHILDREN: CURRENT ISSUES IN CHILDREN'S PRODUCT SAFETY

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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CONTENTS

	Page
Hon. Bobby L. Rush, a Representative in Congress from the State of Illinois, opening statement	1
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement	2
Hon John Barrow, a Representative in Congress from the State of Georgia, opening statement	4
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement	6
Hon. John D. Dingell, a Representative in Congress from the State of Michigan, opening statement	7
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	8
Hon. Jan Schakowsky, a Representative in Congress from the State of Illinois, opening statement	9
Hon. Baron P. Hill, a Representative in Congress from the State of Indiana, opening statement	10
Hon. Edward J. Markey, a Representative in Congress from the Commonwealth of Massachusetts, opening statement	11
Hon. Jim Matheson, a Representative in Congress from the State of Utah, opening statement	12
Hon. Darlene Hooley, a Representative in Congress from the State of Oregon, opening statement	14
Hon. G.K. Butterfield, a Representative in Congress from the State of North Carolina, prepared statement	14
Hon. Tammy Baldwin, a Representative in Congress from the State of Wisconsin, prepared statement	15

WITNESSES

Nancy A. Nord, Acting Chairman, U.S. Consumer Product Safety Commission	16
Prepared statement	19
Answers to submitted questions	207
Alan Korn, director, public policy and general counsel, Safe Kids Worldwide	52
Prepared statement	55
Rachel Weintraub, director, product safety and senior counsel, Consumer Federation of America	70
Prepared statement	72
Answers to submitted questions	226
Frederick B. Locker, general counsel Toy Industry Association; Locker, Brainin and Greenberg, New York, NY	93
Prepared statement	95
Marla Felcher. adjunct lecturer, public policy, Kennedy School of Government, Harvard University	105
Prepared statement	107
Answers to submitted questions	149
James A. Thomas, president, ASTM International	111
Prepared statement	113
Nancy Cowles, executive director, Kids in Danger	124
Prepared statement	127

SUBMITTED MATERIAL

Hon. Allyson Y. Schwartz, a Representative in Congress from the Commonwealth of Pennsylvania, submitted statement	146

Page

Thomas Moore, Commissioner, Consumer Product Safety Commission, answers to submitted questions 156

PROTECTING OUR CHILDREN: CURRENT ISSUES IN CHILDREN'S PRODUCT SAFETY

TUESDAY, MAY 15, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Bobby L. Rush (chairman) presiding.

Present: Representatives Schakowsky, Barrow, Hill, Markey, Gonzalez, Hooley, Matheson, Dingell, Stearns, Fossella, Radanovich, Terry, Burgess, Blackburn.

Also present: Representative Baldwin.

Staff present: Judith Bailey, Christin Tamotsu Fjeld, Valerie Baron, Will Carty, and Matthew Johnson.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLIONOIS

Mr. RUSH. The subcommittee will come to order.

I yield myself 5 minutes for an opening statement.

The jurisdiction of the Subcommittee on Commerce, Trade and Consumer Protection is multifaceted and covers a broad area, but there is nothing more important than our mission to look out for our children's safety. If the Federal Government cannot deliver on this basic responsibility to help parents keep their children away from avoidable hazards and unsafe products, then we are not doing our job.

I hold in my hand a two-part series that appeared in the Chicago Tribune on May 6 and May 7. The Tribune articles are disturbing, to say the least; and they depict the worst nightmare that any parent might have.

A 20-month-old child, Kenny Sweet, Jr., swallowed numerous tiny but powerful magnets that fell out of a popular toy kit called Magnetix. Inside the toddler's stomach these magnets stuck together and cut a hole through his bowels. Unbeknownst to his parents, these tiny magnets were camouflaged in with the carpet, only to be found and swallowed by the young toddler. Kenny Sweet, Jr., died on Thanksgiving Day, 2005. He died of what was equivalent to a gunshot wound to the stomach.

This child's death is tragic. What is even more infuriating is the possibility that Kenny's death was preventable. According to the

Tribune articles, both the company that manufactures Magnetix, Rose Art, and the Consumer Product Safety Commission were notified of the loose magnets and possible dangers they posed to young children, but neither acted in a timely manner to prevent Kenny's death.

What I want to take away from this hearing and what I want to understand is why it took the Chicago Tribune doing athorough investigative story on Magnetix to finally get this product off the shelves. This story makes clear that the toys were still in some stores as it went to press. And I want to know why the Rose Art Company and the CPSC did not take the necessary steps to protect our children.

Ladies and gentlemen, I don't want to engage in a blame game, and I am not looking to initiate a consumer product witch-hunt. I fully appreciate and respect the efforts of the Consumer Product Safety Commission, and I am not attributing incompetence or negligence to their staff or to Acting Chairman Nord. The Commission did the best it could, given the resources they had. However, I do want to find out how the system broke down; and, more importantly, I want to find out how to repair the breach. From this hearing, I want to come away with an idea of what steps this subcommittee should take to ensure that something like this never happens again.

Today's hearing is not just about the Magnetix case. This subcommittee will hear testimony of numerous witnesses and explore a broad range of children's product safety issues. Many Members of Congress, including members of this subcommittee and full committee, have specific bills and legislative priorities when it comes to children and product safety. This hearing will serve as a forum to discuss and to deliberate on those individual bills.

I know my friend and colleague from Chicago, Ms. Schakowsky, the vice chairman of this subcommittee, has long been a champion of children's safety; and she has several proposals to strengthen and empower parents to protect their children.

I am not naive enough to think that we can protect all children from all the dangers that lurk in the world, but I do know that the regulatory regime that we have set up under the CPSC must be improved. I hope the members of this subcommittee, both Republicans and Democrats, are willing to roll up their sleeves and join with me and make the necessary reforms to the Consumer Product Safety Commission so that the number of preventable future deaths are minimized.

Kenny Sweet, Jr., should be alive today; and I would like to enter into the record by unanimous consent the two Chicago Tribune articles. The reporter, Patricia Callahan, should be commended for her tremendous work.

With that, I recognize the ranking member of this subcommittee for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning and thank you, Mr. Chairman. I applaud you for having this hearing.

I think all of us are champions of children. I have raised three boys; and I realize how difficult it is sometimes to supervise them, particularly after Christmas when they are playing with all the new toys under the tree and the day goes on and they sometimes can get hurt. So we are all very sensitive and conscious of this, and I applaud the Chicago Tribune for their article.

With that being said, I would like to also tell my colleagues that we need to focus more on child product safety issues and the effectiveness of the current regulation. This is an agency, my colleagues, that has been underfunded. This is an agency that still does not have a commissioner. It does not have a way to actually vote and provide a majority. And this is an agency that has regularly been operating with less money and doing twice as much work.

So if you look at the history of this agency, considering the circumstances, it has been very successful. So I applaud Commissioner Nord and her predecessor for all that they did.

But I am interested, obviously, as most of us are, to hear from the diverse panel of witnesses today about current concerns and what is working and what isn't working. But I also have to remind my colleagues that there are over 300,000 complaints plus that comes into this agency every year. In this case, the Magnetix toy was manufactured in China; and, also, it was distributed out of Canada. So, obviously, when you go to look for standards, it is going to be difficult for us to enforce standards on China as well as Canada. But we can set standards and be sure that people comply, and if they don't it is against the law.

We have other problems dealing with people who want to buy toys over the Internet. What are we going to do about that?

And, third, what about innovations? Some of the new technology that is coming, including nanotechnology, that would create even more difficulty for the CPSC.

This is a very important agency. Its task by statute is protecting the public against unreasonable risk of injuries associated with consumer products, it has jurisdiction over not one, not two but 15,000 kinds of consumer products used in and around the home. As I understand, the agency has a budget of about $63 million. Obviously, that is underfunded.

So I agree with you, Mr. Chairman. This is an agency we need to strengthen, provide more money and get the next commissioner approved. It then could be much more effective in distributing information on dangerous products subject to recall and for providing important consumer education.

Their hardest task is to determine whether there is a trend from one complaint, two complaints or 10 or 100 complaints, and is that trend so significant that they have to do something and implement it. And I imagine, when you consider you have over 300,000 complaints, that is an arduous task.

If an individual company is breaking the law and putting the public in danger, the Commission obviously should take action swiftly and decisively. Moreover, the job of the CPSC is to actively enforce the laws enacted by Congress. Thus, if the Commission believes that the Consumer Product Safety Act needs to be changed,

we certainly welcome their suggestion today; and we are here to act.

The U.S. toy and children's product industry is a large business, with many tens of billions of dollars in sales each year; and, in 2006, the CPSC initiated 94 product recalls of toys and children's products involving millions and millions of product units. Sadly, every year, however, there are a small number of toy-related deaths and hundreds of thousands of injuries. While I applaud the Commission's work in investigating product complaints and getting dangerous products off the market, the agency must remain ever diligent in pursuing its mission to protect the public.

Mr. Chairman, with that, I would like to make the remaining portion of my opening statement part of the record; and I just would like to conclude.

The number of children's products that are imported has grown dramatically, and the Commission should explore ways of enhancing its oversights. I hope Ms. Nord today will talk about that. But, by and large, American manufacturers of children's products adopt industry safety standards and are responsible corporate citizens, but imported products do not always abide by these standards, my colleagues. The Commission must work closely with industry standards setting organizations in general and with an international forum specifically to enhance the safety of imported products.

I would like to thank Acting Chairman Nord for being here today and look forward to her report, and I would also like to thank the second panel of the witnesses.

I thank you, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentleman from Georgia, Mr. Barrow.

OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARROW. Thank you, Mr. Chairman.

This is the first oversight hearing of this Commission, I understand, since 2004. This is the first step in a long overdue trip of a thousand miles that has been postponed for years now. It gives us an opportunity to take stock and to survey just what has been going on.

I want to amplify what Mr. Stearns has said and put it in human terms. When it comes to Commission resources, we have gone from a high of a thousand people working for this agency at the beginning of the Reagan administration way back in 1981 to just 400 people policing the consumer marketplace today in 2007. The consumer marketplace has not become a safer place in the meantime.

I would agree with the Commissioner's testimony that children are safer today than they would be but for the work of the Commission. But I think, in all fairness, we have to attribute that to the work of Commissions before us, certainly not to the work that is being undergone today.

With globalization, with the marketplace being opened up to designers and manufacturers who are abroad, the traditional civil law tort system is less and less able to police the marketplace by making manufacturers and designers pay for the damage that they do.

That is already a very imperfect weapon in the first place. Just to make manufacturers compensate folks for the harm that they do is hardly an effective deterrent. It should make them pay the full price of what they put into the stream of commerce.

But with designers and manufacturers residing abroad today and with most States in this country and this Congress contemplating in passing vendor legislation, which I think wisely, on the whole, exempts mere distributors from the consequences of bad design and bad manufacturing, it becomes that much more important that we police the marketplace in the first place, not leave it to private attorneys general to try and make sure that those who do harm pay for the consequences of their bad design and their bad manufacturer. So, in a global marketplace, it becomes that much more important that the police on the beat be up to the job.

And I don't think anybody can say that the world is as safe, the consumer marketplace is as safe as it needs to be if we have only 400 people policing the global marketplace, whereas we had a thousand people policing our own national domestic marketplace just 26 years ago.

So something is wrong here. In terms of Commission powers, I think we have gotten pretty far off the beaten path. When the maximum penalty that the Commission can levy is a fine of $1.65 million and that is a violation of a regulation, if there is a regulation on the books, seems to me that for many folks it is a whole lot easier to get forgiveness than it is to get permission. And it should not be easy to get forgiveness for killing our children or for putting consumers at risk. They should not get permission to do that that in the first place.

In matters of legislative matters, it concerns me that the Commission is not being more proactive to deal with known defects, known hazards, known risks that can be eliminated in the ordinary course of business.

Take the Pool and Safety Spa Act that Congresswoman Debbie Wasserman Schultz has made such a heroic effort in pushing through the last Congress. I am one of the co-sponsors of that bill in this Congress. Something that keeps children from being trapped and brain damaged or killed in a product as widely available as the backyard swimming pool should not be an option. Basic safety should not be an option in the marketplace that folks have to figure out and shop for. It should be something that they get as a matter of course in the commercial marketplace.

I do not understand why the Commission does not take a more proactive stance and essentially require folks to do the right thing, rather than leaving it up to folks to find out that the products they purchased do not incorporate the basic safety in its design and manufacture. This is long overdue.

I appreciate your coming here today, but, as I say, this Congress has a lot of catching up to do; and we need to begin by assessing the resources that you all have to bring to bear, the powers that you have to bring to bear in the marketplace and the necessary legislation that we need to take if y'all won't take the proper steps yourself.

So, Mr. Chairman, with that, I will yield back.

Mr. RUSH. The Chair recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. Thank you, Mr. Chairman.

I will submit my written statement for the record so as not to take so much time.

I want to make a couple comments, and I appreciate you holding this hearing today. I think one of the valuable exercise of these congressional hearings is to shine the bright spotlight, to use the bully pulpit, as you are doing today, Mr. Chairman, on an issue that, quite frankly, probably doesn't come to the attention of many people in this country.

When I first became aware that we were having this hearing today, I thought there must be some mistake, that the danger from a swallowed magnet didn't seem to be that great. So I went to my usual sources on the Internet and checked it out with the New England Journal of Medicine and put "ingested magnets" in the search engine and found no matches. I went to one of my other Web sites that I frequently look at when posing questions of medical importance, and my good friends at *MayoClinic.com* or at the Mayo Clinic Web site also had no matches.

But it was the Consumer Product Safety Commission that did show a match, and their press release from last month really highlights the danger from these toy sets and these magnets. And even going to Google, the company that sells the magnetic toy devices from the Toys "R" Us Web site does state clearly on the Web page that came up that it is recommended for children 6 years and up and does have a safety warning.

Now this is not a black box warning like we might ask the FDA to do. But it does have a safety warning: This product contains small magnets. Small magnets can stick together across the intestines, causing serious infections and death. Seek immediate medical attention if magnets are swallowed, ingested or inhaled.

I was a physician before coming to Congress; and, again, I don't think I was aware of the seriousness of the injury that could result from a swallowed magnet. Reading the stories in the Chicago Tribune was very moving, and I could only put myself in the position of perhaps a physician who might be the recipient of a child who presented with those symptoms in the middle of the night and not think about the involvement of a magnet that fell out of a toy manufactured in the People's Republic of China.

So I am grateful for you doing this today, Mr. Chairman. I think it does help to expand the knowledge base for caregivers across the country, and I hope people are paying attention to the hearing we are having today.

Sure, there are a lot of issues with the Consumer Product Safety Commission that need to be dealt with. There are a number of Federal agencies that haven't been authorized or are well past their expiration dates for reauthorization that, of course, we need to get to and we should get to. It is our obligation to get to. But I think in the broader context expanding the knowledge base in the country about the danger of these small magnets, which are much more

powerful than the refrigerator magnets that we all grew up with, I think it is important to get that information out there to the general public. So I appreciate the chairman for holding the hearing.

Mr. RUSH. I want to thank the gentleman.

The chair now recognizes the dean of the Congress, the chairman of the full committee, the gentleman from Michigan, Mr. Dingell, for 5 minutes.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Chairman DINGELL. Mr. Chairman, thank you for recognizing me. I commend you for holding a very important hearing today.

Our country's highest responsibility is to protect its children, and I am fearful that our country is falling short in this very important duty. It appears that we are tolerating way too many preventable deaths and injuries to America's children caused by defective, unsafe and hazardous consumer products. I fear that the regulatory system, which is critical, is also broken and in desperate need of serious reform.

All of us are saddened and outraged by the consequence of these product failures. When we hear about such incidences occurring, we can ask, how can this ever have happened? Incidents such as children who die or are maimed simply because the parents put them to sleep in a crib, a product we all thought was designed to protect the children; swimming pools with dangerous drains that can entangle a child's hair and cause drowning; toys in children's jewelry made with high quantities of lead when we know that everything goes straight into the small child's mouth. We believe such tragedies are preventable.

Hearings will explore the reasons why our children are so at risk. Among the questions I believe that should be asked are: do we need more exacting safety standards for children's products? Do we need stiffer penalties for violations of these standards? Do we need stricter and swifter law enforcement so that manufacturers know that we are dead serious about preventing dangerous products from reaching the marketplace? Do we need to improve the recall system so it effectively removes hazardous products from store shelves and also alerts those who have already purchased such products? Do we need more comprehensive educational programs so that families are better informed about products they buy for their children?

And, finally, are serious improvements to the CPSC needed so that the agency can do a better job of protecting our children? Is the agency too small to carry out its responsibilities? Does it have enough money? What barriers stand in the way of its effectively regulating hazardous products?

Mr. Chairman, like the other members of the committee, I look forward to working with you in answering these critical questions and determining what more needs to be done to protect our young people. This hearing starts us on a road towards fixing a system that appears to be broken and badly in need of repair. For the sake of our Nation's children, this committee and all of us must work

with all deliberate speed to fix it so that our country fulfills this important and crucial responsibility.

I thank you, Mr. Chairman; and I yield back the balance of my time.

Mr. RUSH. I want to thank the gentleman.

The Chair recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman. I will waive my opening statement. Thank you.

Mr. RUSH. The Chair now recognizes the gentlelady from Tennessee, Mrs. Blackburn, for 5 minutes of testimony.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. I appreciate that.

I want to welcome Ms. Nord and the guests, our witnesses, for the second panel.

And, Mr. Chairman, I would like to take my time and express my disappointment in the manner in which the hearing was organized. I think all of us, especially those of us who are moms, are deeply concerned about children's products and the safety of children's products and the uses, the appropriate uses and education thereof. This committee has always worked on a bipartisan basis and worked on issues that affect the consumer on a bipartisan basis, and that spirit I think is critical to conducting the type of proper oversight that is necessary as we look at the issues under this committee's jurisdiction.

Today's is no different. Yet it is hard for the members of the subcommittee to work together in that manner when they don't have access to the information, including testimony and the background memos, that will allow them to play a constructive role in this process. I don't know what the reason was for this not being distributed in a timely manner, but no documents were provided to my office, and I expect probably to the rest of my colleagues on this side of the dais, less than 24 hours before the start of the hearing. They didn't get to my office until 4:15 yesterday afternoon.

I would hope that on issues that are so important to our constituents and especially dealing with children that we would see that handled a bit differently in the future. We are all concerned about what is in the marketplace and the understanding of those products; and I hope that we will work in a bipartisan manner to address these issues, to deal with consumer safety, whether it is dealing with the way the consumer protection agency carries out its mission or whether it is dealing with some of the legislation that is before us.

I thank you, Mr. Chairman; and I yield back.

Mr. RUSH. I want to inform the gentlelady from Tennessee that this Chair goes out of his way to include Republicans in all deliberations. We scheduled a meeting yesterday with the Republican ranking member.

This Chair really takes it personally when he is accused of not being fair to the minority. I intend to be bipartisan. I conduct myself in a bipartisan manner. I conduct this subcommittee in a bi-

partisan manner. I think the gentlelady would have been well positioned to engage in this hearing if she had simply asked the question, when did the subcommittee get the materials in order to distribute? You can be assured that as soon as we got it, you got it; and that is the way we will conduct this hearing.

Thank you.

The Chair recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Chairman Rush.

I appreciate the spirit of bipartisanship that you have acknowledged and always carry out, and I thank the ranking member.

Really, I am grateful for this hearing on an issue that I have worked on for a long time and now under your leadership is coming to light. I want to thank all our witnesses. Especially, I want to welcome Nancy Cowles from the advocacy group Kids in Danger, which is based in Chicago.

Two days ago, we celebrated Mother's Day; and while many families were rejoicing for many others, Mother's Day is and always will be a day filled with sorrow and a reminder of their grief for a child lost to unsafe children's products.

For example, Mother's Day will never be the same for Linda Ginzel, who lost her son Danny when a portable crib collapsed around his neck and strangled him. This year had to be especially tough because May 12, the day before Mother's Day, was the ninth anniversary of Danny's death. But even more disturbing is that four children died after Danny died from that same collapsed portable crib.

Penny Sweet and her son Kenny Jr.'s story are chronicled in the Chicago Tribune series on children's products by Patricia Callahan. Kenny died after swallowing magnets from a Magnetix set. The magnets were so powerful that the ones he swallowed were connected to each other in layers of his intestines and set off an internal reaction which resulted in what one pediatrician described as a hidden, quote, gunshot wound, end quote. Not only must Mother's Day be emotionally taxing for Penny but so must be Thanksgiving Day, the day she lost Kenny to a toy.

Since Kenny died, other children have had major surgery as a result of the same incident which she reported. Those two and many other mothers who lost their children went to and still go to other great lengths to protect their other children of harm. However, we fail them if we allow manufacturers to put unsafe products on the shelves and don't provide strong mechanism to get dangerous items off the shelves and out of homes.

A Coalition for Consumer Rights survey in Illinois found that 75 percent of adults believe that the Government oversees pre-market testing for children's products. Seventy-nine percent believe that manufacturers are required to test the safety of those products before they are sold. For most products, neither is true. In fact, there are no mandatory safety standards for the majority of the children's products being sold today.

The majority of the standards that are in place are voluntarily set by the industry that looks to make profits. They are also allowed to police themselves about whether their standards are enforced.

So where is the Government? Where is the Consumer Product Safety Commission?

I am looking at the testimony of Commissioner Nord, and it says that the Commission is tasked with the important mission of protecting the American public from unreasonable risk of injury and death associated with consumer products. It says, while the Commission and the staff work very hard to reduce injuries to consumers of any age, we pay particular attention to products used by vulnerable groups, especially children.

But then you say, with a total nationwide staff of just over 400, an annual budget of just over $60 million, we simply can't be at all places at all times. That is true no matter how much money you have, that is for sure, but with the total compliance staff of approximately 150 you mentioned, so those who are actually dealing with compliance we are talking about even fewer. That is a concern as well as the cap on civil penalties of $1.825 million, which could be the cost of doing business for many companies.

Additionally, the few mandatory and all the voluntary standards are of questionable significance because there are no testing requirements. What that means is that our children end up being the guinea pigs in potentially deadly experiments every time we bring a new product for them into our homes.

Because I believe that we must do much more to protect children, I have introduced two bills, and there are many more offered by various Members of Congress, that would help prevent needless deaths and injuries of young children.

H.R. 1698, the Infant and Toddler Durable Product Safety Act, would require that products are tested and have a stamp of approval; and, in honor of Linda's son, H.R. 1699, the Danny Keysar Child Product Safety Notification Act. These bills would help us protect infants and toddlers from dangerous products before they arrive on the shelves and after they end up in our homes. I am looking forward to your comments on those and hope for their quick passage.

Thank you.

Mr. RUSH. The Chair recognizes the gentleman from Indiana, Mr. Hill, for 5 minutes.

OPENING STATEMENT OF HON. BARON P. HILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HILL. Thank you, Mr. Chairman. Let me thank you for holding this hearing on protecting our children. It is an important hearing to have.

There is an issue that has affected families across this country—and, Chairman Nord, I also thank you for being here as well.

But there is an issue that has affected families across the country and has the potential to affect many more if this committee does not act, and that is accidental drowning of children. In 2004, there were 848 American casualties in Iraq. In that same year, 761 children ages 1 to 14 drowned in this country. It is hard to believe.

Nearly as many children were lost in backyards and swimming pools as there were soldiers lost in the war zone.

According to a report issued by Safe Kids Worldwide, my State of Indiana ranks 36th among the States for the safety of children. There has been improvement in my State. More can be done to protect Hoosiers. Unintentional drowning is the second leading cause of accidental death in Indiana. I don't know where it is countrywide, but, in Indiana, it is the second leading cause of death among children.

There are two significant factors that increase the likelihood of drowning accidents. One is that young children wander too close to a body of water and fall in and, being unable to swim, they quickly sink to the bottom. The other problem is the powerful suction devices that regulate the contamination in pool water.

Without a doubt, supervision is the first line of defense, parents must be responsible and watch their children at all times. As any parent can tell you, there are always moments when a child can wander away from a watchful eye and an accident can occur.

One thing we can do is direct the Consumer Product Safety Commission to develop Federal anti-entrapment drain cover standards. Through innovation and appropriate standards, we can save families from having to endure these tragedies.

In addition to addressing the drainage issue, we must educate individuals about the potential dangers of pools and spas. Furthermore, we can provide guidelines and incentives to encourage States to further the cause of drowning prevention.

Congresswoman Wasserman Schultz has introduced the Pool and Spa Safety Act, which will address all of these issues. This piece of legislation, as I understand it, according to Congresswoman Wasserman Schultz, was passed by the Senate, passed by the House but never became law because we ran out of time. So this is really a moot issue.

I think we are probably going to pass it again; and I hope, Chairman Nord, that you will lend your support for this important piece of legislation. As the summer months approach, there will be an unfortunate increase in incidences throughout the Nation. As we face this reality, I encourage parents to be vigilant in their supervision; and I encourage this committee to be vigilant in efforts to ensure that we work towards eliminating this tragedy.

Again, Chairman Nord, I appreciate your attention here this morning. I hope we can do something about this very important piece of legislation that will reduce the number of drownings of children throughout this country.

Thank you, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentleman from Massachusetts, Mr. Markey, for 5 minutes.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Today's hearing is particularly important in light of a series of recent reports about dangerous children's products, including Magnetix building sets, lunch boxes with linings containing high

lead levels and baby bibs with unsafe levels of lead in the fabric. As the summer season approaches, we are also reminded today of the need for Federal oversight over amusement park rides at fixed sites around the country where millions of children and their families will visit in the coming months.

The Consumer Product Safety Commission has an enormous responsibility to protect the public from unreasonable risk of serious injury or death of the more 15,000 consumer products under the agency's jurisdiction. With thousands of different product categories within this jurisdiction, the Commission faces significant challenges as it works to accomplish its mission.

With a meager $63 million budget requested in fiscal year 2008, only about 400 employees are statutory constraints and limit its effectiveness; and with the current lack of a quorum of commissioners, the CPSC has been unable to adequately perform many key functions. Unless it receives additional resources and adjustments to its enforcement and regulatory authorities, CPSC will no longer stand for Consumer Product Safety Commission but, instead, CPSC will stand for "Cannot Properly Safeguard Children".

The activities and responsibilities of the Commission are too important to permit the continuation of the status quo. I am hopeful that with today's hearing and the important consumer product safety bills introduced by my colleagues we will begin the process of restoring the Commission's vitality.

Later today, I will reintroduce the National Amusement Park Ride Safety Act to provide the Commission with the authority to enforce safety regulations at amusement rides located at fixed sites. My bill would give permission to Federal safety experts at the Consumer Product Safety Commission to gain access to accident sites to find out what happened and what needs to be fixed, give authority to the CPSC to issue and enforce a safety plan to prevent the same accident from recurring on the same ride, allow the CPSC to share what its investigators learn about safety problems nationwide so the same accident does not reoccur on the same rides in other States, and to provide the CPSC with $500,000 per fiscal year to carry out these new responsibilities.

Mr. Chairman, I thank you for having this hearing. I think it is really an important service that we can provide to protect children in the country, and I yield back the balance of my time.

Mr. RUSH. The Chair recognizes the gentleman from Utah, Mr. Matheson, for 5 minutes.

OPENING STATEMENT OF HON. JIM MATHESON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. MATHESON. Well, thank you, Mr. Chairman. I think it is important you are holding this hearing.

In the hearing announcement, we talked about two issues we wanted to look at today. One is oversight of the Consumer Product Safety Commission. The other is to talk about issues of concern to members who legislate proposals for child safety. Both of those are very commendable to be covering today, and I want to associate myself with the opening comments of the chairman of the subcommittee and the chairman of the full committee in terms of highlighting the need for a more aggressive effort.

We have heard from a number of the opening statements how the staffing levels have been reduced, we have heard about the budget numbers that have been reduced, but we have also heard about this new new phenomenon that has really affected us now. In a world of globalization and products coming from all over the world, how is this agency set up and structured and positioned to deal with that challenge in terms of ensuring consumer product safety?

I think that is a very critical issue for us to try to address today and learn what the agency needs and if there are legislative fixes, and authority has to come from the legislative branch to give the agency the flexibility and the capability to address that new challenge.

That probably didn't exist when I was a little boy. You mentioned, Chairman Nord, in your statement that in some ways kids are safer today. They are. I am sure the crib my son sleeps in now is much safer than the one I slept in. So we have made progress, but these new challenges we are talking about clearly mean we have got more to do.

We also have an agency, as Mr. Markey pointed out, right now, that lacks a quorum. We have had an acting chairman since last July. I think it is very important this committee conduct this oversight right now, because I am not sure what is going on in this agency in the last few months. We don't even have a full-time quorum, we don't have a full-time chairman, the budget seems to be dropping, and I think there will be questions that ought to be answered.

Now when it comes to specific issues, Mr. Hill gave a very good description of the need for the pool and spa safety legislation that was introduced by Congresswoman Wasserman Schultz, H.R. 1721. Accidental drowning is, in fact, the second leading cause of death nationally. In addition to what Mr. Hill stated in his own State, second leading cause of death of children ages 1 to 14.

This is legislation of which I am personally a co-sponsor. I think that there is bipartisan support for this matter, and I would encourage that legislation to move quickly.

Second issue, I know the American Academy of Pediatrics has raised the issue to this committee about lead content in toys. Toy jewelry, lunch boxes, In this world of globalization in particular we need to get our arms around that issue and figure out there are better ways to ensure safety for our kids.

I also note that the American Academy of Pediatrics has raised the safety of all-terrain vehicles. These are vehicles that are used a lot in my home State. They are getting bigger and more powerful than they were over the past few years. Questions about children's operation of those vehicles ought to be asked, and we ought to look for opportunities to create a more safe situation for our kids. So, Mr. Chairman, again, I just want to cover both those issues.

The need for oversight is clear. There is some important issues there that we need to face, and I applaud you for holding this hearing. I look forward to continuing the legislative effort through this Congress, and I will yield back my time.

Mr. RUSH. I want to thank the gentleman.

The Chair now recognizes Ms. Hooley of Oregon for 5 minutes.

OPENING STATEMENT OF HON. DARLENE HOOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Ms. HOOLEY. Thank you, Mr. Chairman. I will be very, very brief so we can get to Ms. Nord.

First of all, thank you for being on the panel today; and, second of all, Mr. Chairman, thank you for holding this hearing.

Although I am new to the Commerce, Trade and Consumer Protection Subcommittee, it was actually a child safety issue that first got me involved in politics. My son fell off the swing at the park and cracked open his head on the asphalt below the swings, and I was wondering why anyone would put a hard surface below playground equipment. Well, they did because they wanted to save a little money and thought that was a great idea.

In the process of figuring out how that decision could have happened and making sure it didn't happen again, I ended up on the park board and eventually city council; and we did get rid of the asphalt under the playground equipment. It was one little incident.

The Consumer Product Safety Commission is charged with the enormous task of protecting the public, including children, from unreasonable risk associated with consumer products. Right now, I understand you are trying to do this with 400 employees, in contrast to a thousand that you had in 1981; and yet we know there are many more products out there today that need to be tested. Clearly, this is not sufficient. You also seem to lack the statutory authority to protect consumers. I would look forward to hearing from both panels on how we should address these very serious problems. I also look forward to hearing concerns regarding specific products that are still on the shelves that could injure or even kill children.

Again, I applaud the subcommittee for their diligent work on child safety and look forward to working on this issue with you, Mr. Chairman.

Mr. RUSH. I want to thank the gentlelady. Any other statements for the record may be included at this time.

[The prepared statements follow:]

PREPARED STATEMENT OF HON. G. K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

The oversight hearing the Subcommittee on Commerce, Trade, and Consumer Protection held nearly a month ago on the Consumer Product Safety Commission shed light on the understaffed and underfunded conditions at the Commission. It was an extremely productive hearing that was successful in laying out a framework for potential improvements. The CPSC is charged with protecting the public from unreasonable risks of serious injury or death from thousands of consumer goods. Many of these products have a direct safety implication for children.

While the safety of all Americans is of critical importance to lawmakers, the safety of children is of particular interest for this hearing. The Subcommittee on Commerce, Trade, and Consumer Protection will discuss several important legislative initiatives aimed at improving the consumer product safety for children. Not enough is being done to protect consumers—particularly children.

H.R. 2474 introduced by Chairman Rush aims to increase the maximum civil penalty for violations under the Consumer Product Safety Act. The current limit the CPSC can assess is $1.825 million—the bill seeks to increase the limit to $20 million. Unfortunately, the current penalty is so low that some businesses see it simply as the cost of doing business. So these companies continue to violate CPSC safety violations, putting our children at risk.

The Danny Keysar Child Product Safety Notification Act—H.R. 1699 was introduced by Congresswoman Jan Schakowsky. Mirroring the National Highway Traffic

Safety Administration's recall for car seats, H.R. 1699 requires everyday nursery products to come with a prepaid postage registration card for easy dissemination of recall information. Through this legislation, if a product is recalled, more consumers and children will be protected.

The Children's Gasoline Burn Prevention act—H.R. 814 would require that the CPSC disseminate standards for portable gasoline caps for gasoline containers. Over 1,000 children are treated for burns related to gasoline on an annual basis. By streamlining these standards far less children will be harmed by gasoline.

Finally H.R. 1721—the Pool and Spa Safety Act vastly increases the safety for consumers who use pools and spas. Over 250 young children drowned in US pools and spas last year. This is a troubling number considering the total amount is much higher. The bill requires that all pools and spas sold in the United States adhere to anti-entrapment standards which are layers of protection that include barriers and safety vacuum releases. It also calls for CPSC to establish a grant program for the States to encourage successful passage of pool and spa safety laws.

I strongly support these important legislative measures and urge passage. This is clearly a substantial first step in ensuring our children are properly protected although more must be done. The budget for the CPSC needs to be increased and we as lawmakers should have an increased vigilance for our country's children.

PREPARED STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Thank you Mr. Chairman and I appreciate the opportunity to participate in today's subcommittee hearing on children's product safety. I applaud the chairman for holding this very timely hearing and I join my colleagues in welcoming the Acting Chairwoman of the Consumer Product Safety Commission as well as other witnesses.

It has been over 2 years since the death of my constituent Collin Barberino that first alerted me to the dangers of furniture tipping. Collin was only 3 years old when a dresser that belonged to his new bedroom set fell on top of him and crushed his chest. The dresser was about 4 feet tall and weighed about 150 pounds. Almost exactly a year later, on Christmas Eve 2005, Courtlynn Schneider, also 3 and also from my Madison-based district, died when she climbed a dresser to reach the television on top, causing the TV to fall and crushing Courtlynn's head and chest.

These two tragic incidents made it clear to me that the current voluntary furniture tipping standard is insufficient to protect young children. In fact, according to CPSC's own estimates, approximately 8,000 to 10,000 people, mostly children, are injured every year when household furniture, such as dressers, bookcases, and TV stands, tip over on top of them. When issuing a September 2006 warning about the dangers of TV and large furniture tip-over, the CPSC cited more than 100 deaths reported since 2000 and twice the typical yearly average for the first half seven months of 2006.

While I applaud the CPSC for issuing the warning last September recognizing the dangers of furniture and TV tip-over, the Commission has otherwise consistently resisted any regulatory improvement that would more effectively protect children. It is true that section 7(b) of the Consumer Product Safety Act requires the Commission to rely upon voluntary consumer product safety standards rather than promulgate a mandatory safety standard whenever such voluntary compliance would eliminate or adequately reduce the risk of injury addressed and that it is likely that there will be substantial compliance with such voluntary standards. However, it is also equally clear to me that in the case of furniture tip-over, compliance with voluntary standard by the furniture industry has not been substantial and the risk of injury continues to be significant, if not expanding. I will enter into the record an article from March 2006 issue of Consumer Reports magazine discussing testing done on common furniture in a child's room, as well as TV stands, to see if the furniture met the voluntary standards. The results greatly concern me. One of five dressers failed the test, one broke, and three others passed, but all three tipped when drawers were open all the way and a weight was applied. Clearly the voluntary standards are not satisfactory, and many furniture manufacturers knowingly do not meet them.

I wrote to then Chairman Stratton of the Commission last February discussing the need for mandatory standards and bringing to his attention the testing results from Consumer Reports. In response, CPSC once again rejected mandatory standards but cited progress in working with ASTM to promulgate a new, voluntary, furniture tip-over standard that would incorporate standards on anchoring devices and warning labels. While this is a positive step, there continues to be no requirement

that furniture manufacturers must adhere to such standards. It is the reason why I plan to once again co-sponsor a legislation, to be introduced by Congresswoman Schwartz, that would mandate warning labels and anchoring devices for furniture at risk of tip-over.

I know that the existing vacancy on the Commission has created a quorum issue prohibiting the CPSC from promulgating new rules, but the issue of furniture tip-over predates the current leadership vacuum. It seems to me that the CPSC has allowed bureaucracy to undermine common sense and strayed from its mission to protest consumers from unreasonable risk of injury. If the Commission finds its current governing statutes too restrictive, it should have come before Congress and requested an update; if it finds the extensive mandatory rulemaking process too cumbersome, it should have sought ways to simplify such process. Just last week a 2½ year old girl from New Jersey was killed by a fallen television when she attempted to climb a bureau. I do not understand how many more deaths must occur before the Commission considers the risk of furniture tip-over unreasonable.

I will continue to work with Congresswoman Schwartz and other members of the Committee to move a legislation that would establish mandatory standards to prevent furniture tip-over. I hope today's hearing will help impress upon the Commissioners just how important this committee regards children's product safety. I look forward to the testimonies from our testimonies today, and thank you again Mr. Chairman for giving me the opportunity to participate.

Mr. RUSH. Now the Chair recognizes the Commissioner of the Consumer Product Safety Commission, Chairman Nancy Nord. Chairman Nord was appointed to the CPSC in 2005 to a term that expires in 2012. She has served as CPSC's Acting Chairman since July, 2006.

Chairman Nord, welcome to this subcommittee; and we recognize you for 5 minutes for opening testimony. Thank you very much for coming.

STATEMENT OF NANCY A. NORD, ACTING CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Ms. NORD. Thank you so much.

Chairman Rush, Congressman Stearns, distinguished members of the subcommittee, I am very pleased to be here to testify before you today. Indeed, if I could even start on a personal note, one of my very first jobs as a young lawyer fresh out of law school was to be counsel to the House Energy and Commerce Committee where I did consumer protection activities, including oversight of the CPSC. So for me to come full circle and to be testifying before you as the acting chairman of the Agency is an incredible honor. So I thank you for inviting me up here to testify today.

As you know, the CPSC is a bipartisan, independent Federal regulatory agency. It was created in 1973, and it has the enormous task of protecting the public from unreasonable risks of injury associated with consumer products. We pay particular attention to those products that are used by our most vulnerable population groups, especially our children, as Congresswoman Schakowsky pointed out.

I am pleased to report to the committee that the overall rates of death and injury from children's products have been in the decline since 2001. Indeed, since its inception, the CPSC has led the way in dramatically reducing injuries to children in a variety of areas, including crib deaths, household poisonings, small parts hazards, stair falls and baby walkers, to name just a few.

But we cannot and will not rest on past accomplishments. Every day new children's products and product lines are introduced that

represent new designs, new materials, new technologies and, as a result, new hazards. Recent media reports have highlighted one of these new product areas, and that is small magnets in toys and their potential to cause intestinal damage to children if swallowed.

I met with Chairman Rush last night and, as we discussed at that point, our statutes and the fact that we have an ongoing open investigation really prevents me from getting into the specifics of product cases in an open hearing. I am happy to talk with you about the specifics of these privately or in writing.

Nevertheless, I can tell you that this new and still emerging challenge is being met head on by the CPSC. We have been aggressively seeking to recall defective products, those where small magnets can be easily separated from the toy. We have been seeking to alert both parents and pediatricians of this potential hazard, and we have been working with a variety of stakeholders to ensure that new product standards are put in place to help prevent this problem from occurring again.

Another area where we have been very active is that of lead in children's metal jewelry, jewelry which is frequently mouthed and pieces of which are sometimes swallowed by children. We have started a rulemaking to ban lead in children's jewelry and in the last 3 years have recalled more than 150 million pieces of children's metal jewelry found to have excessive lead levels.

Mr. Chairman, I could go on; and I am happy to discuss with you specific product categories later. However, it must be realized, as several members have pointed out, that with a nationwide staff of just under 400 people, the Agency does not now have—and frankly it has never had—the resources to fully investigate all the hundreds of thousands of individual product incidents of which we become aware. To serve the American people as efficiently and as effectively as possible, we have to establish priorities, we have to identify incident patterns and, based on the best data available, move as quickly as possible to prevent unsafe products from entering the stream of commerce and to recall those that do.

It should also be realized that the large majority of juvenile products that are purchased in the U.S. today are imported from overseas and a majority of those from China. As is the case with many other product categories that we oversee, these products have become relatively cheaper and more plentiful as a result of this unprecedented growth in imports. As this has occurred, we have struggled to ensure that overseas producers as well as their U.S. partners understand and adhere to both our statutory and our voluntary product safety standards. We have established an Office of International Programs, we have entered into 12 separate agreements with our foreign counterparts to work to reduce unsafe products, and we are increasing our cooperation with the Bureau of Customs and Border Protection and other relevant U.S. agencies. In fact, next week I will be in China to meet with our counterparts there to discuss in detail a number of concrete proposals that we have made to reduce the importation of unsafe products in several key product categories including toys.

Mr. Chairman, the resources available to our Agency are modest; and, basically, we are charged to do more with less. Frankly, I think by objective standards we have met that challenge. The num-

ber of recalls that we did last year was up, it was a record high, and we are on record to meet and exceed that number.

We are investigating a record number of section 15 reports. We have got going 14 rulemakings. That is more than we have ever had in the history of the Agency, and these are showing results. As I mentioned earlier, the number of child-related deaths and injuries is down significantly from 2001.

As several members have observed, the CPSC was last authorized by Congress in 1990. Obviously, the marketplace has changed significantly since then. Explosion of imports, the safety challenges presented by counterfeit products, new emerging technologies such as nano materials, our governing statutes need to be modernized; and I look forward to working with this committee to do so at the appropriate time.

Mr. Chairman, thank you so much for inviting me to testify; and I look forward to working with you over the coming months to address the issues that are of interest to you at the CPSC.

[The prepared statement of Ms. Nord follows:]

U.S. Consumer Product Safety Commission

TESTIMONY OF
THE HONORABLE NANCY A. NORD
ACTING CHAIRMAN

SUBMITTED TO
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

MAY 15, 2007

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Mr. Chairman:

Thank you for inviting me to testify today on the critical issue of the safety of children's consumer products. As you know, the U.S. Consumer Product Safety Commission (CPSC or Commission) is tasked with the important mission of protecting the American public from unreasonable risks of injury and death associated with consumer products.

Mr. Chairman, I have been privileged to serve on the Commission since my confirmation just over two years ago and have served as Acting Chairman since last July. As you know, under the terms of our enabling statute, the Commission's quorum expired on January 15, 2007. The President submitted his nominee for the chairmanship on March 5th and the Senate Committee on Commerce, Science and Transportation has scheduled a hearing on that nomination for May 24th. I bring this to the Committee's attention because we are eager to reconstitute the Commission as soon as possible since a quorum is necessary for the Commission to vote to take certain regulatory, enforcement and other actions.

The CPSC is a bipartisan and independent agency with a jurisdiction that reaches across an estimated 15,000 types of consumer products—products that are found in every room of our homes, in our backyards and garden sheds, at our children's playgrounds, and in virtually every other place where we live and visit during our daily routines.

Since its inception in 1973, the CPSC's work has contributed substantially to the decline in the rates of death and injury related to the use of consumer products. We estimate that overall, injuries and deaths associated with the use of products under our jurisdiction have declined by almost one-third since the agency's inception. This includes, for example, a 45 percent reduction in consumer product-related residential fire deaths; a 74 percent reduction in product-related electrocutions; and a 47 percent reduction in product-related carbon monoxide deaths.

While the Commission and the staff work very hard to reduce injuries to consumers of any age, we pay particular attention to products used by vulnerable groups, especially children. In this regard, I am pleased to report that the overall rates of both deaths and injuries related to children's consumer products has been in decline since 2001. Specifically, I would like to point out two CPSC success stories with respect to product-related injuries and deaths of children. Due substantially to the activities of the Commission, both independently and in conjunction with our stakeholders, crib-related deaths have declined by an astonishing 89 percent since 1973 and poisoning deaths from drugs and household chemicals by an equally impressive 82 percent since 1972.

In many ways, America's children are truly safer today when it comes to their interaction with consumer products. But we cannot and will not rest on our laurels. Specific product issues, like small magnets in toys, which have been recently highlighted by the media, indicate how great a challenge we continue to face. Every day, new children's products and

product lines are introduced that represent new designs, new materials, new technologies and new potential hazards, many of which we have never before seen or examined.

With a total nationwide staff of just over 400, and an annual budget of just over $60 million, we simply cannot be at all places at all times. I mentioned that we have responsibility for about 15,000 types of consumer products. With a total Compliance staff of approximately 150, that means that roughly speaking, each Compliance professional is responsible for covering approximately 100 different product categories by collecting product information, investigating incidents, enforcing mandatory standards, conducting inspections, analyzing products, recalling unsafe products and monitoring the marketplace.

By sheer necessity we prioritize. Issues that were paramount yesterday may not be so tomorrow. And, as new product incident patterns emerge, they may displace earlier priorities. I emphasize the word "patterns" because that is integral to understanding how we conduct our activities at the CPSC. We simply do not have the resources to fully investigate and examine every one of the hundreds of thousands of annual product incidents of which we become aware. Our two primary subdivisions—the Office of Compliance and the Office of Hazard Identification and Reduction—look for trends or patterns among product incidents to anticipate and respond to emerging hazards. To do otherwise would disperse the agency's finite resources in a thousand directions at once and dramatically reduce our overall effectiveness.

Having said all of this, I am extremely proud of the CPSC, its dedicated professionals, and the work we do. And, in the final analysis, I believe we carry out our mission of consumer protection and education extremely well.

The CPSC was last reauthorized by Congress in 1990. Obviously, the marketplace has changed significantly since that time. Emerging and ever more complex technologies, like nanomaterials and high-energy and very compact batteries for consumer electronics, continue to challenge our technical expertise and resources. Products being sold via the Internet and other direct-to-consumer sales pose a growing challenge to our enforcement capabilities. And the explosion of imports of consumer products, now accounting for a full two-thirds of our product recalls, has created a number of issues with which we are currently grappling.

So while we are proud of the agency's many achievements over the years, there is still much work that needs to be done. Consumer safety is never a completed task but always an ongoing process of research, standards development, enforcement and public education. With that important concept in mind, I would like to discuss today the primary missions of the CPSC and how those are carried out. I will then briefly address the issue of imported consumer products.

Hazard Identification and Standards Development

The first of those missions is to identify existing and emerging product hazards and to address those hazards by developing mandatory safety standards when there are not adequate or adequately followed consensus (voluntary) product safety standards in place.

This initially requires collecting reliable data on product-related incidents and issues. It is often said that the CPSC is a data-driven agency, and that is quite true. Through our widely acclaimed and utilized National Electronic Injury Surveillance System, or NEISS system, which monitors the patients who come into 100 hospital emergency rooms nationwide, we develop statistical estimates of product related injuries. Last year the NEISS system developed reports on product-related injuries from over 360,000 emergency room visits.

CPSC staff also collects injury data from a number of other sources, including through company and consumer reports to our website, www.cpsc.gov, our consumer hotline, medical examiner and coroner reports, monitoring media outlets, and through various other means. Manufacturers and retailers are also required by federal law to report to the CPSC when they become aware of defects in their products that could cause or that have caused injury.

From these many sources of information and data, CPSC staff, guided by the priorities established by the Commission, determine what action, if any, is necessary to take. In general, this can take one or both forms: regulatory action and/or compliance action.

With regard to regulatory action, it must first be understood that, in the United States, there is a very well established system of voluntary – or what we prefer to call consensus – product safety standards. Under the guidance of respected groups like the American National Standards Institute, ASTM International, and Underwriters Laboratories, who work to bring

all stakeholders into the process, literally thousands of such standards have been written and are continuously being revised. With regard to children's products, CPSC staff over the last year participated in numerous consensus standards activities, including those covering many types of children's products, like toys generally—and magnets in toys in particular; baby gates; inflatable pools; playground equipment; and strollers, among others.

There exists a strong preference in our statutes for deference to such consensus standards over the promulgation of mandatory CPSC-drafted regulations. As a small agency, this consensus standards process allows the CPSC to leverage its resources and achieve much greater coverage over the consumer products that fall under our jurisdiction. However, in any case where a voluntary standard fails to adequately address a product hazard or where there is a lack of substantial compliance with an adequate standard, the Commission may issue mandatory product safety regulations. The CPSC is currently proceeding with rulemaking on hazards related to a number of children's products, including lead in children's jewelry, bed rails, and infant pillows. In fact, we currently have underway 14 different rulemakings, more than at any other time in our agency's history.

Compliance Activities

Another key mission of the CPSC is to remove unreasonably dangerous products from the stream of commerce. We accomplish this primarily through product recalls. Recalls occur for products that contain a defect that could pose a substantial product hazard or for products that violate CPSC-issued mandatory safety regulations. In fiscal year 2006, the CPSC

announced 466 recalls of defective products, representing over 120 million individual products, which was an all-time high by the agency.

There are also other corrective actions, short of a recall, that we can call upon a company to undertake, including modifying the product, issuing a consumer warning, or through other means. Thus, over the last year the CPSC has obtained recalls or other corrective actions for over 300 products directly involving a risk of injury to children.

While the agency has the authority to require a mandatory product recall, due to the lengthy and costly nature of the proceeding that we must undertake in order to issue such a recall, the reality is that the overwhelming majority of the recalls we oversee are voluntary on the part of the recalling firm, the details of which we negotiate with that firm, generally after significant exchange of information between the firm and the CPSC.

To avoid these very resource intensive and time-consuming proceedings, today approximately half of our recalls are initiated under our innovative "Fast Track" recall program. Under this program the subject firm agrees to initiate a recall within 20 days after being contacted by the CPSC, generally in exchange for lack of a formal finding by the agency that a product defect and substantial product hazard exist. This program has been extremely successful at getting unsafe products off the market in a faster timeframe that would simply not otherwise be possible if resort to litigation were the norm.

In addition to monitoring compliance with safety standards by conducting field inspections of manufacturing facilities and distribution centers, CPSC staff also conduct surveillance in retail establishments and via the Internet to assure ourselves that recalls have been effective in getting defective products off retail shelves. Finally, because most of our recalls now involve imported products, we undertake both routine and targeted surveillance and sampling of imported products at U.S. ports of entry, working in conjunction with the Bureau of Customs and Border Protection.

Consumer Information and Education

CPSC's third main mission is to inform and educate the public about product hazards. Recalls and other important safety information is disseminated through all forms of media, including television, radio, print, and via the internet, to warn the public of specific product hazards and advise consumers on more general product use issues. Many of these campaigns are directed toward product risks posed to children's safety.

For example, last year the CPSC conducted public outreach campaigns on back-to-school safety and on the hazards of inflatable pools, among other issues. The 2006 Safe Swimming Campaign identified inflatable pools as an emerging hazard. This year's Safe Swimming Campaign focuses on the fact that a drowning death is a silent death that does not usually involve a child thrashing in the water or calling for help. This campaign emphasizes that multiple barriers and constant supervision are required when children are near pools. In 2006 the CPSC also conducted an information and education campaign on the dangers of

television and furniture tipovers to raise awareness of this risk and to give parents the information they need to address these risks.

Additionally, the agency maintains three websites that give consumers and others access to all manner of product safety information. Those sites are www.cpsc.gov, www.recalls.gov, and our newest website, www.atvsafety.gov, which is part of a significant information and education campaign now underway to advise consumers about a number of ATV safety issues. Visits to CPSC's websites have grown rapidly over the past few years from 200,000 in 1997 to over 20 million last year.

In an effort to communicate with hard to reach populations, the CPSC initiated the Neighborhood Safety Network (NSN) which is a grassroots outreach program that provides timely lifesaving information to 5,000 organizations and individuals who in turn share our safety message with hard-to-target consumers. These are often directed toward children's safety, such as the poster that we produced and distributed through the NSN warning of in-home drowning hazards.

CPSC's outreach efforts include making our safety information available in Spanish, including Spanish language links on our website. We also continue to actively seek the participation of Hispanic and Hispanic-serving community and other organizations to participate in the NSN. Finally, we routinely disseminate safety messages through Spanish language media outlets, such as Telemundo and Univision.

The increased use of our Web sites and e-mail alerts by consumers underscores the critical importance of CPSC's information technology (IT) infrastructure and systems. In addition to our data systems, such as the NEISS system that I described earlier, CPSC's IT tools allow us to extend our public outreach well beyond where it could go ten, or even as little as five years ago. As the numbers, types and sources of consumer products continue to grow at a time of limited resources for the federal government, the maintenance and modernization of CPSC's IT infrastructure is more important than ever.

Imported Consumer Products

I have mentioned the growing issue of product imports. The main issue in this regard is the fact that some overseas manufacturers, particularly those from the developing world, are either ignorant of existing consensus and CPSC mandatory standards or simply choose not to design and manufacture their products to those standards.

Many foreign firms fail to meet one or more of the many thousands of private, consensus safety standards that are intended to help ensure both quality and safety in virtually all consumer products. While a violation of a consensus standard does not, in itself, indicate that a product is unsafe, the growing number of imported products that do not meet voluntary standards has strained our resources and challenged us to find new ways to work to ensure the safety of products in the stream of commerce. To address the issues presented by imported products, the CPSC has negotiated memoranda of understanding with twelve foreign countries. These agreements generally call for close consultation on product safety issues.

This Friday I will be going to Beijing to meet with my Chinese counterparts to pave the way for the second U.S.-Sino Consumer Product Safety Summit that will be held here in Washington this Fall. In preparation for those discussions with the Chinese, we have established several bilateral working groups that are developing concrete strategies for addressing safety issues in several specific product categories where we have seen the biggest problems.

Mr. Chairman, it has been a privilege to serve as a Commissioner at the CPSC for the past two years and as its Acting Chairman for the past ten months. One of the great rewards over this time has been the opportunity to meet and work with the extremely talented professionals at the agency who are completely dedicated to the agency's core mission of public health and safety. They have brought their talents and skills to the public sector to be true public servants, and I am proud to take a moment to recognize their hard work and achievements in this regard.

Thank you again, Mr. Chairman, for holding this important hearing this morning. I look forward to responding to the members' questions.

Mr. RUSH. Thank you, Chairman Nord.

Mr. RUSH. The Chair recognizes himself for 5 minutes of questioning.

Chairman Nord, does the Consumer Product Safety Act provide the CPSC with sufficient tools to protect the American public, especially children, from unsafe products? And what statutory changes should Congress consider to help you do your job better? You alluded to that during your testimony. Please help us to help you.

Ms. NORD. Sir, the Consumer Product Safety Act sets out a fairly comprehensive and rather complicated regulatory framework under which we work to regulate specific product areas; and I think, by and large, the authorities of the Act give us the tools we need. However, it is important for this subcommittee to recognize that the Agency administers five different statutes, not only the Product Safety Act but four other statutes that address specific areas of jurisdiction. Frankly, the regulatory requirements of each of those acts is somewhat different, and you can end up with different results based on what act you are using.

So I think that it would be very helpful for the committee to go through the examination with us at the Agency about why that is true and is there some way to harmonize, if you will, some of the provisions of these various acts so that we can have a comprehensive safety regimen.

Mr. RUSH. The CPSC is slated to get what I consider a very paltry increase in this budgeting fiscal year, 2008; and I understand that this increase will require a drop of 19 full-time employees to an actual total of 401 employees. How can this Agency cope with that reduction and what CPSC activities will be sacrificed to work from a lower staffing figure?

Ms. NORD. Sir, actually, we are already at that staffing level. We moved down over the past year have been working with that particular reduced staff number. We have done this in a couple of ways.

First of all, it is important for you to understand that the Agency has been working very aggressively use technology tools to the extent that we have the resources to acquire them and implement them and use them in a way that helps us do our work more efficiently. I think you can see by the results—some of the figures that I mentioned in my testimony—that that technology has been incredibly helpful to us.

As I said, as you know, we were double our current size 20-some years ago, so we are investigating over double the number of incidents that we were investigating in 1982 when our numbers started to drop. So that is just one example of how, with technology tools, we can achieve greater efficiency.

Another example, we have gone out and leveraged our safety mission with all 50 States; and, right now, we have people who are State employees who are basically working with us to extend our eyes and ears out in the States. They basically help us with policing the marketplace, looking for hazards, looking for recalled products; and they report in to us.

Another example of how we have used technology to be more efficient here, those people were sending in paper reports; and the reports, one didn't look like the other. So somebody on our staff was

trying to have to make sense of that. What we have done now is made this a Web-based reporting system so all the information comes in to us and in a much more useable manner. That is just one small example of how we have tried to be more efficient with technology.

Mr. RUSH. My time is up; and I will recognize the ranking member, Mr. Stearns, for 5 minutes of questioning.

Mr. STEARNS. Thank you, Mr. Chairman.

Commissioner Nord, I just went through the Chicago Tribune story here; and it appears that your Agency reacted pretty quickly after it was brought to your attention in December. In March, you issued a voluntary recall of 3.8 million Magnetix sets. Is that true? So in a very short amount of time you did an investigation and you did almost 4 million recalls of the toy sets.

Ms. NORD. We did. Actually, we have done a couple of recalls; and, again, please understand that I have some legal constraints on me with respect to getting into the details of all this.

Mr. STEARNS. But it is just as a matter of fact. You can say yes or no.

Ms. NORD. Absolutely, we recalled it.

Mr. STEARNS. It appears to me that after you do the recall how are you going to get the people to voluntarily take it off the shelves? If you make a formal finding like, as you did, you say the product is defective, then the implication is a company must recall the product. But if it is made in China, you can't really force it to do that. So all you are left with is trying to get a voluntary recall at Wal-Mart, at Kmart and all these things. How is that going? How effective is a voluntary recall?

The Chicago Tribune is saying when you sent out your press release about it asking for the recall there was some confusion about retailers and consumers. So I guess the question is, do we have an effective way to get the information out; and, two, what can you do to make sure the voluntary recall is implemented?

Ms. NORD. Addressing the question in general terms, one of the things that I am really interested in and have spent a lot of time thinking about as a commissioner at the CPSC is how to make recalls as effective as they can possibly be.

Let me tell you generally what happens in a recall. And let me preface this discussion by indicating to you that virtually all our recalls are voluntary in the sense that we haven't had to go to a mandatory court-type proceeding since 2001. So virtually all of our recalls are voluntary. However, having said that, product sellers have a great deal of incentive to cooperate with us in making sure that we are happy with——

Mr. STEARNS. What is the incentive for Wal-Mart to take it off?

Ms. NORD. Basically we will make them do it if they won't.

Mr. STEARNS. How do you make them do it? Suing them?

Ms. NORD. Certainly we can do that. We can certainly do that, sir. But the marketplace, the fact that Wal-Mart does not want to be having out there on its shelves recalled products, the fact that if they do indeed sell recall products, well, we will have our people in those stores and making them pull it off is good incentive.

Mr. STEARNS. But just sending a press release is not going to do that.

Ms. NORD. We do much more than that.

Mr. STEARNS. If you were told about a product today, you send a mass e-mail, you send a notification. Just give me in the time remaining—because I am worried about if we give you all of the money and the people you needed and you knew immediately what the problem was—I am not sure you are going to get 4 million toys off the shelf soon enough to stop it.

So I think the next step that we ought to realize is there has got to be a clear way for you to implement this recall notification whether it is through a press release or e-mails or whatever, or notifying the neighborhood safety network. But I am not clear that that is as strong as it should be.

Ms. NORD. What we require companies to do at a very minimum—this happens in every single recall—is that we first of all require them, if they know who the individual consumers are, they must individually notify those consumers. There is a joint CPSC-company press release that goes out. That may be enhanced by video, news release, and other kinds of press coverage. We require them to put the notice on their Web site. We require them to post notice at retail. We require them to put in place a plan to pull the product off the retail shelves.

And then once we get it off the retail shelves, then the biggest challenge, frankly, is getting consumers to pay attention to it and getting it out of children's hands, and that is one of the challenges that I have been spending a lot of time working on.

Mr. RUSH. Thank you.

The Chair now recognizes Ms. Schakowsky for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

Ms. NORD. I WOULD LIKE TO SUGGEST A WAY THAT I THINK WE CAN BE HELPFUL IN MAKING RECALLS MORE EFFECTIVE. AND THAT IS H.R. 1699, THE DANNY KEYSER CHILD PRODUCT SAFETY NOTIFICATION ACT.

Here is what this would do: For durable products, high chairs, cribs, strollers, durable children's products, there would be attached to that a postage-paid recall registration card. And this would allow the manufacturers to directly contact each parent who bought their products should any problem arise.

Now we mentioned that after the National Highway and Transportation Safety Administration's recall system for car seats, that ended up with a tenfold increase in the number of families registering and the recall repair rates have gone up 56 percent.

You are shaking your head no.

Ms. NORD. That is information that is rather contrary to the information I have. But I am interested to hear.

Ms. SCHAKOWSKY. But the recall we have now went up by 56 percent and that cost about 43 cents per item. Are you suggesting that that is not a workable solution?

Ms. NORD. As I said, that information is new to me, and I am interested to know it.

Ms. SCHAKOWSKY. This came from the 10-year study by NHTSA.

Ms. NORD. We were petitioned, gosh, back in the early 1990's, well before I was at the Agency to look at product registration cards. The staff did a fairly exhaustive examination, and the recommendation from our staff was that registration cards did not

have a particularly effective return rate. We had the NHTSA information, and it is in our record. I have looked at it. And I would love to sit down with you, perhaps.

Ms. SCHAKOWSKY. Why don't we look at that?

The other thing in the Callahan report, in the Tribune, I just want to quote, I think this may have been the editorial: "a captive of industry, the Consumer Product Safety Commission, lacks the authority and manpower to get dangerous products off store shelves. And section 6(b) says that it requires that the CPSC negotiate with manufacturers on the warning of a press release announcing a recall." And at the end of the discussion about magnetics, a recall notice that went out says there is no required action for retailers.

Now, at the time, the company had convinced the CPSC that their new product did not have that same kind of magnet, that it was more reenforced. However, there was no capacity to distinguish on the shelf between the old and the new. And in fact, the reporter of the series bought the old product.

No wonder there was confusion. Mr. Stearns said how quickly you reacted, but the reaction, as described by the former head of enforcement of the CPSC, was a non-recall recall. I mean, if it says there is no required action for retailers, it means exactly nothing. And in the meantime, more children had severe problems and major, major surgery.

I would like to ask you about the requirement that you negotiate seems on its face to put the power into the hands of the manufacturers rather than your experts at the CPSC.

Ms. NORD. With respect to the Magnetix situation, there were—well, I would welcome the opportunity to address these issues in closed session or with you individually.

Ms. SCHAKOWSKY. Let us talk about the general policy that the manufacturers have the final say about a press release that goes out on a dangerous product for children when your mission, as you stated, is to protect children. Why would the final say on what the language is——

Ms. NORD. Well, first of all, I think it is not a correct statement to say they have the final say. We are constrained by section 6(b) which Congress enacted, and basically the purpose of that was to give us a tool to get information about a product and about——

Ms. SCHAKOWSKY. The manufacturer can sue the CPSC if we——

Ms. NORD. If we make inaccurate statements.

Ms. SCHAKOWSKY. So they could tie up the CPSC if they say what you say is inaccurate. In other words, you really do need to get a check-off from the manufacturer.

Ms. NORD. Ma'am, the purpose of 6(b) was to give us a tool that we could use to get information into the Agency that we could use. There is a provision in 6(b) that requires us to let the manufacturer know if we intend to release it and to give them 30 days' opportunity to correct the information if it is inaccurate.

Now, I would suggest to you that 30 days may have made some sense in 1980. But in today's world, with instant communications, this may be an area that you would like to address, understanding there was and remains an underlying policy issue that Congress was addressing when it enacted 6(b).

Mr. RUSH. The gentlelady's time is up.

The Chair recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman. And thank you, Ms. Nord, for being here with us today.

Currently what would you regard as being the top targets for dangers for children? What are the things out there that we ought to be looking at?

Ms. NORD. When you look at death and injuries to children, frankly, sir, in spite of the fact that they have been coming down over the last 5 years, the biggest killer of small children are balls. One quarter of the children who died last year choked on balls. The second one was balloons, the third was tricycles. And with respect to tricycles, one of those children rode the tricycle into a swimming pool and drowned. The other two were in traffic. So with respect to death, those are the three biggest killers of children.

With respect to injuries, we are looking at motorized scooters, bicycles, toys that allow children to go fast and end up in traffic.

Mr. BURGESS. Is the reason that those fall into the top tiers is because those are in such wide usage, or because of inherent danger in the design?

Ms. NORD. Balls, small balls are ubiquitous, and unless Congress tells us that we need to get rid of marbles and jacks and that kind of thing. It is a problem. I mean, small children getting ahold of these balls that they can choke on remains a problem.

Mr. BURGESS. Let me ask you this, because I alluded to it in my opening remarks. If you find that there is something that, oh my gosh, this is just unparalleled danger that we had never anticipated, how do you get the word out about that? How do you make health care personnel aware of that? How do you get emergency rooms into the loop? What are the mechanisms at your disposal to get that information to the public?

Ms. NORD. We work very closely with the medical community, and indeed have a very strong relationship with the Center for Disease Control, which gives us a well-developed entry into the medical community. We also have various stakeholders, and indeed the chairman alluded to one earlier, or perhaps it was Mr. Stearns, and that is our neighborhood safety network. Basically our neighborhood safety network is something that was set up a couple of years ago to give us entry into communities that might not either listen to or welcome messages from the Federal Government.

It is working with community groups, it is working with various local stakeholders to try to get the message out and we have got, gosh, I think around 5,000 participants in our neighborhood safety network, and they then build on their own contacts and——

Mr. BURGESS. I don't know how effective it is. Do you have like a blast fax or blast e-mail that you send to the emergency rooms around the country so they know about the dangers of these little magnets? Because, again, I wasn't aware of them, and I will admit they were rudimentary searches on some medical Web sites that I check regularly, I found no mention of dangers from ingested magnets when putting "ingested magnets" into the search engine.

Part of my concern is you have got these things, again that are manufactured in the People's Republic of China, so we can only

guess to the quality control of the manufacturer. Presumably the magnets fall out. I don't know with what kind of regularity but that is the problem. The magnets fall out and the children then eat them.

In your press release here, these older sets that were manufactured in China contained 250 plastic building pieces and half-inch steel diameter balls. There are one-inch squares, triangles, reflectors, connectors, extenders, curves, and come in an assortment of colors that are translucent and glow in the dark. It sounds like fun.

But the problem is, again, we have products coming from overseas that are perhaps not well made and is very appealing to young children and yet poses an enormous hazard to them. And again, I am concerned about the ability to get that knowledge out there so that some poor child and some poor emergency room nurse or doctor doesn't miss a very important diagnosis and very important clue.

Ms. NORD. Well, you have put your finger on a problem that we think about a lot, sir.

With respect to this particular hazard, many doctors did view it as just the same thing as children swallowing metal so it was not recognized..

The CPSC, frankly, the Agency that brought this to the medical community's attention, and one of our experts has written the leading article on this—it was published by CDC and distributed widely by CDC to the medical community. But nevertheless, sir, that is very difficult.

We were having a conversation with a very well-known pediatric emergency room surgeon to enlist him to help us on a public service announcement that we have just done on magnets. And he was not aware of the issues. So it is a sense of frustration that we haven't figured out how to get the message out to every pediatrician.

Now, one of the things that I do want to mention to you, because I think this is really important and indeed I would, if possible, like to enlist your aid on this; and that is, when we have recalls, it is really important not only to get the product off the manufacturer's shelves but also to make sure that consumers are aware of it.

We have just initiated something called the "Drive to 1 Million." We have a Web site. We send out e-mail notices on CPSC recalls. People can sign up to get those e-mail notices. You don't have to get all of our recalls. You can indicate the kind of recall that you want to hear about. We are not going to be spamming anyone.

But we are trying over the next year to get 1 million people signed up on our Web site to get CPSC recall notices, and it would really be very helpful to us if this is something you could bring to the attention of your constituents.

Mr. BURGESS. I will put it in my next newsletter.

Mr. RUSH. The Chair now recognizes Mr. Hill from Indiana.

Mr. HILL. Thank you, Mr. Chairman.

I will return to accidental drowning.

What do you think is the most effective thing that we can do to prevent children from drowning in swimming pools?

Ms. NORD. Drowning is one of those hazards that is very important to the Agency. We have ongoing projects dealing with various

aspects of drowning. But, frankly, sir, the two most important things are multiple barriers around the pool and constant supervision.

We are just now starting a drowning safety campaign, and sir, the point that we are making in this campaign is that drowning is often a silent death. You don't hear splashes. You don't hear people crying for help in a pool. The child can slide under the pool silently and be gone in seconds. And I think parents don't understand that, caregivers don't understand that. They feel that a child—you can turn your attention away for just an instant.

Constant supervision, multiple barriers, are really the most important things in addressing this issue.

Mr. HILL. I was reading the testimony that Jim Baker's daughter gave to a committee that almost made me cry.

Ms. NORD. It was awful.

Mr. HILL. It was awful. Do we need to do something about these drainage vessels?

Ms. NORD. I think in today's technology for pools and spas that are being manufactured, that has been addressed. And, of course, the problem is old, old pools and also making sure that when these things are installed, that building codes are complied with. Of course, the CPSC does not enforce local building codes, but that is something that localities need to take a look at.

Mr. HILL. But you don't have the authority to require pool operators to use safety devices, right?

Ms. NORD. No.

Mr. HILL. Let me ask you a final question then.

Do you support Congressman Wasserman-Schultz's bill that she has introduced, that was passed, but ran out of time last year?

Ms. NORD. Sir, if you get it to us, we will enforce it.

Mr. HILL. OK. All right. Thank you, Mr. Chairman. I will yield back the remainder of my time.

Mr. RUSH. The Chair now recognizes the gentleman from California, Mr. Radanovich for 5 minutes.

Mr. RADANOVICH. Thank you, Mr. Chairman, and welcome to the committee.

I didn't hear on the top three—I have got a 9-year old boy who is playing baseball right now. They are using aluminum bats. Isn't that becoming an issue right now with the desire to kind of get those out and go back to wood bats, because the impact that they have on chest impacts, because they are harder hitting than wood bats and there is a hard ball going with a lot of speed in those games. Do you care to elaborate on that?

Ms. NORD. This is an issue we are aware of. We have been working with the NCAA to put in place informal requirements or voluntary requirements that the non-wood bats would have the same performance characteristics as the wood bats. However, having said that, even though within college and high school and school performance or school sports, you would expect to see the NCAA-certified license bat.

Other ones are still available on the marketplace. We have not undertaken formal regulatory activity on that area, but we are very much aware of the issue. We are looking at it. And if, indeed, we

see an increase of injuries, we would certainly want to take a further look at that.

Mr. RADANOVICH. That is all of the questions.

Mr. RUSH. The Chair recognizes the gentleman from Utah. Mr. Matheson.

Mr. MATHESON. You mentioned in your testimony—I just wanted to clarify—what actions has the Commission taken on the issue of the lead content in toys?

Ms. NORD. The Agency has a very long history of dealing with this issue. You should be aware that the CPSC is the Agency that banned lead in paint. And we have banned lead in paint on children's toys and indeed, unfortunately, do have to recall toys, generally imports, that end up with lead paint.

You are aware that we have recalled millions of pieces of jewelry that had excessive levels of lead.

We have a rulemaking underway to deal with lead in children's jewelry, the hazard being that children swallow it and when it is in their systems, it raises their blood levels. So we have a long history.

I will tell you, sir, that we have also now gone to the voluntary standards group that deals with children's products, and we have asked them to open up an activity to look at how lead is used in vinyl with the notion of is there some way to either lower the level of lead in vinyl or ultimately get the lead out.

Mr. MATHESON. And with that long history and you couple that with my opening statement with where these things were coming from offshore 20 or 30 years ago, under the current set of rules and statutory capabilities that you have, how capable is the Agency of dealing with this, and are there changes that you would recommend that Congress needs to do to help you better address this issue in a globalized environment?

Ms. NORD. Well, with respect to lead, sir, I think that the Agency has acted responsibly, and I am not here to suggest to you that we need to change the statute with respect to that particular product.

You raise an issue, and I am hesitating as to whether I really want to get into it in this setting; but, gosh, I think I will.

And that is we issue mandatory product safety rules which we, as an Agency, write. That is a very long, drawn-out process. And Congress put in place that process for good, solid reasons.

However, Congress did include a provision, section 9(b) of the Product Safety Act, that let us sometimes rely on voluntary standards. And there is some confusion, I think both in the Agency and out in the regulated community, as to what happens if we rely on a voluntary standard.

And I think that the statute takes you to the conclusion that in appropriate instances where you go through the shortcut process that is outlined in 9(b), you end up with a standard that you can put on the books, that you can use to address imports coming into the United States.

I would be happy to give you an example of how this could work. But I think it is a tool that is available to us that the Agency really hasn't used. I would like us to start using it because I think it gives us a really good way of dealing with imports where you have

U.S. products meeting voluntary standards, but imports that do not, and you that is the product that you are trying to get to, sir.

Mr. MATHESON. I think it is an issue to look at.

I have one more question.

I just want to mention, testimony before the Senate last year from the American Academy of Pediatrics noted that CPSC's own undercover inspections—this is with relation to all-terrain vehicles—revealed sort of a variable compliance with your requirements that noted a decline in the amount of compliance; where in 1998 compliance was 85 percent, in the years 2000 to 2003 they dropped down to 63 percent and moved up to 70 in 2004.

So we are sitting with about a third of dealers not in compliance.

Do you know why these compliance rates have declined, as shown as by your investigations, when it comes to the ATV manufacturers?

Ms. NORD. I would like to get back to you with the specifics of those statistics. But one of the things that I know is of big concern to us right now with respect to ATVs is, first of all, their popularity has just skyrocketed, and the number of imported ATVs coming in from China and Taiwan, specifically, has gone up as well.

The Agency has action plans negotiated with the big domestic manufacturers. We don't have action plans with these small foreign manufacturers, and it is a problem that the Agency is very much aware of. We are trying to get a handle on it and it indeed is being addressed in rulemaking right now.

Mr. MATHESON. Seems like it is being a recurring issue with imported products.

I yield back.

Mr. RUSH. Thank you.

The Chair now recognizes the gentleman from Nebraska, Mr. Terry, for 8 minutes.

Mr. TERRY. Thank you, Mr. Chairman. I appreciate that.

Just to kind of work through, somewhat historically, your duties, the products aren't presented to your office presale and distribution?

Ms. NORD. No. The Congress made it very specific they did not want us to be doing that.

Mr. TERRY. You don't reverse-engineer a product and then put your seal of approval before it hits the shelf. Unfortunately, the way that your office becomes aware of a potential problem with a product is through hearing of a terrible situation where a child has been severely hurt or injured, correct?

Ms. NORD. We become aware of issues through incident reports that we get in. We get in data from a variety of sources. We have something called the national electronic information surveillance system, or NEIS's system, which is a scan of hospital emergency rooms. We get in, oh, gosh, 350, sometimes 400,000 reports in any given year from the NEIS's system.

We also get in information coming over the Web site and over the consumer hotline. We have field investigators who are out there looking at the marketplace. We read newspapers. We get in reports every night from, again, a scan of newspapers looking at incidents that are reported. We also get coroners' death certificates and then, again, we scan them for a relationship with products.

Mr. TERRY. Sounds like your office is fairly aggressive in trying to obtain information. You are continually exploring other ways of covering information to get a bad product off the shelf sooner. Seems like you can't start it until, unfortunately, something happens.

Ms. NORD. Yes. One of the things I didn't mention also was a brand-new process that we have put in place in the last couple of years called a retailer reporting model, where the big retailers are now reporting to us on a weekly basis, on the incidents that they see.

But, sir, you have touched on a point. We get in an awful lot of information. We want a lot of information, because by having that information we can then, I think, better pick up the patterns that we need to see in order to determine if something is a tragic fluke or if it is the start of a new pattern hazard. And it is making that distinction as early as you can in the process that really is the challenge for us. And that is what we are trying to do every day. It is a daunting challenge but I think we do it well.

Mr. TERRY. And that is a difficult position with that first incident report to determine if it is one of those just one of those things that happens versus a real safety issue that you need to start the process.

You may have said this in your testimony, but let us say that you reach a conclusion fairly instantaneously after you become aware of an incident. How long does it take to be able to remove that product from the shelf and/or start the recall?

Ms. NORD. Well, again, every recall is different, so it is hard to generalize. We have a category of recalls that we refer to as fast-track recalls where we can get a recall accomplished within 20 days of becoming aware of the problem. In fast-track recalls, the manufacturer basically comes to us and says we think we have a problem. We take a look at it, and our requirement is that we get it done within 20 days.

Now about half of our recalls are fast-tracked recalls. So the committee should be reassured that in an awful lot of these things, we are getting the product out of the marketplace quickly.

With other situations, we need to analyze the problem to make sure that there really is something that needs to be recalled, or that it really is the kind of hazard that we have the authority and responsibility to——

Mr. TERRY. I appreciate that.

And when you do a recall or a big announcement of an unsafe product, I think that is how everyone visualizes your office. But there is an education component, too, that I want to bring up and discuss, because as we talk about balloons, small Superballs, that kids—especially my three boys—all grew up with that, but we knew that was a safety issue as parents.

So when you are dealing with water balloons—not necessarily water balloons—but water balloons and things that are just inherently dangerous. I am not sure that Congress wants to eliminate Superballs and balloons. So therefore there is an education component here.

Can you describe that part of your office? And how you are using that?

Ms. NORD. Yes. Information and education is one of the main responsibilities of our Agency.

We issue press releases, we do safety campaigns. For example, this month is electrical safety month. We have just put out an alert warning consumers on counterfeit electrical products. We are also next week going to be issuing a series of PSAs on drowning safety hazards. Again, focusing this year on the fact that drowning is such a silent killer and people just really don't understand that. They think, again, that you are going to hear shouts and splashes, and that is just not the reality.

May is also Bicycle Safety Month, and we are doing a series of campaigns on that as well as helmet safety. So we have a very active consumer education component to the Agency.

Finally, we also will put in place focused campaigns when the need arises. For example, the Congressman from Utah asked about ATVs. One of the things that we are doing with respect to ATVs is we have created an independent Web site called a *ATVsafety.gov*, and along with that Web site we have a whole series of PSAs that go along with that Web site and that push our safety message. We investigate every ATV death and, again, are prepared to move into the State with a PSA when an ATV death occurs.

So we really work hard to carry out the information and education component of our mission.

Mr. RUSH. Thank you.

The Chair now recognizes the gentleman from Massachusetts, Mr. Markey, for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Welcome.

What year did you work here on the committee?

Ms. NORD. This is embarrassing to say, but in the late 1970's and early 1980's, and I did consumer protection issues.

Mr. MARKEY. Well, now this is like the amazing shrinking agency that you work on. It just keeps getting cut back and back and back, and you said you only have now two members of the Commission.

Ms. NORD. Yes. It would be very helpful to have a third.

Mr. MARKEY. Just amazing.

Now you have jurisdiction over bicycles.

Ms. NORD. Yes.

Mr. MARKEY. But you don't have jurisdiction over roller coasters. So if a child is strapped into a roller coaster, hurtling at 75 miles an hour around curves 100 miles in the air, the risk to a child's safety are probably greater than those associated with riding a bicycle.

But in the case of bicycles, you have jurisdiction where in the case of a fixed-site amusement ride, the CPSC does not have authority to investigate accidents, issue or enforce safety plans, or share information about accidents with other operators of the same ride in other States, which is a dangerous double standard that puts children's lives at stake.

Would you support legislation to provide the CPSC with the authority and the resources to regulate amusement rides at fixed sites?

Ms. NORD. Again, sir, Congress has looked at this issue and they have spoken on it. Believe me. If Congress changes the law, you can count on the CPSC to enforce it.

Mr. MARKEY. Actually, that was just a prohibition but actually you did have regulation to regulate. David Stockman stuck it into the legislation bill in 1981. It was something he stuck in.

Ms. NORD. I do remember that.

Mr. MARKEY. Without letting anybody have any notice of it at all, which was a common practice at that time.

In February 2007, Congressman Dingell and I wrote to you after a news story reported on dangerous lead levels in some children's vinyl lunch boxes. According to an AP report, the results of the first type of tests on the lunch boxes, looking for the actual lead content of the vinyl, showed that 20 percent of the bags had more than 600 parts per million of lead. The highest level was 9,600 parts per million, more than 16 times the Federal standard.

In your response to our letter, you noted that under CPSC Federal law, total lead does not dictate action. Instead, designs must consider real-world interaction of child and product and the accessibility of lead from the product.

And in testing for accessible lead in vinyl lunch boxes, CPSC staff did not bind levels to indicate the basis for taking action.

Now, when the FDA determines the lead in lunch boxes could be a danger, which it has, it is called an unsafe food additive, the lead in the lunch boxes could migrate to the food inside and be ingested by a child. Isn't that lead therefore accessible to a child?

Ms. NORD. The FDA enforces a very different statute from the one that the CPSC administers. And the standards under the Food, Drug and Cosmetic Act for food additives are very, very different. I mean, they are pretty starkly zero. And, indeed, I think you have to go through a process to have a food additive——

Mr. MARKEY. But you are saying in your determination, if lead could seep into the food that children eat in the lunch box, that you are not allowed to protect children.

Ms. NORD. That is not what the FDA found, and that is not what we found, sir. When we did our tests to see how accessible was the lead, that is not what we were finding, sir.

The amounts of lead that were accessible and determined by our swipe tests were so minimal that our health scientists felt we did not have the statutory authority to proceed.

Mr. MARKEY. So can you take note of what the FDA found that the lead could migrate into the food? Is that not something that you could note?

Ms. NORD. They didn't say that it did. They said that it could. They didn't make any finding. They were basically using our test——

Mr. MARKEY. They sent letters to you in the past. Have you sent letters to anyone in your jurisdiction?

Ms. NORD. Sir, no. Of course not. No.

Mr. MARKEY. "of course not," did you say?

Ms. NORD. I said no, we have not. We have taken no regulatory action, because we did not have a statutory basis to do that.

Mr. MARKEY. Well, again, that is kind of disturbing to me that——

Ms. NORD. Sir, if I could expand a little bit here.

When we looked at this, we felt we did not have statutory authority to address the issue that you and Chairman Dingell raised.

Let me tell you what we have done. And that is that we are concerned——

Mr. MARKEY. Do you have statutory authority——

Mr. RUSH. I must remind the gentleman that his time is completed.

We move on to the next witness. My friend from Tennessee, Mrs. Blackburn is recognized for 5 minutes.

Mrs. BLACKBURN. Thank you. Ms. Nord, I appreciate your time with us today. Being someone that has spent much of her professional career in retail marketing and consumer marketing, I have an appreciation for the job that is in front of you, and I want to talk with you briefly during my time about two specific things, looking at your processes and procedures.

We have talked a little bit about your education and I appreciate that in your testimony on page 8, you talked about that as a big part of your mission. And you have talked primarily about your reactive end of that, once something happens and how you work on it. And then I guess the proactive end, primarily you are initiative-driven with the Bicycle Safety month or a "this" or a "that," trying to get information out. And I know you have upped the number of people that are going to your Web site. But when you look at 20 million hits in the course of a year, that is still not what you would call market penetration by any stretch of imagination.

So very quickly, because this is question No. 1, and I do want to move on to No. 2, how many of those 401 employees are given to the task of informing the American people that you exist?

And then other than just specific initiative-driven events, what are you doing to make, with other Federal agencies, with the public as a whole, with industry, to basically partner to get the word out that you are there and you can help them?

So, very quickly. We have got 3 minutes on the clock.

Ms. NORD. OK. In our Office of Public Affairs, I think it is five or six people.

Mrs. BLACKBURN. Five or six out of 400.

Ms. NORD. We also have about a hundred people in the field, and they are certainly there to interact with the consumer.

We have relationships with other Government agencies that we try to leverage. I talked about the one with the CDC, and that is a very important one. But we also interact with Federal regulatory agencies. For example, I just did an event with Nicole Mason over at NHTSA on car seat safety.

Mrs. BLACKBURN. So you have those as ongoing relationships that you work with on a daily basis?

Ms. NORD. Absolutely.

Mrs. BLACKBURN. I think that is maybe not transparent to us. It is not something that we are seeing, and I don't think it is something that the public sees.

Now moving on to the second part of my question, and if you want to submit anything additional in writing, please feel free to do so.

Walk through the process. Again, on your procedure end, when you find out there may be just cause for reviewing a recall, that there is a problem with a product and you are getting anecdotal information, you may have a little bit of industry information, go through what a time line, the period of time that would lapse between recognition of an instance and then the issuance of a recall, just to give us, as we go through the next panel, kind of what we are talking about as what that time span would be.

Ms. NORD. OK. Recalls happen in a couple of different ways.

First of all, companies are required to report to us when they became aware of an incident. Companies, about half of our recalls are these fast tracks where companies come in, they say to us we think we have got a problem here. We take a look at it and within 20 days initiate the recall.

Mrs. BLACKBURN. Within 20 days?

Ms. NORD. Within 20 days.

With other kinds of recalls, we basically are looking at information that comes in through these information sites that I described to Mr. Terry. And we will then contact the agent, the company, ask for information, we will sit down, we will go through a process of analyzing what the risk is and does this require a recall.

Mrs. BLACKBURN. OK. And those take you how long?

Ms. NORD. Every one of those is different. They can take a couple of days, a couple of weeks to a year.

Mrs. BLACKBURN. So half of the recalls you initiate on your own and half are industry initiated?

Ms. NORD. That would be a——

Mrs. BLACKBURN. OK. And some of them can go—be turned around as quickly as a week, and some may take 3 weeks.

Ms. NORD. Or 3 months or 90 days or 6 months. Every recall is different.

Mrs. BLACKBURN. So there is no standard procedure.

OK. All right. Thank you, Mr. Chairman. I yield back.

Mr. RUSH. The Chair recognizes Ms. Hooley for 5 minutes.

Ms. HOOLEY. Thank you, Mr. Chairman, and again I thank you for being here today.

I know that your organization deals with over 15,000 different categories and virtually all products for children.

I would like to get a better idea on how you decide what tests, what products, you are going to test at your lab. I am following up on Mrs. Blackburn's question. How many of your employees, your wonderful employees, are dedicated to testing products and what time do you spend reacting to what is on the market versus proactive, where you look at products and get them off the market before they—get them off the shelves before there is a problem?

Ms. NORD. OK. We have a testing laboratory out in Gaithersburg, Maryland. We have about 35 people out there, of a variety of disciplines, but mainly engineers. And so that is the answer to that first piece of the question.

But stepping back a little bit. Because we have such a broad jurisdiction, because there are so many issues, we really have to prioritize. And in the Code of Federal Regulations, we have published regulations that describe how we go about this prioritization process.

Right now we have two strategic goals: one dealing with reducing the risk of residential fires, which certainly impact children; and the second is reducing the risk of carbon monoxide poisoning. Again, impacting children.

And so with respect to those two strategic goals, we have a number of projects that we have initiated proactively to drive down the numbers in those two areas. And I am happy to get into detail with you if you wish.

With respect to other hazards and risks. We have a number of ongoing programs, for example, with respect to drowning. The biggest issue I see—we are a Federal regulatory agency to regulate products. With respect to drowning, we don't have a product to regulate. But we have got to address it, and we have to deal with educating consumers, getting people to understand the need for multiple barriers of protection, the need for constant vigilance.

So that is an example of a program that we have that we can consider, devote considerable resources to. But it is a little bit outside our typical focus as a regulatory agency.

Ms. HOOLEY. How do you decide which products to test?

Ms. NORD. We test products that we are concerned may be a safety hazard. If there is an allegation that it violates a mandatory safety standard, we would obviously test that to see if that is true.

If we are concerned about the effectiveness of a voluntary standard, we would test products to see if indeed they do comply with the voluntary standard. If there is a recall, or if we suspect that there is a recall product out there on the shelves, we would test that information as well.

Ms. HOOLEY. How many products come to your attention that you think need some testing but you can't test because of your staffing or funding issues?

Ms. NORD. We don't test products unless we have a particular reason to test them.

Ms. HOOLEY. So any product that you think you have a reason to test you can do. It is adequate.

Ms. NORD. Ma'am, we can always do more.

Ms. HOOLEY. I just wanted a sense of the products that you think you need to test, you are able to do that with 35 employees at your testing labs and those labs have everything that you need.

Ms. NORD. Again, every agency needs more resources and we would do more with more. But right now, if we have an issue with a product, we think we need to test it to make sure it is either complying or that it has a defect, we have the capability of doing that in our lab. It is not a modern facility by any means, but it is adequate.

Ms. HOOLEY. OK. Thank you.

Mr. RUSH. The gentleman from Texas is recognized for 5 minutes. Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

And Chairman Nord, thank you for your service. I don't think there is any doubt about your dedication or sincerity regarding your duties. I think the problem arises, obviously, from what you have to work with.

And earlier, another Member alluded to the memo that is provided as usually the day before. That hasn't changed, whether it

is Republican or Democrat. As a matter of fact, that meeting that takes place around 1:00, 1:30 on the preceding day of the hearing, where the Republicans used to have that staff meeting more like 4:00 or 4:30. I am not sure where the complaints are coming from.

But regardless, this memo gives us some background. I understand whoever authors it may have certain information or may have their own feelings about things.

But it appears that you have problems, not yourself, obviously, but the Commission with budget and personnel, that has been abundantly clear; the voluntary nature of the safety standards, not necessarily mandatory; the lack of real-life use or testing with children's products; and the limited facilities that you have by your own admission—and again, not to question anyone's dedication—limited sanctions when, in fact, someone violates some standards and such, and then recall ineffectiveness.

And I think Congress had a point. What do you do with your resources? I guess you can divide it into being proactive and reactive. My theory is you don't have the resources to be really proactive, and you may need to concentrate on the reactive.

And what I am getting at is the notice and the recall of dangerous products. And this is what the memo reads: Recall ineffectiveness. The CPSC has limited power to mount effective recall campaigns, first, because of limitations in section 6(b) of the Consumer Product Safety Act on the Agency's ability to make negative statements about specific products. The Agency must negotiate with the manufacturer on the wording of a press release announcing a recall. The CPSC may issue a press release over the objections of the manufacturer provided only if it first goes to court.

Is that accurate?

Ms. NORD. No. That is not accurate.

Mr. GONZALEZ. That is not accurate.

So if you decide—and I know you had an expedited recall—but that is basically where you have a manufacturer coming to you, and I am sure that is streamlined because you have an individual identifies their own product as posing a problem. How do you determine the wording, how do you determine the recall schedule and stuff? Is there anything that you must do in gaining the permission of the manufacturer before you would be able to proceed on the wording of the recall, on the imposing of the recall? Because that is what it appears to represent as far as materials I have. And I may be misreading it.

Ms. NORD. As I indicated, virtually all our recalls are voluntary. The last time we did an involuntary recall was in 2001. And that was the Daisy air rifle case.

However, having said that, companies do have incentives, big incentives to cooperate with us, and they generally do.

The notion that somehow companies control the recall process is just inaccurate, and I think it just does a terrible disservice to the whole notion of product safety.

When we go through the recall process, we have to get information in. We have to understand what the problem is. And that is what 6(b) allows. It allows companies to give us information on the basis that we will not then disclose that information unless we give

them prior notice and we can assure that it is accurate. And it is the accuracy that——

Mr. GONZALEZ. Let me ask you, what is the incentive for self-disclosure? You just said you have a tremendous incentive.

Ms. NORD. The incentive is the fact that it is in the law, it is required to do so. If they don't come to us and talk to us about these issues, they are in violation of section——

Mr. GONZALEZ. What are the consequences? Is it serious enough to gain their attention?

Ms. NORD. We fine them. We take them to court. We issue penalties.

Mr. GONZALEZ. Are the sanctions adequate, in your opinion?

Ms. NORD. The sanctions are considerable, sir. And it is not the level of sanctions that gets in the way of us enforcing the law, sir.

Mr. GONZALEZ. Your own admission, though, is that you all have not had anything at recall that was initiated by you in a number of years. So what makes you feel so comfortable that we have the manufacturers voluntarily coming to you because of fear of some sanction that may be serious but maybe not that serious? I mean, I guess there seems to be almost a conflict. They don't have to worry about being found out, in essence.

So what is the real incentive?

Ms. NORD. Sir, the genius of the Product Safety Act, the thing that Congress did so well when you enacted the statute back in 1973 was to create that incentive. Basically what you have said is that if a product seller thinks that they may have a problem—not that they do have a problem but if they may have a problem—they have to come to us and they have to report to us. If they don't, then we can impose fines on them and, frankly, we do impose fines on them and they are considerable fines. But basically what that does is allow us to get information in the door so that we can analyze it, and that section 15(b) which is in the Product Safety Act really provides the incentive and is the key for an awful lot of the things we do.

Mr. RUSH. The gentleman's time is up.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. Thank you.

Mr. RUSH. The chairman now recognizes the gentlelady from Wisconsin. She is not a member of the subcommittee but we invite her to ask questions. Ms. Baldwin is recognized for 5 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman. I appreciate the opportunity to participate in today's hearing and I join in this hearing because of a personal interest and a commitment to the issue of furniture tipping. And it has been a little over 2 years since the death of my constituent Colin Barbarino who first—this is what first alerted me to the dangers of furniture tipping. Colin was only 3 years old when a dresser that belonged to his brand-new bedroom set fell on top of him and crushed his chest, and the dresser was about 4 feet tall and weighed about 150 pounds.

It was almost exactly a year later, on Christmas Eve 2005, when Courtlynn Snyder, also 3, from my district in south central Wisconsin, died when she climbed a dresser to reach the television set that was on top, causing the TV to fall and, again, crushing Courtlynn's head and chest.

And these were two tragic incidents that made it clear to me that the current voluntary furniture tipping standard is insufficient to protect young children. In fact, according to CPSC's own estimates, approximately 8,000 to 10,000 people, mostly children, are injured every year when household furniture such as dressers and book cases and TV stands tip on top of them.

When issuing the September 2006 warning about the dangers of TV and large furniture tipovers, the CPSC cited more than 100 deaths reported since 2000, and twice the typical yearly average for the first 7 months of 2006. So while I applaud the CPSC for issuing the warning last September that recognizes the danger of furniture and TV tipovers, the Commission has otherwise consistently resisted any regulatory improvement that would more effectively protect children.

It is true that section 7(b) of the Consumer Product Safety Act requires the Commission to rely on voluntary consumer product safety standards rather than promulgating mandatory safety standards whenever such voluntary compliance would eliminate or adequately reduce the risk of injury addressed, and that it is likely that there will be substantial compliance with such voluntary standards. However, it is also equally clear to me that in the case of furniture tipover, compliance with voluntary standards by the furniture industry has not been substantial, and that the risk of injury continues to be very significant, if not expanding.

And I want to enter into the record an article from the March 2006 issue of Consumer Reports magazine discussing testing done on common furniture in a child's room, as well as TV stands, to see if that furniture meets the voluntary standards, and the results greatly concerned me.

One of five dressers failed the test. One broke, three others passed, but all three tipped when the drawers were open all the way and the weight was applied.

So, clearly, in my mind the voluntary standards are not satisfactory and many furniture manufacturers knowingly do not meet them.

So I have just basically two sets of questions for you. One, the commission has cited section 7(b) of the Consumer Product Safety Act as a statutory barrier inhibiting the Commission from promulgating mandatory safety standards, and it has also described a rather protracted rulemaking process to create any mandatory standards. So I ask if you would support modifying 7(b) of the act to grant the Commission more authority in moving ahead with mandatory standards.

And since I only have a couple more seconds, let me just get to the second major question. We have written to the CPSC, me and my colleagues, concerning the danger of furniture tipping, and you are probably familiar with our legislative attempts to address this matter. Have you reviewed legislation introduced by Congresswoman Allyson Schwartz last Congress that creates mandatory safety standards that include warning labels, anchoring devices, and weight requirements. Would you generally support that bill?

Ms. NORD. Thank you for the question. With respect to the bill, I am not familiar with the bill. However, I am familiar with the fact that the Agency staff is now working with ASTM. They have

initiated a new process to look at the existing voluntary standard to look at its adequacy.

Going to the bigger question, ma'am, the Product Safety Act does set out a regime under which it really directs the Agency to look at issues in the marketplace that are not being adequately addressed by the voluntary standards writing organizations. And again, that is a way for us to focus the resources of the Federal Government in areas that are not otherwise being addressed. If there is a voluntary standard in place that is indeed adequate, then I do not believe that we would be able to meet the statutory requirements of the act dealing with addressing unreasonable risks that are not being met.

If, however, there is a voluntary standard in place and it is not adequate or it is not being complied with, then we have no statutory prohibitions on proceeding. And we do indeed proceed, and we will in the future.

Mr. RUSH. I thank the gentlelady. Your time is up.

The Chair is going to beg your indulgence. We want to have a second round, and it will be a brief second round. We will give each member 3 minutes to ask a question. And the Chair gives himself 3 minutes now for an any additional questions.

Madam Chairlady, there was a follow-up article to the article in the Tribune—the original series, investigatory series, dated I think May 6 and 7. There was a follow-up article dated Friday, May 11 that says recalled magnetic toys are still in stores. Are you familiar with this article in the Tribune?

Ms. NORD. I have read the Tribune material——

Mr. RUSH. It says that the Illinois attorney general's office has found stores across Illinois selling recalled toys linked to the death of one child and severe intestinal injuries of more than two dozen others. It also says that—and I am quoting from a statement from Ms. Kerry Smith, who is a deputy chief of staff for policy and communications for the Illinois attorney general's office. It says: "Ideally, these products are recalled. Promptly, recalls make their way to the retail level and the kids are kept safe. That process needs to be airtight and it clearly is not."

Do you agree with that? And are there any suggestions that you have that would make recalls more effective today or tomorrow?

Ms. NORD. OK. If there is product that has been recalled and the manufacturer intentionally puts it out there or the retailer intentionally sells it, then we have got the authority to go after that product seller, and we have in the past. Indeed this past spring we, initiated or issued a fine against somebody who did precisely that. And frankly, sir, as long as I am on the Commission we will aggressively undertake those actions.

With respect to how can we make recalls more effective, the thing I want to emphasize here is that our first objective is to get the product off the store shelves and out of consumers' hands. That is the thing we are focusing on first when we do a recall. After we have accomplished that, then we step back and say, OK, is this a situation where we want to look at a potential further action? Is 15(b) applicable here? Do we need to bring an action against the manufacturer? And we do that with some frequency.

However, I will tell you that one of the, I think, weaknesses in the current system and where I think it would be useful to have some further discussion with you is the fact that there is no place in the statute that makes it a violation of the statute if a product seller makes a commitment to us to do something and then does not live up to that commitment. If they commit to undertaking certain kinds of actions to get the product out of the marketplace, and if they don't do that, then there is no specific violation of the statute for that kind of activity, and there might be some useful conversations that we could have about that kind of improvement in the statute.

Mr. RUSH. Thank you so much.

Now the Chair recognizes Mr. Gonzalez for an additional 3 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. Chairman Nord, you have indicated that, of course, a lot of toys are now coming over from China and they may pose a problem. My sense is that those toys usually will end up in certain types of stores, and these certain types of stores—and I guess I will just name one of them, the Dollar Stores. And if you look at where they are actually located, that is going to be lower-income neighborhoods, and then you can maybe see established patterns and you know that there are certain markets that you want to address regarding those particular toys that you know probably pose a real risk.

What are you doing to address that particular aspect of the Chinese imported toys?

Ms. NORD. Well, sir, a couple of things, starting on sort of the global level and then working down, if you will. The Agency, for the first time 3 years ago, negotiated a memorandum of understanding and an action plan to implement that memorandum of understanding with our counterpart agency in China. And as a part of that, we set up four different working groups under that plan of action dealing with the import of fireworks, electrical products, toys and cigarette lighters.

So we have developed a whole series of activities in each of those four different product areas that we are going to be talking with the Chinese about to see if we can implement some specific activities to address this. And indeed that is one of the reasons that I am going to be meeting with my Chinese counterpart next week. And that will all lead up to a Chinese-United States safety summit that will be held here in Washington in the fall of 2007.

So on the global issue, we are trying to address it, although this is a huge problem and it is a real hard problem to get our arms around. And I am not going to sit here and pretend to you that we have got our arms around it. We are working on it, but we don't yet. So that is what we are trying to do to stop the manufacture of this unsafe product.

Then the next issue is, OK, if it is manufactured, it gets on the boat, then what do you do to stop it at the port? We have a good working relationship with the Customs Bureau, and we have got, again, a memorandum of understanding with them. They are implementing a new automated system that allows them to look at the contents of cargo containers with a lot more precision than they have in the past.

We are part of that, or we are going to become part of that whole process so that we will have access to that data and our compliance people will be able to see it before—to see what is in the containers before it arrives, again, to focus our efforts in problem areas. If something gets into the stream of commerce, then it is our responsibility to remove it from the stream of commerce.

I am very much aware of the issue that you raised. There are certain stores and certain retailers that we spend more time focusing on because we see the kinds of incidents you deal with. But again at that point, it becomes a task of trying to pull it out of the stream of commerce, and that is a much harder task.

Mr. GONZALEZ. I just wondered, is there any outreach that you are doing to those identified neighborhoods where these particular retailers set up shop? Because that is pretty easily identifiable.

Ms. NORD. This is done specifically through our neighborhood safety network, which is basically a network of local and community-based organizations that are working with us to try to disseminate safety messages. And we do talk through the neighborhood safety network to these kinds of communities. All the materials that we put out to the NSN are translated into Spanish. We do specific periodic outreach to them but, again, you know we work at this, sir, and I am sure there is more that we could be doing, and we do the best we can.

Mr. RUSH. The gentleman's time has expired.

Mr. GONZALEZ. Thank you.

Mr. RUSH. Madam Chairman, before we go to our final series of questions, would you please make available to the members of this committee a listing of the neighborhood associations' safety networks?

Ms. NORD. I would be delighted to.

Mr. RUSH. So we can distribute them by districts for members of the subcommittee. Thank you so very much.

The gentlelady from Wisconsin is recognized.

Ms. BALDWIN. Thank you. I believe I heard some encouragement in your answer to my questions on furniture. I want to press just a little further because it does sound—if I heard you correctly, you said that you didn't view section 7(b) as an impediment to moving to a mandatory standard, assuming that our voluntary standard has not adequately reduced the risk of injury or has not resulted in substantial compliance. And on this issue in particular you also expressed that you had not had a chance to review our legislation authored by Congresswoman Schwartz on this issue.

Basically what it does is require a mandatory standard rather than a voluntary standard on this issue. But what I would ask you is, what sort of help can we provide you in moving ahead to a mandatory standard on this issue in reaching the conclusion that the voluntary standard has not resulted in substantial compliance throughout the industry and has not served to adequately reduce the risk of injury?

Ms. NORD. Well, as I mentioned earlier, we have been looking at this issue as it is being implemented by the voluntary standards organization. Well, let me back up again.

ASTM has issued a voluntary standard dealing with furniture tipover that requires warning labels and anchors. They have re-

vised that standard. They are now in the process of revising it again. And our staff is working very closely with ASTM on this revision process. Once the standard is put into place, then what we would need to do is look to see is it being implemented, and is it being effective? And that is what Congress is basically directing us to do.

Ms. BALDWIN. Can they keep on pushing the data off as they make a little revision here and a little revision there? When do we say voluntary hasn't worked and we need to have a mandatory standard? If I am pressing you do anything, it would be to look very seriously. I think a mandatory standard is absolutely needed in this case.

Ms. NORD. Ma'am we will look very seriously at it. Again, the statute outlines the things we look at and directs us to make findings, very specific findings. So when we go through this process, that is what we do. And as a part of that, if we think that there is an unreasonable risk of injury and it is not being addressed by a voluntary standard, or if there is a voluntary standard out there and it is not being complied with, then, again, under the statute we can proceed. But when we proceed we also have to make these other kinds of findings under the Product Safety Act, and that is what we do.

Mr. RUSH. The gentlelady's time has expired. Madam Chairlady, we really appreciate your time today. You have been most gracious with your time. We thank you so much for appearing before this committee, and we will commit to working with you to ensure that our children are safe in the future. Thank you so very much.

Ms. NORD. Thank you so much, sir.

Mr. RUSH. We will call the next panel, panel II, to appear:

Mr. Alan Korn who is the public policy director and general counsel for Safe Kids Worldwide. Ms. Rachel Weintraub who is director of product safety and senior counsel for the Consumer Federation of America. Frederick Locker who is with the firm Locker, Brainin and Greenberg, from New York City.

Dr. Marla Felcher, adjunct lecturer at the Kennedy School of Government at Harvard University. She has a Ph.D. She is the author of a book, "It Is No Accident How Corporations Sell Dangerous Baby Products."

Mr. James A. Thomas who is the president of ASTM International.

And Ms. Nancy A. Cowles, executive director of Kids in Danger, from Chicago Illinois.

We want to thank you for your patience. We will ask that if you have opening statements please be mindful of the fact that you have a 5-minute limitation on your opening statements and we will begin with you, Dr. Korn.

STATEMENT OF ALAN KORN, DIRECTOR, PUBLIC POLICY AND GENERAL COUNSEL, SAFE KIDS WORLDWIDE

Mr. KORN. Thank you, Mr. Chairman, Mr. Gonzalez. We want to thank the committee for holding this hearing. We are particularly pleased that you are doing it so early in the 110th, which we believe is a comment on your leadership and hopefully bodes well for

children in this country which is something that Safe Kids Worldwide cares greatly about.

With the chairman's permission I would like to note that my written testimony discusses many of the issues that were discussed here today: civil damages, voluntary standards, some of the bills that are pending, ways to improve effective recalls.

But I would like to take the short time I have in oral testimony to speak just about the Pool and Spa Safety Act which I believe significantly—it passed the United States Senate last year by unanimous consent, and came so close in the House of Representatives just at the end of the 109th—in fact, it was the very last bill that was voted on in the 109th and it came just a handful of votes short of passing. You have the numbers. I won't go through them in detail.

Suffice it to say that far too many children are dying from injury as it relates to drowning. Of these drowning deaths it is estimated that about 40 percent, even a little bit more in some areas of the country, including your region, die in pools and spas. Many of these deaths are due to children having unfettered or very easy access to pools or spas, or as the result—that has been discussed—of not properly supervising children while swimming. But I would like to point out, sir, that there is a hidden hazard related to pools, and that is called drain entrapment.

You heard the story of Secretary of State James Baker losing his granddaughter, Graeme Baker, at the bottom of a pool spa. I must say this to you: I have been doing this for 12 years, and only one other death that I have heard of in my time here was more disturbing than that one.

It is a very difficult job I have, an interesting job to think about, talk about all the time, about how children die. That story in particular was very disturbing. The risk is associated with the circulation system of the pools, and the risk, unlike the more common forms of drowning which I mentioned early on—the unfettered access to pools—has nothing to do with lack of proper adult supervision but has everything to do with the way pools are built and maintained in this country. Far too many children, not as many as regular drowning, are dying from this entrapment. It happens very much like if you put your hand on the end of a vacuum tube or a vacuum cleaner, that suction—that is what happened. It took two adults well more than 5 minutes to break Graeme Baker off the bottom of that pool spa. Suffice it to say it was too late by then. A really really horrible story.

Thankfully there is a solution to the problem, and I will try not to read my testimony and just kind of talk you through it. First is four-sided fencing, which is very important. It has been mentioned by several of the members here already. That is fencing that goes completely around the pool that prevents that unfettered access to children who either wander from another yard or wander from out of their home into a neighborhood backyard pool.

Same thing applies, by the way, to commercial pools. The same type of fencing is required. We think that 50 to 90 percent of the drownings could be prevented just by that single act alone.

The Wasserman Schultz and Frank Wolf bill—and I think many members of the subcommittee are already cosponsoring the bill that would address that issue.

Second is anti-entrapment drain covers and I brought a visual with me, if I could. This here is the dangerous drain cover. You see it is flat and flush to the bottom of a pool. A child forms the suction. This is not unlike what happened to Graham Baker, the Secretary's granddaughter. And you could make the seal.

Well there is a better product on the market now that is—although these are still around and still can be purchased. These, as you can tell—I am not an engineer, but you can tell there is a different shape to that that prevents that seal from happening. If a person sits on this or gets sucked on this, you can't get that seal. So this is a very important device and, again, the Pool and Spa Safety Act addresses that.

I would also like to mention a safety vacuum release system, another thing that the bill addresses, and this detects any unnatural source or any blockage at the drain and automatically shuts the system off. That kind of prevents that panic that you have by the pool that happened in the backyard pool in the Baker neighborhood. It automatically shuts the suction system off so the child can break free.

There are dual drains which I will also mention is very important. The more drains you have at the bottom of the pool, in particular for new pools, the less single-source suction you have.

And then, finally, pool alarms, which is kind of that last protection there. The chairman mentioned someone riding a tricycle into a pool. Well, I have seen this particular pool alarm demonstrated and an alarm would have went off both in and outside the house immediately. It takes 6 seconds from the fall into the pool for this alarm to go off.

So we like those types of layers of protection, as you heard the chairman of the CPSC mention. If I could, I will just conclude by saying we are very supportive of the pool and spa safety grant, which does a number of things, one of which is it requires a standard for these. So let's get rid of these in the marketplace, so only that this is provided as you go out to build and maintain and service your pools.

The other is to address those pools that are already existing by way of incentive grants, to get the States to pass laws that require four-sided fencing, drain entrapment safety vacuum release systems, and pool alarms.

I see my time is up. I will say that it is not—many of these incentive grants in the past originated in this committee for other safety devices: booster seats, safety belts. So it is a way to motivate States to do the right thing.

I am happy to answer your questions on any of these things and certainly the other issues that have been discussed today. Thank you very much.

[The prepared statement of Mr. Korn follows:]

WRITTEN STATEMENT OF ALAN KORN, J.D., DIRECTOR OF PUBLIC POLICY & GENERAL COUNSEL SAFE KIDS WORLDWIDE ON PRODUCT SAFETY FOR CHILDREN

My name is Alan Korn, and I am the Director of Public Policy and General Counsel for Safe Kids Worldwide. It is my pleasure to testify before the House Commerce, Trade and Consumer Protection Subcommittee today. Mr. Chairman and Congressman Stearns, thank you for allowing me to address the important topic of children's product safety.

I. History of Safe Kids Worldwide

Safe Kids Worldwide is the first and only international organization dedicated solely to addressing an often under recognized problem: ***More children ages 14 and under in the U.S. are being killed by what people call "accidents" (motor vehicle crashes, fires, drownings and other injuries) than by any other cause.*** Formerly known as the National SAFE KIDS Campaign, Safe Kids Worldwide unites more than 450 coalitions in 16 countries, bringing together health and safety experts, educators, corporations, foundations, policymakers and volunteers to educate and protect families against the dangers of accidental injuries.

Founded in 1987 by the Children's National Medical Center and with support from Johnson & Johnson, Safe Kids Worldwide relies on developing injury prevention strategies that work in the real world – conducting public outreach and awareness campaigns, organizing and implementing hands-on grassroots events, and working to make injury prevention a public policy priority.

The ongoing work of Safe Kids coalitions reaching out to local communities with injury prevention messages has contributed to the more than 40 percent decline in the childhood unintentional injury death rate during the past 15 years. However, with more children dying from accidental injury than from cancer, heart disease and birth defects, Safe Kids Worldwide remains committed to reducing unintentional injury by implementing prevention strategies and increasing public awareness of the problem and its solutions.

II. The Problem: Accidental Childhood Injury

Accidental injuries are a leading cause of death for all Americans, regardless of age, race, gender, or economic status. Annually, an average of 27,100 deaths and over 33.1 million injuries are related to consumer products. Unfortunately, children make up a large portion of these tragic numbers. Each year, more children ages 14 and under die from unintentional injuries than from

all childhood diseases combined. More than 5,300 children ages 0 – 14 die and there are over 6 million injuries serious enough to require medical care due to unintentional injury.

III. Federal Child Safety Product Legislation

Safe Kids is quite pleased that the Subcommittee has chosen to address the issue of child safety so early in the 110th Congress. We believe it is a comment on its commitment to children and its recognition that accidental injury and death to children happens far too often and, more importantly, that something can be done about it. Not coincidently, there is a lot that can be done. Over the past 13 years, there has been a backlog of consumer product legislation that has languished in Congress, and several are worthy of attention and action:

A. Pool and Spa Safety for Children: *Pool and Spa Safety Act* (H.R. 1721)

1. The Problem: Accidental Childhood Drowning in Pools and Spas

While water recreation provides hours of enjoyment and exercise for children, water and children can be a deadly mix when an unsafe environment or inadequate supervision is also present. In the United States, drowning remains the second leading cause of accidental injury-related death among children ages 1 to 14. In 2004, 761 children ages 14 and under died as a result of accidental drowning and in 2005, approximately 3,019 children in this age group were treated in emergency rooms for near-drowning, which often results in lifetime injuries, including permanent brain injuries. Of these drowning deaths, an estimated forty percent occur in pools. The vast majority of these deaths were due to children having unfettered or very easy access to pools/spas or as a result of adults not properly supervising children who were in the pool with permission.

Swimming pools and spas also present hidden dangers for children (and adult bathers and swimmers): the risk of drain entrapment. Entrapment occurs when part of a child becomes attached to a drain because of the powerful suction of a pool or spa's water circulation system. This happens much the same way one's hand might get stuck to the hose end of a vacuum cleaner. Young children are captivated with the suction created by a pool or spa circulation system, often playing in the suction path to feel the powerful pull of the water. This is often referred to as an "attractive nuisance". That "nuisance" is magnified by the lack of awareness by most consumers (especially children) and the aging of pools in this country. Death or serious injury can occur when the force of the suction overpowers the child's ability to disengage from the drain and rise to the surface of the water. Often, the strength of an adult is still not enough to remove a child trapped by a pool or spa's drainage system. This risk, unlike the more common form of drowning described above, has nothing to do with the lack of proper adult supervision, but has everything to do with engineering flaws in the way pools are built and maintained.

There are at least five different types of suction entrapment:

1. Body Entrapment – where a suction of the torso becomes entrapped;
2. Limb Entrapment – where an arm or leg is pulled into an open drain pipe;
3. Hair Entanglement/Entrapment – where hair is pulled in and wrapped around the grate of a drain cover;
4. Mechanical Entrapment – where jewelry or part of a bathing suit becomes caught in the drain or grate; and
5. Evisceration – where the victim's buttocks comes in contact with the pool suction outlet and he/she is disemboweled.

Each of these "entrapments" almost always results in death or permanent serious injury.

From 1985 to 2004, records show that at least 33 children ages 14 and under died as a result of pool and spa entrapment, and nearly 100 children were seriously injured. Entrapment deaths can also occur when a child's hair or swimsuit gets tangled in the drain or on an underwater object, such as a ladder. Forty-one percent of the deaths were hair-related entrapments. Fifty-two percent of these fatalities occurred in spas or hot tubs, thirty-nine percent in swimming pools, and nine percent in combination pool/spas.

However, according to the U.S. Consumer Product Safety Commission (CPSC) and Safe Kids Worldwide, the number of entrapment deaths could be much higher than reported. Due to the fact that entrapment is a little-known risk for drowning, it is possible that many drowning deaths have not been classified as entrapment and that the number of deaths is probably higher than reported. For example, in the case of Nancy Baker's daughter and former Secretary of State James Baker's granddaughter, Graeme's cause of death was listed as a "drowning" only with no mention of the mechanism of the fatality on the death certificate. Safe Kids believes that this type of incomplete characterization happens more often than not, and therefore, the actual incidences of entrapment/entanglement/evisceration is much higher than reported.

As pools and spas become more common among consumers and existing pools and spas age and require maintenance, the potential risk of injuries and deaths from entrapment increases. The number of residential swimming pool owners increased by approximately 600,000 from 2002 to 2004, and the number of residential spa owners increased by about 800,000 over the same period.

Drowning, in all its forms, is usually quick and silent. A child will lose consciousness two minutes after submersion, with irreversible brain damage occurring within four to six minutes. The majority of children who survive without neurological consequences are discovered within two minutes of submersion, and most children who die are found after 10 minutes.

For children who do survive, the consequences of near-drowning can be devastating. As many as 20 percent of near-drowning survivors suffer severe, permanent neurological disability, the effects of which often result in long-lasting psychological and emotional trauma for the child, his or her family and their community. Near-drownings also take a tremendous financial toll on affected families and society as a whole. Typical medical costs for a near-drowning victim can range from $75,000 for initial treatment to $180,000 a year for long-term care. The total cost of a single near-drowning that results in brain injury can be more than $4.5 million.

2. The Solution: Layers of Protection and Active Supervision

As a result of these alarming statistics, Safe Kids has promoted two primary ways to prevent pool and spa drownings and entrapments: safety devices to guard the pool and prevent entrapment, and active supervision.

a. Use of Environmental Safety Devices: Layers of Protection

i. Four-Sided/Isolation Fencing

One of the most effective ways to reduce child drownings in residential pools is to construct and maintain barriers to prevent young children from gaining unsupervised access to pools. Studies show that installation and proper use of four-sided isolation fencing could prevent 50 to 90 percent of residential pool drowning and near-drowning incidents among children. Isolation fencing (enclosing the pool completely) is more effective than perimeter fencing (enclosing property and the pool) because it prevents children from accessing the pool area through the house. If the house is part of the barrier, the doors and windows leading to the pool should be protected, at the very least, by an alarm or a powered safety cover for the pool. Safe Kids also recommends that pool fences have a secure, self-closing, self-latching gate and also isolate the pool from the residence. The CPSC has crafted suggested recommendations, entitled *Safety Barrier Guidelines for Home Pools,* which details specifically how pool owners and pool installation companies should construct fencing to best prevent the unsupervised access to pools by children. Some localities and a few states have used these guidelines as a basis for their own laws.

ii. Anti-Entrapment Drain Covers

In addition to the barriers to the water, there are other devices designed specifically to protect against entrapment. Another layer of protection involves the installation of anti-entrapment drain covers. Anti-entrapment drain covers are recommended to help prevent the suction from drawing the body or hair into the drain. Anti-entrapment drain covers are not flush to the bottom of the pool or spa, like many dangerous grates and outlet covers in pools/spas today. Anti-entrapment covers are drain fittings that are

specifically designed to prevent the circular or swirling motion of the water that tends to form a vacuum or suction and draws hair or the body into the drain pipe. Safe Kids recommends that pool owners (both private owners and commercial operators) have their pools/spas inspected by pool maintenance professionals for dangerous or broken covers and have them replaced with safer covers before pools/spas are used for the summer. These drain covers have a retail price of approximately $30 – $75.

iii. Safety Vacuum Release Systems

Safety vacuum release systems (SVRS) are intended to detect any blockage of a drain, automatically and immediately shutting off the suction to prevent entrapment. This immediate shut off feature eliminates the need for a witness to an entrapment, usually a panicked family member, from searching around for the on/off switch to turn off the pool pump. The search costs precious seconds and usually by the time the switch is found, it is too late. These safety devices have a suggested retail price between $375 – $800.

iv. Dual Drains

To ensure a safe environment, Safe Kids advises pool and spa owners to install multiple drains, not just one, in order to decrease the amount of suction at the drain site. Although this safety adaptation is admittedly costly and labor intensive for existing pools since the bottom of the pool would have to be dug up, this safety feature should be a part of the construction for all new pools and spas being built.

v. Pool Alarms

Additionally, a common cause of drowning occurs when children have an accidental or unsupervised entry into a pool. Fencing is a deterrent to such entries, but they cannot save children who have found their way into the pool without adult supervision. If a child has overcome the other physical barriers in place and reached the pool, pool alarms represent a last line of defense that can provide rapid detection of unauthorized, unsupervised, or accidental entry into the water. Like many safety mechanisms, technological advancements have significantly improved the reliability and efficacy of pool alarms. Today's pool alarms use advanced signal detection to detect slight changes in water pressure, automatically reset themselves even when the pool owner forgets to arm them, and have reduced or eliminated the challenges of a high false alarm rates. A pool alarm is a reliable and affordable safety device that can help reduce the number of childhood drownings that occur in pools.

Safe Kids also believes that pool service companies, and in particular, their technicians, need to be better educated about these "layers of protection" and

should more regularly inform pool owners and operators about these important environmental changes and safety devices. The pool service visit each May should not only include preparing the pool for the summer's activities, but should also include an inspection for these hidden hazards and installation of the appropriate layers of protection.

b. Active Supervision of Children

In addition to environmental precautions, parents and caregivers must also actively supervise children whenever water is present. Unfortunately, many parents do not realize the importance of active supervision around water at all times. Active supervision means that a parent or caregiver is giving undivided attention to the child and is close enough to help the child in case of emergency.

In a previous Safe Kids' study, research revealed that nine of out of ten children who drowned were being supervised. Our 2004 study, *Clear Danger: A National Study of Childhood Drowning and Related Attitudes and Behaviors,* showed that in 88 percent of drowning cases reviewed, the victim was under some form of supervision when he or she drowned – in most cases, being supervised by a family member.

In the report survey, nearly all parents (94 percent) reported that they always actively supervise their children while swimming. However, deeper examination revealed that parents participated in a variety of distracting behaviors while supervising, including talking to others (38 percent), reading (18 percent), eating (17 percent), talking on the phone (11 percent) and even closing their eyes and relaxing (4 percent).

c. Safe Kids' Support of the *Pool and Spa Safety Act*

Safe Kids knows that installation of the layers of protection will go a long way to protecting children from the potential dangers of residential and publicly-operated pools and spas. Ten states have enacted residential pool fencing laws and five states have laws designed to prevent entrapment-related incidents for residential swimming pools, but no state has a comprehensive pool safety law on its books. Accordingly, Safe Kids strongly supports the enactment of the *Pool and Spa Safety Act* and applauds Congresswoman Debbie Wasserman Schultz (D-FL) for her leadership in introducing this legislation. We also commend former Secretary of State James Baker and Nancy Baker for sharing their personal story about the loss of Virginia Graeme Baker and for their advocacy efforts in support of this important piece of legislation.

The *Pool and Spa Safety Act* was narrowly defeated in the 109th Congress. The legislation is intended to increase the safety of swimming pools and spas by

motivating states to pass laws that incorporate the layers of protection in order to help prevent drowning, entrapment and hair entanglements. If enacted, the legislation would provide incentive grants to states that call for all swimming pools and spas to have the following layers of protection:

- A wall, fence or barrier that entirely encloses the pool;
- Self-closing and self-latching gates for any walls, fences or barriers;
- A drain system that contains two suction outlets per pump (for new pools only);
- A safety suction outlet drain cover that meets the CPSC's guidelines;
- A pool alarm; and
- A safety vacuum release system.

Congressional incentive grants to encourage states to pass safety legislation are not a new concept. Congress has used this mechanism often to promote state transportation safety laws, some of which are included in the recently passed SAFETEA-LU federal highway law. Safe Kids believes that the *Pool and Spa Safety Act* could do for pool safety what incentive grants have done for booster seat child occupant protection laws, primary enforcement safety belt laws, .08 drunk driving laws and open container prohibition laws.

The bill also has two important industry and consumer awareness/education components. First, the bill would require states to use at least 50 percent of the awarded grant to hire and train personnel to properly enforce the law, and to educate pool construction/installation companies, pool service companies and consumers about the new law and about drowning prevention tips.

In addition, passage of the legislation would enable a national public education program on pool and spa safety to be implemented through the CPSC. The need for this type of consumer awareness program is overwhelming. Safe Kids, in its most recent research, has found that the vast majority of American pool and spa owners did not install many of the recommended devices in and around their pools and spas. Swimming pool owners would be targeted with information on ways to prevent drowning and entrapment, and educational materials would be designed and disseminated through pool manufacturers, pool service companies and pool supply retail outlets.

The bill would also provide for a federal safety standard for anti-entrapment drain covers in order to ensure that all drain covers available in the marketplace would conform to certain safety criteria.

We encourage this Subcommittee to support the *Pool and Spa Safety Act* before another summer of active water recreation passes by.

B. Poison Prevention: *Children's Gasoline Burn Prevention Act* (H.R. 814)

According to the CPSC, approximately 1,270 children under age 5 are treated in hospital emergency rooms for injuries resulting from unsecured gas containers. Safe Kids believes that the passage of the *Children's Gasoline Burn Prevention Act* introduced by Representative Dennis Moore (D-KS), would help protect children from these types of injuries associated with non-child resistant gasoline containers.

Child resistant packaging has been a proven effective intervention to keep kids safe from dangerous medications. The CPSC estimates that child resistant packaging for aspirin and oral prescription medicine saved the lives of about 700 children since the requirements went into effect in the early 1970s.

Child resistant packaging is needed for other household chemicals, such as gasoline. This legislation is critical because currently there are no mandatory CPSC standards in place that address portable gasoline containers. The 1973 Poison Prevention Act does not apply to childproofing gasoline containers because they are sold empty – even though the containers are designed to (and always do) store poisonous, highly flammable liquids. The designed purpose of the containers, coupled with the fact that nearly 45 percent of household garages are used to store gasoline, highlight the need for child resistant caps on these products. Passage of the *Children's Gasoline Burn Prevention Act* would require the CPSC to implement this standard and help prevent these injuries from occurring in the first place.

C. Product Recall Effectiveness: *Danny Keysar Child Product Safety Notification Act* (H.R. 1699)

The *Danny Keysar Child Product Safety Notification Act* (H.R. 1699), sponsored by Representative Jan Schakowsky (D-IL), would direct the CPSC to require certain manufacturers to provide consumer product registration cards in order to help facilitate the recall process. Safe Kids believes that recall effectiveness would be enhanced if at least two types of products had a registration card requirement:

1. Items Intimately Interwoven in a Child's Daily Life

In its present form, the *Danny Keysar Child Product Safety Notification Act* includes items such as cribs, bunk beds, strollers, high chairs, baby walkers, changing tables, and play yards – products that are intimately interwoven in a child's daily life. These types of consumer products have special characteristics, in that a child often interacts with them for a substantial period of time. Additionally, many of these products are designed by intent or by practice to allow for a child to be left unattended for several moments or for an even longer duration. If the CPSC were to determine that one of these products posed an

unreasonable risk to the child, and subsequently required a recall, Safe Kids believes that it would be particularly important to notify consumers as quickly as possible. For these types of products, registration cards would assist in that process.

2. Products with a Safety Purpose

Safe Kids believes that, along with improving recall effectiveness rates, some products are of such special nature and purpose, registration cards should be considered for them. Mandatory registration cards may have some value when attached to products that are designed to fulfill a safety purpose, such as baby monitors, safety latches, baby gates, catcher's masks and other sports safety equipment, smoke alarms, and carbon monoxide detectors. Consumers purchase these products to serve a preventive role in order to protect their children and families from deaths and injuries. If the CPSC determines that one of these products is not adequately fulfilling that safety purpose, it is critically important to remove that product from homes as soon as possible. We cannot have consumers relying on a safety product when the product itself fails to fulfill its intended purpose. Again, in those circumstances, it would be particularly important to notify consumers quickly about the defect. We recommend that these types of safety products be included in H.R. 1699.

D. Furniture Tipover Prevention: *Katie Elise and Meghan Agnes Act*

The *Katie Elise and Meghan Agnes Act,* introduced by Representative Allyson Schwartz (D-PA) in the 109th congressional session, would protect children from the dangers involved with unstable furniture and appliances. CPSC data indicates that each year approximately 8,000 to 10,000 victims are treated in emergency rooms for injuries, and six people die as a result of furniture tipping over. The majority of these injuries and deaths are to children.

The legislation, if passed, would direct the CPSC to issue regulations concerning the safety and labeling of certain furniture and electronic appliances that the CPSC determines poses a substantial hazard of tipping, due to its weight, height, stability or other design features. This would include requiring anchoring devices and instructions in the packaging of furniture that does not meet the stability standard. Warning labels would also alert consumers at the point of purchase that certain pieces of furniture or appliances have the potential for tipover. If this bill is introduced again in the 110th Congress, Safe Kids encourages this Subcommittee to support this measure.

E. Amusement Park Safety: *National Amusement Park Safety Act*

Safe Kids urges Congress to amend the Consumer Product Safety Act to include fixed site amusement park rides as a consumer product under CPSC jurisdiction. In its present form, Section 3 of the Consumer Product Safety Act defines a consumer product as, among other things, "any mechanical device which carries or convey passengers...for the purpose of giving its passengers amusement...*and which is not permanently fixed to a site*." (Emphasis added.) This definition is commonly referred to as the "roller coaster loophole."

Safe Kids supports Congressman Ed Markey's *National Amusement Park Ride Safety Act* (soon be introduced in the 110th Congress), which among other things, closes the "roller coaster loophole." This loophole prevents the CPSC from investigating any amusement park ride accident in any park in America. Instead, all authority has fallen by default to the states – many of which do not have the resources to oversee these activities – leaving regulation largely to the parks themselves. However, even if state-by-state regulation were adequate, the fact that no one with 50-state authority has the ability to investigate deaths or serious injuries in amusement parks means:

- Accidents in one state may be repeated on similar rides in other states – resulting in possible tragedies that could have been prevented but for the loophole;

- Injury and accident trends are not identified because there is no independent government source of data; and

- When safety repairs are ordered by one state, they are not required in any other state.

The legislation would restore fixed site amusement park ride jurisdiction to the CPSC (jurisdiction that was removed from the Commission in 1981). The bill would allow the CPSC to investigate accidents; develop an enforced action plan to correct problems if found; and act as a national clearinghouse for incident and defect data.

If Congress chooses to restore this jurisdiction to the CPSC, Safe Kids urges the Subcommittee to authorize and Congress to appropriate adequate funding to the agency to carry out this new policing effort.

IV. Suggested Congressional Considerations

Safe Kids believes that both changes to its authorizing/enabling statutes and an overall increase to its budget will help the Commission serve its critical mission of protecting children and other consumers. Accordingly, Safe Kids offers the following points for Congress to consider.

A. CPSC Budget Constraints Limiting the Agency's Ability to Fulfill its Mission

The CPSC is an agency with a huge responsibility and a very large jurisdiction. This agency monitors the safety of over 15,000 product categories – including kitchen appliances, sporting equipment, safety devices, home furnishings and art materials – just to name a few. The CPSC must regulate these products, recall them when necessary, educate the public about safe use and behavior, and stay current on new injury product trends. Unfortunately, President Bush has requested a FY 2008 budget amount for the agency that is the equivalent of a budget cut. It certainly prevents the Commission from serving its critical mission, and prevents it from improving the way it protects consumers and children from dangerous products.

President Bush's Fiscal Year 2008 budget includes an appropriation of $63,250,000 for the CPSC, an increase of $880,000 from Fiscal Year 2007. Although Safe Kids recognizes that this is an apparent increase over last year, in effect, and given this agency's recent inadequate budgets, we believe additional funds are needed given the CPSC's broad jurisdiction over so many consumer products. Additional funding would help the agency better fulfill its broad mission (i.e., better marketplace policing, more effective consumer education, improved testing of products).

In addition, the President's budget includes a request for 401 full-time employees. This staffing level would be the lowest ever for the Commission. Salaries represent the largest portion of the CPSC's budget. However, the CPSC has gradually had their staffing levels reduced over the years due to budget constraints. This has resulted in fewer and fewer CPSC staff members to carry out the agency's increasing responsibilities to keep children and families safe from defective and hazardous products. Additionally and significantly, the President's request for the CPSC is much less than the proposed $66.858 million request that the agency itself voted for in the fall of 2006. At that time, the CPSC voted unanimously to approve the CPSC Executive Director's recommendation to request a $4.468 million increase over the President's Fiscal Year 2007 request. The Executive Director's recommendation also included 420 full-time staff positions which she felt was needed to at least continue the Commission's core functions. Safe Kids believes that the Commission itself knows best its budgetary needs and the President should have (and Congress should) give great deference to the CPSC's own assessment and budget needs. Congress now has the opportunity to do just that. Safe Kids hopes that the Subcommittee supports increasing the President's budget request so that the Commission not only keeps pace with their current duties, but is able to expand their activities as needed.

In March, the Senate approved an additional $10 million increase for the CPSC's budget. We hope this Subcommittee also supports this increase. The CPSC does so much with so little and over the years has established and implemented programs and initiatives that work, and with an infusion of additional resources, it could be much more effective. For example:

1. Data Collection: NEISS and the Safety Hotline

The CPSC maintains the only federal data system specifically designed to collect information on consumer product-related injuries. The National Electronic Injury Surveillance System (NEISS) allows the CPSC to identify hazards and serves as the basis for preventative measures and education programs. Safe Kids recommends that a portion of any increase in funding be used to improve this unique data collection tool. Specifically, the CPSC should add more hospitals, especially children's hospitals, to the approximately 100 institutions currently in the database. This would result in more reliable data and would improve national estimates of injury incidence. The necessary expansion of this data collection technique would, of course, need additional funding. Congress should provide it.

The CPSC "Safety Hotline" provides a vital link between government and America's consumers. This toll-free hotline permits individuals to: 1) report an unsafe product; 2) report a product-related injury; 3) find out whether a product has been recalled; 4) learn how to return a recalled product or arrange for its repair; 5) receive information on what to look for when buying a consumer product; and 6) obtain information on how to safely use a consumer product. Safe Kids' network of over 300 state and local coalitions, as well as other community-based organizations, utilize the hotline on a regular basis to both report potentially dangerous products and to collect information on unsafe products. Clearly, the hotline is an invaluable resource to groups like Safe Kids that are in the business of communicating critical safety messages to the general public, but we are sure that the hotline itself is ready for technological updates that will help keep it on the cutting edge.

The CPSC needs adequate funding so that it can continue and improve upon these important services through upgrades of its critical information technology systems.

2. Market Oversight

The CPSC has the mandate to ensure that companies which produce or sell consumer products comply with the laws, regulations and standards intended to protect consumers and children. Significantly, since 1973, the Commission's use of its recall authority has resulted in the initiation of thousands of recalls or other corrective actions involving millions of products. These recalls involved a variety of products, including baby rattles, pacifiers, cribs, flammable clothing and bike helmets. Over the years, however, and due to budget restraints, the CPSC may not be able to properly police the marketplace for dangerous products. By necessity, the CPSC is recalling more products than ever. It is receiving more Section 15 reports than at any other time in its history, especially from some of our nation's largest retailers. This increased activity demands appropriate resources – resources that the agency right now does not have.

The agency's field and compliance staff, in our view, are stretched to the limits. These CPSC departments, at their present staffing levels, will not be able to keep up with this increased activity and safety will suffer. For instance, more and more products are now being sold on the Internet. It is the CPSC's responsibility to police this electronic marketplace for recalled, dangerous products being sold online after a recall has been announced. Presently, CPSC Investigators conduct surveillance only on weekends and in their spare time. This is not nearly enough given the huge expansion of this type of commerce. In addition, more and more products are entering the marketplace through imports, especially from China. This influx of products presents the CPSC with the challenge of increased custom product import oversight. Congress should provide the resources in order to allow the CPSC to better police the consumer product marketplace in all its forms.

3. Public Education

The CPSC uses a wide range of tools to spread many important safety messages that are critical to the prevention of product-related injuries. Each time the CPSC educates a parent, an adult or a child about the proper use of a product, it is helping to create a safer environment for America's children. Safe Kids applauds the CPSC for its widespread and effective Neighborhood Safety Network initiative, which provides timely and useful public education materials to our organization and the public at large. Congress should help the CPSC continue and expand upon this role of providing public education.

4. CPSC Testing Laboratories

Several years ago, Safe Kids staff toured the CPSC testing lab located in Gaithersburg, Maryland. The CPSC, among other things, uses this lab to test thousands of consumer products to ensure that they comply with existing voluntary or mandatory standards, or to determine whether or not they pose an unreasonable risk of injury to the American public. Safe Kids staff was impressed by the commitment and expertise of CPSC lab personnel, but was surprised by the quality of the lab's conditions. The CPSC to this day, while somehow fulfilling their mission, has done so with less than adequate technical facilities. We believe that the CPSC should have a lab that, at the very least, competes with those found in the private sector and that Congress should provide the funds necessary to upgrade the facility.

B. Allowing Election of Remedy Under Section 15 Does Not Necessarily Serve the Public Interest

Once the Commission determines that a product distributed in commerce presents a substantial hazard and that remedial action is required to serve the public interest under

Section 15 of the Consumer Product Safety Act, the CPSC may order the manufacturer of the dangerous product to elect (at the product manufacturer's discretion) to either:

- A. Bring the merchandise into conformity with requirements of the applicable consumer product safety rule; or
- B. Replace the product with a like or equivalent product; or
- C. Refund the purchase price (less a reasonable allowance for use).

(Consumer Product Safety Act, Section 15d)

This discretionary election may not always serve the public interest. For instance, if the CPSC is recalling a $75 toaster that poses a serious electrocution or fire and burn hazard, the manufacturer, once ordered to remedy, may elect to refund the purchase price less a reasonable allowance for use. The refund on a toaster that has been in the marketplace for five years may have a refund value of $10. This refund may not be a motivating enough factor to encourage the consumer to remove the dangerous product from their household. In this case, the public may be better served by a different remedy – such as receiving a replacement item that is of similar quality or having the recalled product repaired. Safe Kids believes that CPSC compliance officers should ultimately decide what constitutes an appropriate remedy given the totality of the circumstances. Congress should consider a technical change to Section 15 of the enabling statute that empowers the CPSC to police the manufacturer's elected remedy option.

C. Congressional Consideration of Increase of Civil Penalties under the Consumer Product Safety Act

Safe Kids urges Congress to consider an increase in the civil penalty allowed by the Consumer Product Safety Act. In its present form (under Section 20), any person who knowingly engages in a prohibited act, as outlined in Section 19, is subject to a civil penalty not to exceed approximately $1.8 million. In some cases, and in particular when larger companies are involved, the $1.8 million cap may not be enough of an economic deterrent to prevent the company from engaging in an unlawful act. For example, a company that has $50 million worth of product in the marketplace may be willing to incur the civil penalty instead of reporting a defect or injury as required under Section 15 in hopes of avoiding a recall. Congress should consider increasing the civil cap to an amount that better represents a deterrent. In order to avoid an unduly harsh and unfair penalty, if Congress chooses to increase the cap, consideration could be given for different caps for different companies based on gross revenues. For instance, bigger companies could have bigger caps, and smaller companies could have smaller caps. Alternatively, the cap could also be raised for only the most serious violations of Section 19.

V. Conclusion

Children are especially vulnerable to the dangers posed by hazardous products. They often are unable to recognize and avoid dangerous situations. Safe Kids commends this Subcommittee for convening this important consumer safety hearing and we look forward to working with you on any legislative initiatives and educational efforts designed to protect children from these hazards.

Mr. RUSH. Thank you very much.

The Chair recognizes Ms. Rachel Weintraub, director of product safety and senior counsel for the Consumer Federation of America.

STATEMENT OF RACHEL WEINTRAUB, DIRECTOR, PRODUCT SAFETY AND SENIOR COUNSEL, CONSUMER FEDERATION OF AMERICA

Ms. WEINTRAUB. Chairman Rush and members of the subcommittee, thank you very much for the opportunity to speak today. Thank you for holding this hearing, and please accept my written comments as the full extent of the breadth of what I wish to discuss today.

The CPSC is an incredibly important independent Federal agency with jurisdiction over all consumer products, which is really—the estimation of how many products it has jurisdiction over is lowballed by 15,000 products—it is at least 15,000, and likely thousands more. The CPSC statutes give the Commission the authority to set safety standards, require labeling, order recalls, ban products, collect data, and collect death and injury data, inform the public about consumer product safety, and contribute to the voluntary standard setting process.

CPSC was created to be proactive. Unfortunately, that proactivity has been thwarted by a diminished budget and limiting statutory provisions. CFA doesn't always agree that CPSC is acting in the best interest of consumers. However, we do believe that a stronger CPSC can better serve the public than a less robust one.

In addition, CFA has deep respect for CPSC staff. They are dedicated, hardworking, and have worked diligently while weathering the storm of budget cuts and lack of quorum.

What does CPSC need? First, an increased budget. Over 30 years after it was created, the Agency's budget has not kept up with inflation, has not kept up with its deteriorating infrastructure, has not kept up with the changes in product development, and has not kept pace with the increase of consumer products on the market. CPSC staff has suffered repeated cuts during the last two decades, falling from a high of almost 1,978 employees to just 401 in this next fiscal year, the fewest in the Agency's history. The 2008 budget would provide only a little bit more than $63 million.

While every year an estimated 27,100 Americans die from consumer product-related causes, an additional 33.1 million suffer injuries related to consumer products. This Agency is limited by what it can do. It is for this reason that CFA believes two of the most important things that this committee can do is to increase the budget and provide increased oversight for CPSC.

The CPSC's authorizing statute, the CPSA, requires that the Commission rely upon voluntary consumer product standards rather than promulgate another mandatory standard when compliance of a voluntary standard would adequately solve the problem and when there would likely be high compliance with that voluntary standard. But this can act as a shield, preventing the Agency from taking critical steps to initiate mandatory rulemaking proceedings.

In addition, the Commission does not always police the market adequately to ascertain whether the voluntary standard is working.

For this reason, CFA supports H.R. 1698 introduced by Representative Schakowsky.

Due to limited resources and a reliance upon voluntary standards, the Commission has not issued mandatory standards for numerous products posing risk to consumers. I would like to highlight just a few:

Furniture tipovers are an incredibly important problem. At least 8- to 10,000 people require emergency treatment each year as a result of furniture or appliance tipovers resulting in an average of at least 6 deaths. Most of these injuries and deaths occur to children when they climb onto, fall against, or pull themselves up on furniture and appliances such as stoves. We support the legislative efforts undertaken by Representative Schwartz, whose bill would require CPSC to promulgate safety standards for these products.

All terrain vehicles are another issue CFA is very concerned about and we are currently very dissatisfied with CPSC's rulemaking proceedings. Serious injuries requiring emergency room treatment would increase to 136,700 in 2006 and deaths in 2005 reached an estimated 767. CPSC's rule changes the way ATVs have been categorized, by engine size, to a system based on speed, which is highly flawed.

Increasingly, lead has been found in children's products, including jewelry, lunch boxes, bibs, cribs, and other products. Serious acute and irreversible harm can result to children after a resulted exposure to lead. And we urge CPSC, in congressional action, to improve CPSC statutes. We recommend that recalls be made more effective through direct consumer notification. We support Representative Schakowsky's bill on this issue. We suggest that the cap on civil penalties be eliminated; $1.85 million is a paltry amount, not doing an adequate job. We urge the repeal of section 6(b) of the Consumer Product Safety Act. We urge Congress to restore authority over fixed-site amusement parks. And we also support H.R. 1893, to require the same warning labels on toy packagings that are required to also be posted on the Internet.

In terms of imports, CPSC and consumers, as well as Congress—specifically, really, Congress—and CPSC need to work to hold all major children's product manufacturers responsible, both large and small manufacturers responsible for unsafe products imported into the market. CPSC and Congress must assure and prohibit the export of products that don't meet voluntary or mandatory safety standards, no matter where the products are made, whether here or anywhere else.

In conclusion, this subcommittee must make sure that the Federal Government lives up to the commitment it made when it created CPSC to protect consumers from product-related deaths and injuries. Thank you very much.

[The prepared statement of Ms. Weintraub follows:]

Consumer Federation of America

Testimony of

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America

Before the
Subcommittee on Commerce, Trade and Consumer Protection
Committee on Energy and Commerce
U.S. House of Representatives

Protecting Our Children: Current Issues in Children's Product Safety

Rayburn House Office Building 22123

May 15, 2007

Chairman Rush, and members of the Subcommittee, I am Rachel Weintraub, Director of Product Safety and Senior Counsel for Consumer Federation of America (CFA). CFA is a non-profit association of approximately 300 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education. Thank you for holding this hearing and for providing us with the opportunity to speak today.

I. Introduction

The theme of today's hearing, "Protecting Our Children: Current Issues in Children's Product Safety," is a critically important topic that CFA prioritizes. Sadly, we have much work to do to protect our children from product safety hazards and there are many issues in need of immediate attention.

The Consumer Product Safety Commission (CPSC) is the independent federal agency charged with protecting the public from hazards associated with over 15,000 different consumer products, including children's products. The Agency was created because the marketplace was not adequately policing itself: litigation and various federal laws were not adequately preventing death and injuries from unsafe products. CPSC's mission, as set forth in the Consumer Product Safety Act, CPSC's authorizing statute, is to "protect the public against unreasonable risks of injury associated with consumer products."[1] CPSC's statutes give the Commission the authority to set safety standards, require labeling, order recalls, ban products, collect death and injury data, inform the public about consumer product safety, and contribute to the voluntary standards setting process. CPSC was created to be a proactive organization. Unfortunately, much of that proactivity has been thwarted by a shrinking budget, a lack of aggressive action by the

[1] Consumer Product Safety Act, 15 U.S.C. 2051, section 2(b)(1).

agency and statutory provisions which create obstacles to the effective prevention of product risks.

Consumer Federation does not always agree that CPSC is acting in the best interest of consumers: indeed CPSC has denied several petitions CFA has filed to better protect the public and CFA has opposed numerous aspects of CPSC's rulemakings and inaction on other issues. However, CFA still believes that a stronger CPSC, one with more funds and more staff, can better serve the public than a less robust one struggling to re-set and limit its priorities. In addition, CFA has deep respect for CPSC staff: they are dedicated and hardworking and have worked diligently while weathering the storms of budget cuts and a lack of quorum.

While we are concerned about the role CPSC has played in protecting children from product hazards, as our country's gate keeper for unsafe products, CPSC saves $700 billion in societal costs each year.[2] We know from past experience, from survey data, and from consumers who contact us, that safety is an issue that consumers care deeply about and that CPSC is an agency that consumers support and depend upon to protect them and their families. However, there is much more this agency should do to protect our children.

[2] U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 72. On the web at http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf

II. What CPSC Needs to Better Protect Our Children

A. An Increased Budget

With jurisdiction over many different products, this small agency has a monstrous task. This challenge is heightened by the fact that, over the past two decades, CPSC has suffered the deepest cuts to its budget and staff of any health and safety agency.[3]

In 1974, when CPSC was created, the agency was appropriated $34.7 million and 786 FTEs. Now 32 years later, the agency's budget has not kept up with inflation, has not kept up with its deteriorating infrastructure, has not kept up with increasing data collection needs, has not kept up with the fast paced changes occurring in consumer product development, and has not kept pace with the vast increase in the number of consumer products on the market. CPSC's staff has suffered severe and repeated cuts during the last two decades, falling from a high of 978 employees in 1980 to just 401 for this next fiscal year. This is a loss of almost 60 percent.

The President's 2008 budget would fund only 401 full time employees ("FTE"), the fewest number of FTEs in the agency's over 30 year history, and provide only $63,250,000 to operate the agency. This is a reduction of 19 FTEs and a small increase of $880,000 from the 2007 appropriation. This increase does not provide for inflation, will not allow CPSC to maintain its current programming, and will not allow for CPSC to invest in its research, resources and infrastructure.

Funding for CPSC has remained essentially flat for the past two years, forcing staff decreases of 31 FTEs in 2006 and 20 FTEs in 2007. Since 2000, CPSC has lost 79 FTEs, a loss of 16 percent. This loss in staff is particularly significant because "CPSC is a staff intensive organization with nearly 90 percent of its recent funding absorbed by

[3] See Appendix 1, at the end of this document.

staff compensation and staff related space rental costs."[4] CPSC estimates that just to maintain its current staffing level of 420 FTEs, which already required limiting CPSC's programs, CPSC would need an additional $2,167,000. CPSC, like all Federal Agencies, is to increase costs for staff such as a projected 3 percent Federal pay raise, increased Federal Employee Retirement System contributions and two additional paid work days.

While every year an estimated 27,100 Americans die from consumer product related causes, and an additional 33.1 million suffer injuries related to consumer products under the jurisdiction of CPSC, this agency, with its reduced staff and inadequate funds, is limited in what it can do to protect consumers. "CPSC has maximized staff efficiencies and cannot absorb further reductions without having an impact on its product safety activities."[5] Due to these constraints, CPSC cannot even maintain its current level of safety programs, let alone invest in its infrastructure to improve its work in the future.

Because of this historically bleak resource picture, CFA is extremely concerned about the agency's ability to operate effectively to reduce consumer deaths and injuries from unsafe products. It is for this reason that CFA believes that two of the most important things that can be done to protect consumers, including children, from unsafe products are to assure that CPSC has sufficient funding and to increase oversight of CPSC. CPSC's current budget, staff, and equipment are stretched to the point of breaking. CPSC salaries and rent currently consume almost 90 percent of the agency's appropriation. The remaining 10 percent of the agency's budget pays for other functions (such as supplies, communications and utility charges, operation and maintenance of

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[4] U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page v. On the web at http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf
[5] U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page vi. On the web at http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf

facilities and equipment) that merely allow CPSC to keep its doors open for business each day.

B. Improved Authority to Implement Product Safety Standards and Testing

Consumers believe that when they see a product on the shelf it has been tested by the government or some other trustworthy entity to ensure that the product is safe. This is not the case. First, there are not necessarily safety standards for every product. Second, CPSC does not have pre-market jurisdiction of any of the products it regulates. CPSC does not enter manufacturing facilities and is hard pressed, due to its shrinking budget, to police the marketplace even after products are in the stream of commerce. CPSC must rely upon manufacturer assurances that their products comply with various voluntary and mandatory standards. Reliance upon these assurances has proven to be fatally flawed-placing children at risk. For example, CPSC relied upon assurances of magnet toy manufacturers that the toys they sold to the public after recalls would not pose the same hazards to children as the recalled toys. However, the same recalled toys continued to be sold without any changes to improve safety.

Section 7(b) of the Consumer Product Safety Act requires that the Commission "rely upon voluntary consumer product safety standards" rather than promulgate a mandatory safety standard when "compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards."[6] This requirement for reliance upon voluntary standards can act as a shield, preventing the agency from taking critical steps to initiate mandatory rulemaking proceedings. Effective voluntary standards have

[6] Consumer Product Safety Act, 15 U.S.C. 2056, section 7(b).

decreased consumer risk, such as those for baby walkers. However, it was actually the initiation of a mandatory rulemaking proceeding that led to the more stringent and ultimately effective voluntary standard.

In addition, CFA is concerned that the Commission does not police the market well enough to accurately ascertain whether a voluntary standard is preventing the intended harm. For example, a CPSC rulemaking for baby bath seats has essentially been tabled as a voluntary standard has been implemented. Unfortunately, the baby bath seats not meeting the new standard have never been recalled, thus they are still posing serious harm to babies. The bath seats meeting the new standard have been problematic: in July of 2005, CPSC and Dorel Juvenile Products issued a safety alert to consumers acknowledging that they had "received nine reports of breakage due to use of Tubside Bath Seats in non-traditional or sunken bathtubs and an additional 67 reports of breakage due to handling, assembly and unknown reasons."[7] The new bath seats also caused at least 9 deaths from May 2004 to May 2006. However, despite this information, CPSC has not taken broader action on baby bath seats.

To best protect consumers from product hazards, products should be required to be tested for safety -- including for compliance with existing mandatory and voluntary standards, if they exist -- before they can enter the stream of commerce, and potentially pose risks to children. This power would give CPSC proactive authority that it desperately needs. CFA supports H.R. 1698, *The Infant and Toddler Durable Product Safety Act*, introduced by Representative Schakowsky. This bill requires CPSC to issue mandatory safety standards for durable infant products and requires that these products be tested and certified for compliance by an independent third party before sale. This bill

[7]See Press Release: http://www.cpsc.gov/cpscpub/prerel/prhtml05/05219.html

would effectively and proactively protect consumers from purchasing potentially harmful products for their children.

C. Action Needed on Numerous Product Safety Issues

Due to limited resources and a statutory reliance on voluntary standards, the Commission has not issued mandatory standards for numerous products posing risks to consumers.

1. Furniture Tip-overs

An estimated 8,000 to 10,000 people are injured seriously enough to require emergency room treatment each year in the United States for injuries associated with the tip-over of furniture or appliances, resulting in an average of 6 deaths each year. The majority of these injuries and deaths are to children. These injuries and deaths frequently occur when children climb onto, fall against, or pull themselves up on such items as shelves, bookcases, dressers, bureaus, desks, chests, television stands, and television sets. There are currently no mandatory safety standards in place for such products. For just one electrical appliance, stoves, there have been over one hundred incidents of death or injury as a result of tip-overs. While a voluntary standard is in place which requires gas and electric ranges to remain stable while 250 pounds of force is applied for five minutes and which requires anti-tip brackets to be installed upon delivery, the anti-tip devices are rarely if ever installed. Consumers are unaware of this hidden hazard which, data shows, places children and the elderly especially at risk.

In the 109th Congress, Representative Schwartz introduced, HR. 1861, *The Katie Elise and Meghan Agnes Act*, which would require CPSC to promulgate consumer product safety standards applicable to any furniture or electronic appliance that the

Commission determines poses a substantial safety hazard due to tipping because of its design, height, weight, stability, or other features. The bill would also require the Commission to promulgate regulations mandating warning labels on the packaging of such items and on the packaging of furniture with drawers that pose a danger to children due to tipping. The bill would require the Commission, in promulgating safety standards under this Act, to take into consideration the intended uses of furniture and electronic appliances and the likelihood that children could climb on or tip the furniture. CFA supports this legislation and believes it will decrease the hazard posed by unstable furniture and appliances.

2. Pool Safety

CPSC no longer includes reducing child drowning deaths as one of its "results-oriented hazard reduction strategic goals." The Commission, in the 2008 Performance Budget document states, "We continue our work in reducing child drowning deaths at the annual project level including expanding our public information efforts. Staff, however, proposes that we no longer address this area at the level of a strategic goal because of resource limitations and the limited ability to develop further technical remedies to address the behavioral aspects of child drowning."[8] Drowning continues to be the second leading cause of accidental injury-related death among children ages one to fourteen and the leading cause of accidental injury-related death among children one to four. Thus, even though drowning remains a leading cause of death among children, the Commission can no longer prioritize its work on reducing child drowning as a result of reduced funding. Representative Wasserman Schultz has introduced H.R. 1721, the *Pool and Spa*

[8]U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 8. On the web at http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf

Safety Act, which seeks to increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems by establishing a swimming pool safety grant program administered by CPSC to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety. CFA supports the goal of this legislation.

3. All-Terrain Vehicles

One of CFA's priority issues before CPSC is all terrain vehicle safety. It is no secret that CFA is extremely dissatisfied with CPSC's current rulemaking on ATVs. Serious injuries requiring emergency room treatment increased to 136,700 in 2005. Since 2001, there has been a statistically significant 24 percent increase in serious injuries from ATVs. The estimated number of ATV-related fatalities increased to 767 in 2004. Children under 16 suffered 40,400 serious injuries in 2005. Since 2001, there has been a statistically significant increase of 18 percent in the number of children under 16 seriously injured by ATVs. Children made up 30 percent of all injuries. In 2005, ATVs killed at least 120 children younger than 16 accounting for 26 percent of all fatalities. Between 1985 and 2005, children under 16 accounted for 36 percent of all injuries and 31 percent of all deaths.

One of our biggest concerns with CPSC's proposed rule is that it will change the way ATVs are categorized. CPSC is seeking to change the way ATVs have been traditionally categorized—by engine size to a system based upon speed. Since the late 1980's, adult size ATVs have been defined as an ATV with an engine size of over 90cc's. CPSC now proposes to alter the age/size guidelines by creating a system that limits the maximum speeds of ATVs intended for children under the age of 16.

The Commission's rule proposes Teen ATVs, intended for children between 12-15 years old, with a maximum speed of 30 mph; Pre-teen ATVs, intended for children between 9-11 years old, with a maximum speed of 15 mph; and Junior ATVs, intended for children between 6-8 years old, with a maximum speed of 10 mph. We are not satisfied that the Commission has adequate evidence to support this rule. CPSC staff admitted that speed limiting devices upon which the above outlined categories depend, do not work consistently. This categorization fails to take weight of the ATV into consideration, which significantly impacts the consequence of a crash or tip-over. Further, we are vastly concerned that the Commission has neglected researching critical aspects of this issue, partly because it simply cannot afford to do so.

For example, 45 percent of ATV incidents involve an ATV tipping over, thus raising the issue of an ATVs inherent stability. However, CPSC has not conducted stability tests or research. When Commissioner Moore asked CPSC staff about this lack of information, CPSC staff responded, "CPSC staff has not had the resources to perform the necessary tests and evaluations to develop a comparative analysis of the current market of ATVs for steering, pitch stability, lateral stability, braking, and other handling features."[9]

This is unfathomable: those aspects of ATVs that are most involved in ATV incidents leading to death and injury are factors that CPSC staff are not studying. Failures of these systems are critical to ATV crashes and tip-overs. However, the Commission is moving forward on an ill advised rule without studying these issues due at least to a significant degree to a lack of resources. We fear that not only will this rule not

[9] CPSC Staff Response Regarding Follow Up Questions from Commissioner Moore after June 15, 2006, ATV Safety Briefing, July 11, 2006.

save lives, but that it may lead to younger children riding larger, faster and potentially more dangerous machines.

4. Lead in Children's Products

Shockingly and increasingly, lead has been found in children's products, including children's jewelry, lunch boxes, bibs, cribs and other products. CFA supports the CPSC's proposed ban on children's jewelry containing more than .06 percent by weight of lead, as a first step in reducing the risks of lead exposure to children. However, jewelry is just one route of lead exposure among many under the jurisdiction of CPSC. Serious, acute and irreversible harm can result to children as a result of exposure to lead. CPSC and Congress should do all it can to ensure that manufacturers find safer alternatives for lead in all consumer products, making children's products a priority. CPSC has been unable to effectively communicate, recall, and regulate lead in children's products because of limiting provisions in its authorizing statute. For example, in the recently publicized hazard of lead in children's bibs, while the state of Illinois conducted a recall of certain bibs sold by Walmart, CPSC did not conduct a recall and only warned parents about the potential hazard of lead in bibs without providing identifying information indicating which bibs were found to contain lead. Consumers need a vastly more effective regulatory system to protect their children from the hazards of lead exposure.

5. Yo Yo Water Balls

Yo yo water balls are long stretchy cords with a ball of the same material, at one end. As of November 2nd, 2006, the CPSC has received 409 reported injuries related to this toy, 294 of those injuries were classified as suffocation or strangulation. Australia,

France, the United Kingdom, Luxembourg, Brazil, and Canada have banned yo yo water balls. The state of Illinois also banned the sale of this toy in 2005. However, CPSC has taken no action to recall or ban these products. Rather, the Commission issued one warning to parents in September of 2003. CFA supports the ban of these products and supports Congress' role in removing these products from the stream of commerce and from the hands of children. While a voluntary standard has been written, which will significantly change the design of these products and reduce the harm they pose, the voluntary standard does not impact the millions of products already in consumer's hands. Further, it is not yet clear that all manufacturers and especially importers will comply with this voluntary standard. Last Congress, Representative Andrews introduced H.R. 3738 which directs CPSC to promulgate a rule to ban yo yo water balls as banned hazardous product. CFA supports this legislation.

D. Improve CPSC's Statutes

1. Recall Effectiveness

The ability of CPSC to conduct effective recalls of unsafe products is critical to protecting the public from unreasonable risks associated with consumer products. In 2001, CFA filed a petition with CPSC urging them, among other things, to issue a rule that would require that manufacturers (or distributors, retailers, or importers) of products intended for children to provide along with every product a Consumer Safety Registration Card that allows the purchaser to register information, through the mail or electronically. Such information will allow the manufacturer to contact the purchaser in the event of a recall or potential product safety hazard.

The Commission denied CFA's petition in March of 2003 and has not undertaken any concrete efforts to broadly increase recall effectiveness other than the creation of a web site dedicated to recalls. Unfortunately, the web site requires a consumer to take proactive steps to obtain recall information, even though research indicates that direct-to-consumer notification is the best method for informing consumers about recalls. Direct ways to inform consumers who purchased the recalled product exist and would be more effective than the current approach which relies upon the media to convey the news of the recall. CFA supports H.R. 1699, the *Danny Keysar Child Product Safety Notification Act,* which directs CPSC to require certain manufacturers to provide consumer product registration forms to facilitate recalls of durable infant and toddler products. This legislation mirrors the concept CFA proposed in its 2001 petition and CFA believes that the direct-to-consumer notification directed in this bill will significantly increase consumer awareness of product recalls.

Consumers who do not hear of product recalls are at greater risk of tragic consequences, including death or injury. By relying solely upon the media and manufacturers to broadly communicate notification of recalls to the public, CPSC and the companies involved are missing an opportunity to communicate with the most critical population--those who purchased the potentially dangerous product. Product registration cards or a similar electronic system would provide consumers the opportunity to send manufacturers their contact information enabling manufacturers to directly notify consumers about a product recall.

To improve recall effectiveness, CFA recommends that section 15 of the CPSA be amended to require manufacturers to provide a means of directly communicating

information of recalls to consumers through a registration card, electronically or by other means of technology. Manufacturers, retailers and importers should be required to report the existence of the recall to retailers and all commercial customers within 24 hours after issuing the recall or warning. All entities within the stream of commerce should be required to post the recall to web sites, if in existence, within 24 hours of issuance of recall. We suggest that manufacturers, retailers, distributors and importers be required to communicate notice of the recall with all known consumers. Retailers, after receiving notice of the recall, must remove the recalled product from their shelves and web site within three business days and retailers must post notice of the recall in their stores for 120 days after issuance of the recall.

2. Eliminate the Cap on Civil Penalties

CFA suggests that Congress eliminate the cap on the amount of civil penalties that CPSC can assess, as spelled out in section 20 (a) of the Consumer Product Safety Act (CPSA), against an entity in **knowing** violation of CPSC's statutes. The current civil penalty is capped at $7,000 for each violation up to $1.83 million. A "knowing violation" occurs when the manufacturer, distributor or retailer has actual knowledge or is presumed to have 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. Knowing violations often involve a company's awareness of serious injury or death associated with their product. Eliminating the cap will encourage manufacturers to recall products faster and comply with CPSC's statutes in a more aggressive way. Importantly, the elimination of the cap will act as a deterrent to non-

compliance with CPSC's regulations. Eliminating the cap will also strengthen CPSC's bargaining power when negotiating with many companies to take a particular action. CFA supports H.R. 1698, the *Infant and Toddler Durable Product Safety Act*, introduced by Representative Schakowsky, which eliminates the cap on civil penalties for infant and durable products.

3. Eliminate Section 6(b) of the CPSA

CFA urges Congress to eliminate section 6(b) of the CPSA. This section of the Act prohibits CPSC, at the insistence of industry, from communicating safety information to the public. This provision, to which no other health and safety regulatory agency must adhere, requires that CPSC must check with the relevant industry before it can disclose the information to the public. It serves to hold CPSC captive to the very industry it regulates. If the industry denies access to the information, CPSC must rely upon the industry's response and may just drop the issue, thus denying the information to consumers. This has the effect of delaying or denying access of important information to consumers.

4. Changes to Section 15(b) of the Consumer Product Safety Act

On July 13, 2006, the Commission issued Final Interpretative Guidance on section 15(b) of the Consumer Product Safety Act. Section 15(b) requires that every manufacturer, distributor, or retailer immediately inform the CPSC if it "obtains information that reasonably supports the conclusion that its product either: (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard . . . ; (2) contains a defect which could create a substantial

product hazard . . .; or (3) creates an unreasonable risk of serious injury or death.[10] The CPSC guidance purported to clarify the current law by adding factors to be considered when evaluating the duty to report: the definition of defect will be amended to include the role of consumer misuse, adequacy of warnings, and obviousness of the risk; the number of defective products on the market will be considered; and compliance with product safety standards will be evaluated. We fear that these factors could cloud the interpretation of the law and the obligation to report under this section.

We are also troubled that these proposed changes will shift the burden of weighing relevant factors in reporting under section 15(b) from the CPSC to businesses as well as create a safe harbor for non-reporting. Further, we are alarmed about reliance on factors such as the number of defective products in use as well as compliance with product safety standards to determine whether hazards are reportable. We fear that this guidance may jeopardize the Commission's ability to receive important product safety information that is critical for CPSC's consumer protection function.

5. Restore CPSC Authority over Fixed-site Amusement Parks

CFA encourages Congress to restore CPSC's authority over fixed-site amusement parks. According to the CPSC, between 1999 and 2003, serious injuries on theme park rides soared 96 percent. Federal oversight is crucial to the prevention of any future deaths and injuries associated with fixed-site amusement parks due to the vast variation in state laws and the absence of any regulation in some states. CPSC has illustrated its ability to identify and prevent injuries from many consumer products, including mobile amusement park rides. CPSC should be granted the same scope of authority to protect against unreasonable risks of harm on fixed-site rides that it currently retains for carnival

[10] 15 U.S.C. §2064(b)(1), (b)(2), and (b)(3).

rides that move from site to site. However, with this additional authority, CPSC should be authorized more money to take on this important role. CFA supports the National Amusement Park Ride Safety Act, introduced by Congressman Markey, which will restore fixed-site amusement park authority to CPSC.

6. Toys on the Internet

We ask Congress to require businesses selling toys on the Internet to provide on their website the same cautionary labeling that is required on toy packaging. Currently, Section 24 of the Federal Hazardous Substances Act (FHSA) requires cautionary labeling on small balls, marbles and toys that contain small parts for children three years of age and younger. This labeling must be apparent to consumers at the point of purchase so consumers are able to make informed decisions about potential safety hazards associated with the toys. Online retailers should be required to post cautionary warnings on their website so that consumers could be aware of the potential safety issues before actually purchasing the product. We support H.R. 1893, the *Choking Hazard Awareness* Act, introduced by Representative Lowey which would require the same warning labels on toy packaging to appear online and in catalogs because we believe that consumers should see critical safety warnings no matter where they purchase toys.

III. Changing Consumer Product Market -- New Products and More Imports

Sophisticated, high-tech products, such as Segway devices, which CPSC engineers may have never seen, much less have expertise with, pose particularly resource intensive challenges. Similarly, products such as computer lithium batteries that have recently been subject to recall as well as products involving nanotechnology challenge the Commission's limited resources. For the CPSC to live up to its safety mandate, it

must be able to keep pace with the ever-changing development of technology. The 2008 Performance Budget does not provide funds or an opportunity for CPSC staff to adequately study these and other emerging technologies in the consumer product market.

Another aspect of the changing consumer product market is that every year, more and more consumer products are imported into the United States. According to CPSC, two-thirds of all recalls involve products manufactured overseas. CPSC has two programs dealing specifically with this issue. The first is its program with the U.S. Customs and Border Protection. In 2006, CPSC field staff and U.S. Customs staff prevented about 2.9 million non-compliant cigarette lighters and fireworks from entering the United States[11] and also prevented 434,000 units of toys and other children's products from entering the country.[12] The 2008 Performance Budget includes a goal of import surveillance for one product for which fire safety standards are in effect and one product for which safety standards are in effect. These are limited goals due to limited resources. Further, the customs program has many other competing homeland security priorities, which limit its product safety surveillance.

The second is the relatively new Office of International Programs and Government Affairs which seeks to have signed Memorandums of Understanding with seventeen countries by the end of 2008. These memoranda establish closer working relationships and set up frameworks for exchanging safety information with CPSC's counterparts in other countries. CFA hopes that these memoranda lead to concrete efforts to prevent unsafe products from entering the United States and we believe that to achieve

[11] U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 21. On the web at http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf
[12] U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 36. On the web at http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf

this goal, CPSC must work with other countries to prohibit the export of products that do not meet voluntary or mandatory safety guidelines. Specifically, compliance with safety standards should be made a necessary condition of receiving an export license for certain products which have had pervasive safety problems. Further, products should be required to be tested and certified by an independent third party laboratory to determine if products meet safety standards. If they do not, products cannot be imported in to the United States. This regulation would protect the marketplace before products enter the stream of commerce. Unfortunately, many unsafe products are being imported from other counties and much more must be done to protect American consumers and children specifically. Ultimately, the responsibility falls on the manufacturers, many of which are based in the United States, which must be more fully engaged in policing their products.

IV. Conclusion

In conclusion, this Subcommittee must make sure that the federal government lives up to the commitment it made to protect consumers from product-related deaths and injuries when it created the Consumer Product Safety Commission. CFA urges this Subcommittee to appropriate more funds to the Consumer Product Safety Commission so that the Commission can grow to incorporate a changing and more complex marketplace, increase CPSC oversight, pass product safety legislation for numerous potentially unsafe products and pass amendments strengthening CPSC's authorizing statutes. The safety of our children depends upon it. Thank you.

Appendix 1

CPSC Resources

Year	Budget Authority	FTEs[13]
1974	$34,776,000	786
1975	$36,954,000	890
1976	$39,564,000	890
1977	$39,759,000	914
1978	$40,461,000	900
1979	$42,940,000	881
1980	$41,350,000	978
1981	$42,140,000	891
1982	$32,164,000	649
1983	$34,038,000	636
1984	$35,250,000	595
1985	$36,500,000	587
1986	$34,452,000	568
1987	$34,600,000	527
1988	$32,696,000	513
1989	$34,500,000	529
1990	$35,147,000	526
1991	$37,109,000	514
1992	$40,200,000	515
1993	$48,400,000	515
1994	$42,286,000	518
1995	$42,431,000	487
1996	$39,947,000	487
1997	$42,500,000	480
1998	$45,000,000	480
1999	$46,949,000	480
2000	$48,814,000	480
2001	$52,384,000	480
2002	$55,200,000	480
2003	$56,767,000	471
2004	$59,604,000	471
2005	$62,149,000	471
2006	$62,370,000	446
2007	$62,370,000	420
2008 (proposed)	$63,250,000	401

[13] This column represents the staffing ceiling established for the agency in each year. The term FTE or full time employee has been used since 1980. From 1974-1979 the figures in this column represent positions or people. One FTE is equivalent to 2080 hours per year.

Mr. RUSH. Thank you. Our next witness is Mr. Frederick Locker. He is with the law firm of Locker, Brainin and Greenberg, from New York.

STATEMENT OF FREDERICK B. LOCKER, GENERAL COUNSEL, TOY INDUSTRY ASSOCIATION; LOCKER, BRAININ AND GREENBERG

Mr. LOCKER. Yes sir, we act as general counsel to the Toy Industry Association. I want to thank you, Mr. Chairman and members of the committee, for allowing us to appear today and to talk about a longstanding commitment to children's product safety.

We certainly all shudder at the tragic loss of any child's life. Whether it is a child involved by accident or some other problem, we are just saddened by that loss. We are in a business to provide fun and joy and pleasure and learning to children. They are our most valuable resource. They are our most valuable customer.

In connection with the U.S. Consumer Product Safety Commission and the important subject of children's product safety, we want to be clear that we have acted for decades to promote the development of significant children's product safety standards. This is done under the auspices of ASTM, ANC and ISO. These are not just consensus standards that govern children's products. The regulation of children's products accounts for approximately 40 percent of all the existing regulations, or perhaps more, at the CPSC. There are a tremendous breadth and scope of mandatory toy safety regulations and children product safety regulations. None has been more effective, for example, than the small parts regulation which has prevented death from choking and aspiration or ingestion from millions of kids. It has been a remarkably effective standard. It is not voluntary. It is mandatory.

We support the strict enforcement of mandatory regulations against any importer that violates the CPSC regulations. Now, CPSC activity has certainly increased with fewer resources. During the past decade they have conducted more than 5,000 recalls, and they have needed to resort to litigation rarely. And let me explain something about that. One of the reasons is it is not a question of people being dragged, kicking and screaming; it is a question of people, particularly in the children's product industry, want to do the right thing. If you have a reputation for selling an unsafe product in this business, you are soon out of business.

It is in everyone's economic motive and, in particular, American manufacturers who produce these products, to ensure the safety of children. But, nevertheless, when we find mandatory regulations lacking or in need of quick and swift action we take action. That is why we have worked to develop these many voluntary standards that deal with children's products, whether they are nursery products or toys or a whole range of products.

And encompassing the standard, as perhaps Mr. Thomas will touch on, you will find that there is an enormous complexity of issues that are dealt with in a rather rapid length of time. This can be accomplished quickly because CAST in process is a living, breathing, consensus process. It forces us to reevaluate the assumptions upon which those safety regulations are based, over and over, and adjust them accordingly.

CPSC is completing over 214 voluntary standards, while issuing 235 mandatory standards, while shrinking resources and using the leverage collaboration of their staff over the past decade.

Now, our ASTM standard, the standard consumer safety specification on toy safety, is clearly recognized globally. It was the basis for the European regulations of toy safety. It is the basis for the International Standard Organization 8124 which is a global toy standard. It is increasingly being used by every country in the world, including China. We work to develop these standards because children, as I have noted, are a priority.

Now, keep in mind when analyzing all this recall data, what are we talking about? Recalls involving children's products actually account for the vast majority of product recalls conducted in cooperation with the Commission. As I have mentioned before—half of CPSC's regulations already specifically directed at children's products and the heightened awareness of obligations to children, companies are responsible for a higher percentage of recalls and corrective actions undertaken, almost one-third.

Of course, there are still occasions where the Commission may seek to act to remove unsafe products from the marketplace and set standards where those private standards either do not exist or are clearly inadequate. We have touched on that in connection with section 7 of the act. I want to be very clear: That act does not act as a bar to the regulation of products by the CPSC. CPSC has only formally recognized voluntary standards on two occasions. All those other 214 standards are there and subject to further enforcement or mandatory imposition of regulation, if required. And the key word is "if required." it is important for them to monitor the marketplace to make sure the standards are in conformance, and they have been doing this.

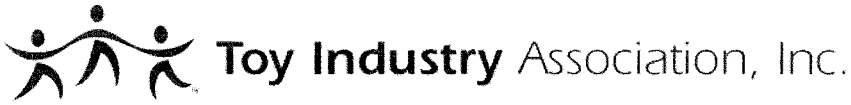
So we know, for example, that the voluntary standard dealing with cribs has resulted in 89 percent reduction of fatalities since its inception. For walkers it is 84 percent, and it has been lauded by the American Academy of Pediatrics as a model standard.

Mr. RUSH. Your time has expired.

Mr. LOCKER. I just want to make a few recommendations, however. What can the CPSC do better? What does it need to do better? Retain experienced personnel and prevent the so-called brain-drain to analyze those emerging hazards that may be difficult to discern; prioritize risks for children; work to develop standards, consensus, if effective, or mandatory to address such risks; create information and education campaigns that reinforce safety messaging to the public; recognizing changing demographics of our society, including dealing with pool safety and drowning risks; support rulemaking on lead in children's metal jewelry, ATVs, upholstered furniture; continue to monitor effective compliance with——

Mr. RUSH. Your time has expired. Thank you very much.

[The prepared statement of Mr. Locker follows:]



TESTIMONY OF

FREDERICK LOCKER, ESQ.

Before the

SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER PROTECTION
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

PROTECTING OUR CHILDREN: CURRENT ISSUES IN CHILDREN'S PRODUCT SAFETY

May 15, 2007

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Chairman Rush and members of the Subcommittee, thank you for the opportunity to provide comments about the important subject of children's product safety. I am Frederick Locker, General Counsel to the Toy Industry Association (TIA). There is no more important theme than protecting our children. As much work as we all do, there is always room for improvement. We may not always agree with everyone appearing before you today, but we always stand willing and committed to work for the betterment of children's lives.

TIA

TIA is a not-for-profit trade association composed of more than five hundred (500) members, including manufacturers whose aggregate sales at the retail level exceed $22 billion annually (regular members), as well as product design firms, toy testing labs and safety consultants, and others (associate members). The U.S. Toy Industry leads the world in the innovative, cost-effective design and sale of toy products. We are in the business of developing fun, innovative products with which children can play and learn. TIA's primary office is located in New York City. TIA members account for 85% of domestic toy sales and, global in character, approximately 50% of all toys sold worldwide. TIA emphasizes the importance play has in all children's' lives. Not only is it fun and educational, but a necessary part of growing up. Play is the way children learn. However, to ensure that all children have a positive play experience, TIA's primary concern is that play is safe. Together with the U.S. government, TIA and its members have led the world in the development of toy safety standards by investing heavily in child development research, dynamic safety testing, quality assurance testing, risk analysis and basic anthropometric studies of children. Moreover, since the 1930's, TIA has established a tradition of working with others to ensure the manufacture and distribution of safe toys.

TIA is proud of its record of significant accomplishments in the area of toy safety over many decades through relationships with the National Safety Council (NSC), National Bureau of Standards (NBS), American National Standards Institute (ANSI), ASTM International (formerly American Society for Testing and Materials, ASTM) and International Organization for Standardization (ISO). We have also worked in collaboration with many charities and consumer organizations to promote the well-being of children. This includes working with the International Consumer Product Health and Safety Organization (ICPHSO), International SAFE

KIDS, and others to advocate the need for product safety initiatives in both the U.S. and internationally.

This commitment to toy safety continues today. Comprehensive and accurate information is available any time of day, through a specially-designed area on the TIA website: www.toy-tia.org/consumer/parents/safety/4toysafety.html.

The ASTM Consumer Safety Specification on Toy Safety is Globally Preeminent

Under the auspices of NBS, TIA led in the development of a voluntary safety standard for all toys in 1976, and then, in 1986 it was revised and designed under ASTM. The current standard is the *ASTM F963-07 Consumer Safety Specification on Toy Safety*, was just published at the beginning of this month. All of the federal toy safety regulations, which appear in the Code of Federal Regulations Title 16-Commercial Practices, are referenced in ASTM F963. As you've heard today, ASTM is one of the largest voluntary standards development organizations in the world. The standards are considered extensive and extraordinarily effective. They were the model for European and global toy safety standards.

Almost all toy packages include a suggested age range for use. A child's actual age, physical size, skill level and maturity, as well as safety, are all taken into consideration when developing age labels for different types of toys. To help manufacturers reach a greater degree of consistency in age grading practices and age labeling toy packages, CPSC publishes a manufacturers' guide for age labeling toys. Since children develop at different rates and vary in their interests and skills, age labeling on packages is intended to give the consumer a general guideline on which to rely to base toy selections. Typical designations might be "Recommended for children from eighteen months to three years" or "Not recommended for children under three years of age." Additional specific cautionary labeling requirements specified by ASTM F963 or by CPSC regulations cover products such as crib gyms, electrically operated toys, chemistry sets, swim-aids and such toy features as functional points and edges (i.e. paper doll scissors and toy sewing kit needles). The standard also contains cautionary labeling requirements, as mandated by the U.S. Consumer Safety Protection Act (CSPA, 1995), relating to potential choking hazards to children under three years of age from toys or games *intended* for children ages three through under six years, which contain a small part, any small ball, marble or balloon. TIA supported

this 1994 legislation. Regardless of labeling, however, there is simply no substitute, at any age, for appropriate adult supervision.

If a manufacturer misrepresents compliance with ASTM F963, the company is subject to prosecution under Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive methods of competition.

How the Industry Tests Its Toys for Safety

There are innumerable specialized tests and design specifications included in a broad scheme of mandatory federal regulations and ASTM F963 that apply to toy products. These help reduce or eliminate potential hazards involving toys during normal use or reasonably foreseeable abuse conditions. These include, but are not limited to, testing requirements addressing mechanical, electrical, thermal and chemical hazards. For example, testing involves simulated use-and-abuse tests, testing for accessible sharp points, edges, small parts, projectiles, heavy metals in paint and similar surface coatings, flammability, toxicity, and even acoustical restrictions on noise levels. Many manufacturers, especially larger ones, have their own in-house testing laboratories sophisticated enough to ensure that products meet standards for safety. Those without safety facilities on site use independent testing laboratories. Manufacturers producing toys overseas test them before shipping, and then sample production lots again once they arrive in the United States. Major retailers duplicate this process on product orders. TIA and its members are vitally interested in developing and maintaining reputations as "safety conscious" companies. Similar to the other witnesses on this panel, we support the important and essential mission of the Commission.

CPSC Performs a Vital Function

CPSC's mission is to protect children and families against an unreasonable risk of injury and death from more than 15,000 types of consumer products from a wide range of product hazards. Their work is vital in that it addresses consumer product hazards through a framework of mandatory product safety standards; engagement in the voluntary or consensus standard-setting process; compilation of consumer injury data; issuance of safety guidelines; implementation of information and education programs in an effort to proactively avoid injuries;

and product recalls and corrective actions when necessary. The agency is operating on a relatively modest budget, with a request of $63,250,000 for fiscal year 2008. We believe that their budget request should be granted with increases earmarked for retention of staff, upgrades to their testing laboratory and support of increased coordination with other countries regarding harmonization of standards with better inspection and enforcement coordination.

With respect to reauthorization of the Commission, we ask this Committee to act thoughtfully in any review of a regulatory structure that has served the American public well for the more than 30 years. U.S. manufacturers in the consumer product industry presently face increasing global competition that is more intense than ever before. In such an economic environment, U.S. manufacturers should not be disadvantaged by an unnecessarily intrusive and inefficient domestic regulatory regime.[1]

CPSC Is Working With Limited Resources

The Commission works well with and understands the needs of manufacturers, retailers and the consumers. Whenever appropriate, they have encouraged voluntary collaborative actions among stakeholders to address safety requirements. During the past decade, they have worked cooperatively with industry to conduct more than 5,000 recalls and needed to resort to litigation to compel recalls only several times. In 2006, CPSC completed 471 product recalls involving nearly 124 million product units that either violated mandatory standards or presented a potential risk of injury to the public and negotiated civil penalties of approximately $2.3 million. In addition, the CPSC compliance staff has continued to refine its Retailer Reporting Model implemented in 2005 and used by two of the nation's largest retailers. This provides additional trending complaint data for evaluation by the staff, which supplements manufacturer and consumer reporting. With shrinking resources, leveraged collaborative action is preferable to

[1] It is interesting to note that the European Union recently announced that it wants to boost trade between EU countries by making it more difficult for member states to block imports of specific products on the basis that they do not meet a national product safety standard. The EU wants member states to bear the cost and burden of demonstrating that a product is unsafe if they wish to remove it from their market. *Procedures Relating to the Application of Certain National Technical Rules to Products Lawfully Marketed in Another Member State and Repealing Decision 3052/95/EC.*

mandatory regulations provided it can be implemented in a timely fashion and adequately addresses an unreasonable risk of injury.[2]

Today's U.S. economy is consumer-driven. An enormous number and variety of consumer products are designed, manufactured, imported and sold in the United States. With that in mind, industry, standards organizations and internal safety requirements developed in cooperation with manufacturers result in some of the best hazard-based standards that ensure that American consumers may be comfortably secure in the safe use of their consumer products. Many companies also increasingly recognize the value of taking responsible corrective action to address patterns of injuries or misuse that may indicate a problem with their product. This accounts for the vast majority of product recalls conducted in cooperation with the Commission. Of course, there are still occasions where the Commission justifiably acts to remove unsafe products from the marketplace and to set standards where private standards either do not exist or are clearly inadequate. Consumer product manufacturers are committed to working with the Commission to achieve these objectives. We have consistently supported Commission efforts, along with the U.S. Customs Service, to monitor imported products to ensure that they meet mandatory federal safety standards. We recognize that this has been an efficient leveraging of resources to enhance enforcement related to product imports. In addition, we note that the Commission has played an increasingly significant role in educating consumers about safety concerns and practices. We note that they employ capable high-level and well-experienced Epidemiologists, Toxicologists, Physiologists, Chemists, Engineers, Statisticians, and Economists to inform their decision-making. They have performed well in OMB assessments of their overall regulatory policies.

CPSC Needs To Allocate Resources Based Upon Demonstrable Data

In spite of remarkable progress that dramatically improved the length and quality of children's lives in the U.S. over the past century, today's children still face significant, real risks.

[2] An excellent example is their work with industry to revise the ASTM consensus baby walker safety standard to address injuries from stair falls. New walkers with safety features are now on the market. There has been a decrease in injuries of over 84 percent since 1995, likely due in large part to the effectiveness of such standard requirements. The commission projected societal costs decreased by about $600 million annually from this one action. Similarly, there was an 89 percent reduction in crib-related deaths from an estimated 200 in 1973 and an 82 percent reduction in poisoning deaths of children younger than 5 from drugs and household chemicals from 216 in 1972.

For example, often-avoidable unintentional injuries take the lives of more than 1 out of every 10,000 children in the U.S. annually. That may not sound like a lot, but this includes over 150 infants that die before their first birthday in motor vehicle accidents and nearly 50 who drown in bathtubs.

Estimated Annual Mortality Risk for Children under Age 10
(Number of deaths per million children)[3]

Motor vehicles	46	Guns	5
Drowning	20	Poisoning	2
Suffocation	17	Bicycles	2
Fire	16	Medical care	2

In addition, statistics that show other significant risks to children include[4]:

- 16% of American children under the age of 18 live in families with incomes below the poverty level
- 4% live in households experiencing food insecurity with moderate to severe hunger
- 69% live in two-parent families, down from 77% in 1980
- Birth rate for females (age 15-17) around 26 per 1000
- Substance use rates are high
  - 21% of 12th graders smoke daily
  - 30% of 12th graders have at least 5 drinks in a row at least once in the previous 2 weeks
  - 25% of 12th graders report illicit drug usage in past 30 days
- 14% of young adults age 18-24 have not completed high school
  8% of youths age 16-19 are not in school or working

Further, as you can see, the risk of death to children from toys does not figure prominently in much of the data. The actual rates for toys would be about the same as the rate of suicide for children under 10, which is extremely rare! Of course Accidents still occur. We are committed to action when patterns of hazards emerge. The fact that the recently published ASTM-F963-07 incorporates new provisions intended to address unreasonable risks from injury with certain *magnetic toys*, *yo-yo waterballs* and *steering wheel openings*, clearly demonstrates this.

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[3] Harvard University School of Public Health, Kids Risk Symposium, March 26-27, 2003 (Kimberly Thompson, M.S. SCP, Assoc. Professor of Risk Analysis and Decision Science, Children's Hospital Boston, Harvard Medical School Co-Founder/Director of Research Center on Media and Child Health; Director HSPH Kids Risk Project.

[4] Based on 1997 data from: (1) the National Center for Injury Prevention & Control, Centers for Disease Control and Prevention and population estimates from Statistical Abstract of the United States for 1997.

Compare the above childhood risks with the handful of "toy-associated" deaths per year for children from birth to approximately age 13 (primarily balloons and ride-on toys like scooters), or to CPSC's own annual report that indicates that of fifteen commonly used household products, toys had among the lowest number of incidences of injuries and deaths. Although there are risks associated with some toys, they are clearly very small by comparison. We recognize that media attention continues to focus on the small risks associated with toys while some very big risks remain underappreciated and unaddressed. In a world where perception is reality, where misinformation often drives perception, and where new, scary and uncertain hazards receive widespread attention, it is no wonder that policy makers and parents lack context for understanding and managing children's risks. Unfortunately, the net result is that we often collectively waste scarce financial resources at the expense of allocating them efficiently to make children's lives measurably safer. Further, this perpetuates a lack of coordination between groups that are all arguably committed to helping children; focuses on individual issues and agendas instead of children themselves; and competition rather than cooperation for the resources to truly protect children.

Along those lines, we believe that there are ways to make the Commission more effective and at the same time more efficient. Allow me to share a few proposals on ways the Commission can increase its effectiveness in protecting consumers while minimizing burdens on the manufacturing sector of this country.

RECOMMENDATIONS

1. Collaborative Information and Education Programs

First, we support dynamic new partnerships between stakeholders and the Commission to promote safety and safe consumer practices. Consumer information and education does not substitute for the essential responsibility of manufacturers to provide safe products, but it can help with a large percentage of accidents due to improper or irresponsible conduct or lack of

supervision of minors. The Commission is fully authorized to embark on such programs, but encouragement from Congress should be provided.[5]

2. Continued Involvement in Consensus Safety Standards and Activities

Second, we are supportive of the Commission's involvement in private standards activities as authorized in the current statute. These standards are the bulwark of our national and even international safety system, and the Commission plays an important role in providing comments and proposals.[6] However, we believe the Commission needs to better manage and supervise its internal process, particularly staff input to standards organizations, to ensure an opportunity for public comment and to prevent proposals which lack technical merit or otherwise cannot be justified as federal standards. This is why we support the Commission's stated strategic goal to improve the quality of CPSC's data collection through 2009 by improving the accuracy, consistency and completeness of the data. For an agency such as the CPSC, it is essential to maintain and use accurate data as a valuable tool to allocate staff time and resources to address emerging real world hazards.

3. Continued Efforts to Engage and Educate Small Manufacturers

Third, there is a need for better guidance and education from the Commission on the implementation of the Section 15 Substantial Product Hazard Reporting provisions. Manufacturers with defective products that could create substantial product hazards are obliged to report to the Commission and, if needed, to take corrective action including recalls. However, the law and implementing regulations are vague and ambiguous. It is difficult for manufacturers,

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5 CPSC has been increasingly effective at using electronic media and websites. The creation of Hwww.recalls.govH and enhancements to their website has resulted in a rapid growth from 200,000 visits in 1997 to what is expected to be almost 25 million visits by the end of the year. Product safety information is increasingly available in Spanish and other languages. In addition, outreach activities such as the Neighborhood Safety Network; collaborative efforts with FEMA and public information education initiatives with NGOs and industries have resulted in increasingly effective communication about fire and carbon monoxide hazards, disaster preparedness, hazards associated with recreational vehicles, proactive holiday safety messaging, poison prevention, pool drowning risks and back to school safety programs.

6 CPSC has worked with stakeholders to develop effective consensus standards completing approximately 10 times as many voluntary standards as mandatory standards (CPSC assisted in completing and developing 352 voluntary safety standards while issuing 36 mandatory standards from 1990 through 2006).

especially small businesses, to determine when reporting and corrective action is necessary. Likewise, it is difficult for them to comprehend how the penalty for the failure to report in a timely fashion is justified by the agency. We support the Commission's efforts to clarify guidance on reporting and penalty computation by issuance of guidelines, which were subject to prior publication, comment and review prior to adoption.[7]

4. A Strong Role in Setting and Enforcing Safety Standards in a Global Economy

Fourth, in a global economy, we note the importance of the agency's international engagement to ensure greater import compliance with U.S. safety standards and harmonization of standards to promote export opportunities for American businesses and the elimination of non-tariff trade barriers. CPSC has entered into Memorandums of Understanding (MOU) with a number of foreign governments to provide for a greater exchange of information regarding consumer product safety. We note by the end of 2008, CPSC expects to have MOUs with 17 countries. These activities are becoming increasingly important in helping to ensure consistent hazard-based, harmonized global safety standards.

5. Existing Regulatory Framework is Effective, But More Resources are Needed

Finally, we believe that the existing authority granted to the Commission under the Consumer Product Safety Act and related Acts, together with existing implementing regulations, are sufficient for the CPSC to execute its mission in an effective manner. The CPSC does not lack the requisite authority to implement fully its congressional mandate "to protect the public against unreasonable risks of injury associated with consumer products." However, it requires greater resources to implement such authority.

Thank you for providing me the opportunity to testify. The Commission is an important agency and we fully support its mission. It can and should, have the funding and resources it needs to effectively function and we look forward to working with the Commission and the Committee to this end.

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[7] Federal Register, Vol. 71, No. 142, pages 42028-42031 and proposed interpretive rule, Federal Register, Vol. 71, No. 133, pages 39248-39249

Mr. RUSH. The Chair now recognizes Dr. Marla Felcher. She is an adjunct lecturer at the Kennedy School of Technology at the Harvard University, and she is the author of a book, "It Is No Accident How Corporations Sell Dangerous Baby's Products."

Welcome to the committee. You have 5 minutes, please.

STATEMENT OF MARLA FELCHER, ADJUNCT LECTURER, PUBLIC POLICY, KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Ms. FELCHER. Good morning. I guess I should say "good afternoon" by now. I would like to thank you for inviting me to participate in this important hearing. Most of all, I would like to thank you for even having this hearing.

I have been working in this area, product safety, for over 8 years, and for the first time I am hopeful that we are going to move beyond talking and finally act.

I would like to start by making a few comments about how I got interested in this topic. I worked for most of my career in marketing for Gillette and Talbots, the retailer; as a marketing consultant for Nabisco, M&M, Mars, Ben & Jerry's, and other companies that make really good things to eat. And I also worked as a marketing professor at Northwestern University.

I have an M.B.A. and I have a Ph.D. in marketing, yet the first time I ever heard about product recalls was when my friend's son Danny Keyser was killed by a recalled portable crib in 1998. Watching my friends bury their 16-month-old son, I vowed to learn how watching the child of two safety-vigilant University of Chicago professors could have been killed by a crib that had been recalled 5 years ago. This is how I learned about CPSC, and this is how I got involved in this work.

I would like to spend what brief time I have today talking about what I believe are the two most insidious problems faced by the Agency.

Number 1, companies that flout the Agency's hazard self-report rule which is section 15(b) and section 6(b) censorship.

I will start with a story that is true. I have changed the names of the victims. One October night in 1998, Shannon Campbell was awakened at 2 a.m. by the screams of her children, 13-year-old Sarah and 10-year-old Max. Shannon jumped out of bed, opened her bedroom door, and ran into a thick wall of black smoke. In a desperate attempt to flush the house with fresh air, she ran back into her bedroom and opened a second story window. Then she jumped. Unable to stand after she broke her leg, the 31-year-old mother crawled on her hands and her knees to a neighbor's house. She banged on the front door and when no one answered, she kept going, crawling down the driveway into a cul-de-sac. She collapsed on her back and screamed until someone heard her and called the police. By the time the fire department arrived, plumes of smoke were spewing from the house's windows. The firefighters crashed through the locked front door and made their way to her children's bedrooms. There they found Max lying on his back in bed, entangled in the bedding. Sarah was on the bed with her brother, curled into a fetal position. Both children were dead. A family dog lay at the foot of the bed, also dead. Shannon's husband Jack was out of

the country at the time on a U.S. military mission. When he returned home, his children were dead his wife was in the hospital. His home had been destroyed. A few days later a fire department investigator told Jack that the fire had been caused by the family's 3-year-old big screen television. Engineers working for the company had discovered a design flaw in the TV, a flaw that created the potential for the sets to burn, 6 months before Max and Sarah were killed. But there was no way the parents could have known this.

The morning after the fire, the TV manufacturer safety officer flew to Washington to meet with CPSC about a recall. The safety officer, however, did not even know about the fire that had occurred the night before. What had prompted the trip was a call he had received from a North Carolina grandmother who had seen her TV go up in flames while she was babysitting for her granddaughter. The grandmother's complaint had not been the first. Reports of burning televisions had been landing on this safety officer's desk for years. Dozens of similar sets had smoked or "charred" which is the word the company prefers to use, or burst into flames.

Sears, Allstate Insurance, Rent a Center, and multiple homeowners have filed claims with the company. Two TVs have even caught fire on retailers' showroom floors.

Now, I have worked in marketing for most of my life and I can tell you, that is not a good sales strategy. Section 16(b) of the Consumer Product Safety Act required the safety officer to notify CPSC within 24 hours of learning of a product defect that posed a substantial hazard or created an unreasonable risk of injury or death.

The documents that I have uncovered suggest that he flouted this rule. The manufacturer agreed to recall the sets with CPSC, but it did not agree to publicize the recall. Instead, the safety officer promised CPSC staff he would mail safety notifications to everyone who owned the TV.

It will come as no surprise that the safety notification did not reach all TV owners. They kept burning, and CPSC eventually learned about at least 45 more burning sets.

In 2003, 5 years after Sarah and Max were killed, CPSC recalled the sets for a second time. This time CPSC and the manufacturer issued a press release. It read, I quote: No injuries have been reported.

In 2004 I got a grant from the Fund for Investigative Journalism to report on this story. I filed a Freedom of Information Act request with CPSC asking for documents related to the recalled sets. What did I get back? Nothing. Request denied. And what happened when I called CPSC last year in 2006 and asked the public affairs officer why the recalled press release said "no injuries have been reported," a statement that officially denied that Sarah and Max had been killed? He told me to file a request for an answer. What happened when I did? Request denied. So was my appeal.

So what I would like to leave you with today is the knowledge that for every Chicago Tribune story like the one on magnets that gets written, there are dozens, perhaps hundreds, that never get written. This is the legacy of section 6(b). Thank you.

[The prepared statement of Maria Felcher follows:]

E. Marla Felcher, Ph.D.
Kennedy School of Government,
Harvard University

Testimony to be presented May 15, 2007
House Subcommittee on Commerce, Trade and Consumer Protection
"Protecting our Children: Current Issues in Children's Product Safety"

Good morning. I'd like to thank the committee for inviting me to participate in this important hearing. Most of all, I'd like to thank you for holding this hearing. I've been working in the area of product safety for eight years, and for the first time, I am hopeful that we will move beyond talking about the challenges we face in children's product safety, and finally act.

I'd like to start by making a few comments about how I got interested in this topic. I worked for most of my career in marketing, for Gillette and Talbots, as a consultant to Nabisco, M&M Mars, Ben & Jerry's, and other companies, and as a marketing professor at Northwestern University. I have an M.B.A. from the University of Texas, and a Ph.D. in marketing from Northwestern. Yet, the first I ever heard of recalls was when my friends' son Danny Keysar was killed by a recalled portable crib in 1998. Watching my friends bury their 16-month-old son, I vowed to learn how the child of two safety-vigilant University of Chicago professors could have been killed by a crib that had been recalled five years earlier. This is how I learned about CPSC.

I would like to spend what brief time I have today talking about what I believe are the two most insidious problems faced by CPSC: companies that flout the agency's hazard self-report rule, and censorship. I'll start with a story. It's true, but I have changed the names of the victims.

One October night in 1998, Shannon Campbell was awakened at two a.m. by the screams of her children, 13-year-old Sara and 10-year-old Max. Shannon jumped out of bed, opened her bedroom door, and ran directly into a thick wall of black smoke. In a desperate attempt to flush the house with fresh air, she ran back into her bedroom and opened the second-story window. Then she jumped out of it. Unable to stand after breaking her leg in the fall, the 31-year old mother crawled on her hands and knees to a neighbor's house, banged on the front door, and when no one answered she kept going, crawling down a driveway into a cul-de-sac. She collapsed on her back and screamed until someone called the police.

By the time the fire department arrived, plumes of smoke were spewing from the house's blown-out windows. The firefighters crashed through the locked front door and made their way up to the children's bedrooms. There they found Max lying on his back in bed, entangled in the bedding. Sara was on the bed with her brother, curled into a fetal position. Both children were dead. A family dog lay at the foot of the bed, also dead.

Shannon's husband Jack was out of the country on a U.S. military mission. When he returned home his children were dead, his wife was in the hospital, and his home had been destroyed. A few days later, a Fire Department investigator told Jack that the fire had been caused by the family's three-year old big screen TV. Engineers working for the company that made the TV had discovered a design flaw – a flaw that created the potential for the sets to burn -- six months before Max and Sara were killed. But there was no way their parents could have known this.

The morning after the fire, the TV manufacturer's chief safety officer flew to Washington to meet with CPSC staff about a recall. The safety officer did not yet know

about the fire that had killed Sara and Max. What had prompted the trip was a call he had received from a North Carolina grandmother who had seen her TV go up in flames while she was babysitting for her granddaughter.

The grandmother's complaint had not been the first. Reports of burning televisions had been landing on the safety officer's desk for years. Dozens of similar sets had smoked, charred (the word the company preferred) or flamed. Sears, Allstate Insurance, Rent-A-Center and multiple homeowners had filed claims with the company. Two TVs had burned on retailers' showroom floors. Section 15(b) of the Consumer Product Safety Act required the safety officer to notify CPSC within 24-hours of learning of a product defect that posed a substantial hazard or created an unreasonable risk of injury or death.

The manufacturer agreed to recall the sets. But it did not agree to publicize the recall. Instead, the safety officer promised CPSC staff he would mail "safety notifications" to everyone who owned the TVs. It will come as no surprise that the safety notification did not reach all TV owners, and at least 45 more sets burned. In 2003, almost *five years* after Sara and Max were killed, CPSC recalled the sets for a second time. This time, CPSC and the manufacturer issued a recall press release. It read, "no injuries have been reported."

What does this story have to do with censorship? To me, it is a stark illustration of a simple truth: Censorship kills. Section 6(b) of the Consumer Product Safety Act prohibits CPSC from telling anyone – a *Consumer Reports* researcher, a daycare provider, a parent, or a journalist – anything about a product's safety record, unless the manufacturer gives the agency permission to do so. Just in case you missed that, I'll put

it in context and repeat it: CPSC is mandated to disseminate product-related safety information to the public, but the agency is not allowed to release information about a specific product or brand without first asking the manufacturer if it is okay to do so.

The company did not want the public to know its TVs were burning. Therefore, there was no way Shannon could have known her family's TV presented a hazard. What if she had been clairvoyant, if she'd suspected the TV was defective before hers burned, and called CPSC to find out if any other sets had caught fire? CPSC staff was not allowed to tell her a thing. But of course, it's not at all clear that the agency had anything to tell her. Why? Because the company's safety officer did not show up at CPSC to discuss the defective sets until after Max and Sara were dead.

In 2004 I got a grant from the Fund for Investigative Journalism to report on this story. I filed a Freedom of Information Act request with CPSC, asking for documents related to the recalled TV sets. What did I get back? Nothing. Request denied. And what happened when I called CPSC in 2006 and asked the public affairs officer why the recall press release stated, "no injuries have been reported" – a statement that denied Sara and Max had been killed? He told me to file a FOIA request for an answer. What happened when I did? Request denied. So was my appeal.

What does it say about how America, when we knowingly allow companies to flout CPSC's hazard self-report rule? What does it say about America when CPSC acts as an accomplice in corporate secret-keeping? What does it say about America when we allow children like Sara and Max, and my friends' son Danny, to die senseless deaths? It shows that we care more about the well-being of our corporations than we do about children's lives.

Mr. RUSH. The Chair recognizes Mr. James Thomas who is the president of ASTM International.

STATEMENT OF JAMES A. THOMAS, PRESIDENT, ASTM INTERNATIONAL

Mr. THOMAS. Thank you, Mr. Chairman, members of the subcommittee. I appreciate the opportunity to be here.

ASTM is an organization with a proud history of over 100 years. It is an organization that provides a forum for energized and dedicated volunteers that represent Government, industry, academia, and consumers to work together to solve problems through voluntary standards. We are very fortunate to have, as very active members of the ASTM standards-writing committees in the consumer product area, talented experts from the Consumer Product Safety Commission as well as other Federal and State agencies who contribute to the development of these voluntary standards.

The ASTM has over 140 different technical committees writing standards in a wide range of subject areas. One of those was actually organized approximately 32 years ago in direct response to the creation of the Consumer Product Safety Act. That is our committee F15, and over the years that committee has developed many standards, some of which have been mentioned here, and others are mentioned in my fully prepared statements.

Many of our activities are initiated at the request of the Consumer Product Safety Commission. And, in fact, approximately 90 percent of the work of our Consumer Product Committee is a direct result of the Consumer Product Safety Commission providing information and seeking the involvement of ASTM to develop voluntary standards to address a consumer issue.

We have developed standards for playgrounds, standards to prevent strangulation by clothing, drawstrings, bunk beds, baby walker standards. We have developed standards to eliminate the toxicity of crayons and other art supplies. We have standards to enhance the fire safety of candle products and many more.

We are currently working on CPSC requests to establish standards for powered scooters, above-ground inflatable portable pools, and infant bathtubs. And legislation currently referred to the House Energy and Commerce Committee, such as the Pool and Spa Safety Act and the Children's Gasoline Prevention Act, reference ASTM safety standards to achieve their goals of protecting children.

In the area of toy safety, ASTM has a standard that has received a great deal of global recognition, which is our toy safety standard F963 that establishes safety requirements for toys intended for use by children under the age of 14. This ASTM standard protects children in countless ways as it relates to possible hazards that may not be easily recognized by consumers. But through the numerous tests and technical requirements of this document, many hazards are addressed before a toy reaches the shelves of a retailer. Like all of our ASTM standards, F963 is reviewed and revised, as necessary, to address newly identified hazards.

Most recently, the ASTM toy safety standard was revised to address the incidents of magnet ingestion. And in order to address that and to provide information on how to address the manufac-

turer of the toy and the components and to the development of the warning statements that would be used on the products, that revision was approved and made available March 15, 2007. And this may not sound quick. But in the voluntary standards world, the fact that it only took 9 months to complete a voluntary standardization process is something that we are very, very proud of.

Consumer safety advocates, industry representatives, and CPSC staff recognized the urgency of the need, and they spent a great deal of time developing these standards. While the toy safety standard has been revised, our work on magnet ingestion may not yet be finished. Representatives of ASTM will be part of the Consumer Product Safety Commission Magnet Safety Forum in June, which may serve as a springboard for additional revisions or new standards activities.

And in summary, I would just draw your attention to the outstanding work that is being done by volunteer members from 125 countries from around the world to develop the standards that are making a contribution to improve quality of life and safety for consumers and all mankind around the world. And I appreciate the opportunity to be here today.

[The prepared statement of Mr. Thomas follows:]

May 15, 2007

Testimony of

James A. Thomas
President
ASTM International

Before the

House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection

Hearing on

Protecting Our Children: Current Issues in Chidren's Product Safety

Introduction

Thank you Chairman Rush, Ranking Member Stearns, and Members of the Subcommittee for the opportunity to participate in this important hearing. I am Jim Thomas, President of ASTM International.

ASTM International is a leading non-profit organization devoted to the development of international standards that are utilized by virtually every industrial sector and geographic region of the world. For more than 100 years, ASTM has served society as a leading venue for consumers, industry and regulators to come together and solve problems by crafting consensus solutions that promote health, safety and improve

the overall quality of life. The standards that result from ASTM's development process are well known and valued for their technical quality and relevance.

Our standards touch the lives of consumers every day in countless ways. Hundreds of items and materials in homes, schools, hospitals and other buildings are produced according to ASTM standards to ensure that they are structurally sound, made of non-toxic or non-hazardous materials, resistant to fire, and so that they perform in an environmentally efficient manner. And as you go outdoors, ASTM standards are ubiquitous as they are embedded in paving materials, bridges, playground equipment, and much more. Of particular interest to today's hearing, ASTM standards are widely used to make toys and juvenile products safer and to reduce the threat of injury that common household products and furniture pose to children.

The U.S. Voluntary Consensus Standards System

As this committee knows very well, the Consumer Product Safety Act and its subsequent amendments establishes a Federal policy directing the CPSC to defer to a voluntary consumer product safety standard in lieu of promulgating its own requirements if important criteria are likely to be met through the use of the voluntary standard. This criteria includes a CPSC determination as to whether the utilization of a voluntary standard would eliminate or adequately reduce the risk of injury addressed and whether it is likely that there will be substantial compliance to the standard by industry Other important Federal laws such as the National Technology Transfer and Advancement Act

(NTTAA) directs all agencies to use voluntary consensus standards and to participate in their development where it makes sense to do so.

As a result of these Federal laws, the United States has a very decentralized voluntary consensus standards system that is driven by the needs of stakeholders. The government is a major participant. But the process requires participation and cooperation of all stakeholders and a commitment towards reaching a consensus. To guide the process, ASTM and many standards development organizations are accredited by the American National Standards Institute and adhere to procedures for due process, openness, balance and transparency. If it is suggested that these procedures are not being met, there are protective actions such as a right of appeal to preserve the integrity of the process.

The U.S. system of standardization is the most dynamic and effective system in the world. It eliminates or significantly reduces the cost to the Federal government of developing its own standards. For consumers, it reduces the costs of most goods that are purchased. But most importantly, the system allows stakeholders – technical experts, consumer advocates and regulators to engage directly in the process. While the process is not perfect, it often results in new standards or revisions to existing standards that reflect changing technology and that establish requirements to address changing hazard patterns or emerging issues. Led by the private sector, these changes can often be made and then be incorporated into the marketplace much faster than an agency rulemaking or other regulatory action.

ASTM Standards and Child Safety

Of all of the standards activities that ASTM is engaged in, none are more important than our work with the Consumer Product Safety Commission (CPSC), consumers, safety advocates, and representatives of the consumers products industry. ASTM's largest consumer product standards committee is F15 on Consumer Products. Committee F15 has played an important role in consumer product safety standards for over 30 years. The committee has a broad global membership of approximately 900 professionals and encompasses 50 standards-writing subcommittees, each of which focuses on a specific product area. F15 stakeholders work in the public interest, forming new subcommittees as urgent safety issues and new hazards are identified in various products.

One of the most critical areas of focus for Committee F15 is child safety. Throughout its history, Committee F15 has worked – often at the request of the CPSC - to address children's safety issues. A few examples of recent F15 accomplishments include:

F2613-07 Standard Consumer Safety Specification for Children's Folding Chairs – After significant incidents and recalls of children's folding chairs, the CPSC asked ASTM F15 to devise a standard that will reduce lacerations, fractures, pinches and amputations of children's fingers in folding mechanisms, and that

improve the structural integrity and labeling of this type of product. ASTM F15 responded and published F2613-07 in less than one year of time.

F1487-07 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use – F15.29 is a 200 member subcommittee of F15 that meets three times a year to keep this one critical safety standard current. Revisions to this standard address evolving components of commercial playground equipment and help to minimize the likelihood of life-threatening or debilitating injuries.

F 2208 – 07 Standard Specification for Pool Alarms – ASTM F15 has responded to the CPSC strategic priority on pool safety with several standards, including F2208-07 whose initial development was achieved within 9 months time. ASTM currently maintains 9 standards related to pool safety. In fact, legislation recently referred to the Energy and Commerce Committee as H.R. 1721 by Congresswoman Wasserman Schultz includes references to ASTM pool safety standards.

Other accomplishments of ASTM F15 include the development of standards helping to prevent strangulation by clothing drawstrings, bunk-bed injuries, crayon toxicity, fire safety of candle products and more. These ASTM standards prevent injuries and save lives throughout the world. We are currently working on requests from CPSC to establish standards for powered scooters, above ground inflatable portable pools and infant bath tubs. In fact, ASTM just received a letter from CPSC staff dated May 10,

2007, requesting that F15 coordinate the development of a new standard for mitigating lead in children's vinyl products.

ASTM Toy Standards

Another important focus of F15 child-related products standards is toy safety. With thousands of new toys introduced to the marketplace each year, ASTM plays a vital role to protecting the safety of children. An important contributor to that safety is ASTM F 963, Consumer Safety Specification for Toy Safety, which establishes recognized safety requirements for toys intended for use by children under the age of 14. First drafted in 1971, ASTM F 963 has been enhanced over the years to address new product technology and innovation.

Many federal toy safety regulations, which appear in the U.S. Code of Federal Regulations Title 16-Commercial Practices, are referenced in ASTM F 963, and additional requirements and test methods are included. There are more than 100 separate tests and design specifications included in ASTM F 963 and the federal regulations to reduce or eliminate hazards with the potential to cause injury under conditions of normal use or reasonably foreseeable abuse. These tests and specifications include use-and-abuse tests, testing for accessible sharp points and edges, and measuring for small parts, wheel-pull resistance and projectiles. There are also tests for flammability, toxicity, electrical and thermal requirements, and noise. ASTM F 963 protects children in countless ways as it relates to possible hazards that may not be recognized readily by the public, but that

may be encountered in the normal use for which a toy is intended or after reasonably foreseeable abuse.

ASTM F 963 is reviewed and revised every five years, at a minimum, and on an ad hoc basis to address newly identified hazards. Recent revisions made to ASTM F 963 include the addition of safety requirements and test methods for yo-yo elastic tether toys; the addition of requirements related to cord, straps and elastics; and revisions to sections that address packaging film, age requirements as they pertain to use and abuse testing, and hemispheric shaped objects.

ASTM Responds to Magnet Ingestion

Most recently, incidents of magnet ingestion drove a major new revision to ASTM F 963. In several cases, children have swallowed small magnets that were built into toys or were part of a building play set with small parts intended for older children. A change was made to F 963 requiring that magnets and magnetic components be reliably contained within a toy or carry a warning describing the dangers posed by functional small ingestible magnets.

The new edition of ASTM F 963 was approved March 15, 2007, nine months following the initial establishment of the task group in June 2006. ASTM members involved in this effort recognized the urgency of the need and diligently worked together to develop the new safety requirements. Nine months of development time, given the

complexity of the task in a full consensus environment, is evidence of the high priority that the various interest groups involved placed on finding a solution.

While the toy standard has been revised to reflect magnet ingestion, ASTM's work is not done. Representatives of ASTM F15.22 will be part of the CPSC Magnet Safety Forum in June. That forum may serve as a springboard for additional revisions or new standards activities. ASTM is also working on a webinar training course to explain the safety issues with magnets, the new requirements of F 963, and to provide guidance as to how to properly perform the test.

ASTM F 977 Standard Consumer Safety Specification for Infant Walkers

In the 1990's, the CPSC responded to incident data involving baby walker stair falls by initiating an advance notice of proposed rulemaking (ANPR). After publication of the ANPR, Commission staff worked with the ASTM Walker Subcommittee to add new performance requirements to the existing ASTM voluntary walker standard to address the stair fall hazard. A revised ASTM F 977 standard incorporating improvements and features that reduced the likelihood of stair fall injuries associated with traditional baby walkers was approved and published. The CPSC made a determination that the revised ASTM standard adequately reduced the risk of injury and concluded that there would be significant industry compliance with it. Accordingly, the ANPR was terminated. Since the revisions to the ASTM F 977, there has been a decrease in injuries of over 84 percent. The CPSC has projected societal costs decreased by about $600 million annually from this one action.

Participation in ASTM F15

Most major manufacturers of toys, juvenile and related consumer products participate in ASTM F15, as do many major retailers. These individuals are classified as "producers" for the purposes of committee operations and standards development work. Representatives of consumer groups, safety advocates, testing laboratories, academics and government agencies are classified as "non-producers" since they represent a consumer, user or general interest. ASTM's regulations require a balance of interests in two ways – first by allowing only one voter per organization and second by ensuring that the number of voting producers never exceeds the number of voting non-producers. Thus, no single person or entity can control an ASTM standards committee, its agenda or the content of an ASTM standard.

Staff of the CPSC are actively engaged in the work of ASTM F15, particularly in key subcommittees on toys and related juvenile products. While CPSC attends meetings and actively participates in the standards development process, a Commission policy requires that staff maintain non-official voting status. However, CPSC staff regularly return abstention ballots with technical comments that are very significant to F15 deliberations.

Consumers and safety advocates continue to play an important role in F15 and other ASTM technical committees by raising awareness of issues, providing valuable input regarding consumer behavior and preferences and recommending entire new subject areas for standardization. These individuals

share their experiences and knowledge to create better standards and, ultimately, better products. One of the greatest barriers to participation by consumers has been a lack of financial resources. Recognizing the need to assure that the interests of the public are protected and represented in our standards activities, ASTM provides a level of travel and participation assistance for consumers to attend subcommittee meetings and Committee F15 has a policy of waiving the annual administrative membership fee to encourage a broader participation of consumers. And ASTM has reduced barriers to participation with a full range of electronic initiatives that allow individuals to participate in the standards development process from their computer desktop without ever having to physically attend meetings.

ASTM has also begun to support the important work of the International Consumer Product Health and Safety Organization, an organization where health and safety professionals can meet annually to exchange ideas, share information, and take leadership roles in addressing health and safety concerns affecting all consumers. Finally, ASTM is a member of the Consumer Interest Forum of the American National Standards Institute which helps to facilitate the representation of consumer interests in the voluntary standardization process.

While taking steps to encourage more active consumer participation, Committee F15 is proud of the fact that many leading consumer organizations – including Kids In Danger, the Consumer Federation of America, Safe Kids, the American Academy of Pediatrics, Consumers Union, Good Housekeeping, and

Keeping Babies Safe – are engaged and are making a difference. Individuals and organizations that do participate in standards development should be applauded for their contributions of time, talent and resources. I wish to thank them for their important efforts and numerous contributions to the development of ASTM safety standards.

Conclusion

Voluntary consensus standards developed through ASTM International continue to enhance the safety of children and the public in everyday life. While we have had great success in working cooperatively with representatives from the CPSC, industry, consumer groups and other interested stakeholders to develop ASTM standards, enhanced cooperation and deeper participation will be critical in meeting emerging safety challenges of the future. It is vital that all interested stakeholders participate and have a voice in standards development. The open forum that ASTM provides is unlike any other in the world. Working together, ASTM consumer product standards will continue to improve product quality, reduce the risk of injury, and give consumers confidence that the products they rely on are safe and ready to use.

I thank you for the opportunity to participate in today's hearing and I look forward to answering your questions.

Mr. RUSH. I want to thank you so very much.

Mr. RUSH. Our final witness is Ms. Nancy Cowles. She is the executive director of Kids in Danger, a Chicago organization. It is a not-for-profit organization dedicated to protecting children by improving children's product safety.

I want to welcome you, one Chicagoan to another Chicagoan.

Ms. COWLES. Yes. Several are here today.

Mr. RUSH. Yes. Congresswoman Schakowsky also represents Chicago. Welcome to the committee.

STATEMENT OF NANCY COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER

Ms. COWLES. Thank you so much for letting us present our views on children's product safety here today. As you mentioned, we are dedicated to protecting children from unsafe products. We were founded in 1998 after the death of Danny in a very poorly designed, inadequately tested, and feebly recalled product. It was recalled 5 years before his death.

Our mission is to promote the development of safer children's products, advocate for children, and educate the general public about children's product safety. We work with States to implement the Children's Product Safety Act which prohibits the sale or lease of recalled dangerous children's products or their use in child care. We provide educational materials to health care professionals, parents, and caregivers to alert them to the dangers facing children, and we are also working with engineering programs to increase the knowledge of safety standards that tomorrow's designers will bring to children's products.

We are doing all we can to protect children, and we are here today to talk to you about what we believe Congress and the CPSC can better do to protect children. Congresswoman Schakowsky mentioned an Illinois poll that was taken in 1999 that showed that the overwhelming number of parents and other people believe that children's products are tested for safety before they are sold and that the Government oversees that testing. Both statements are not true. To one, the parents, caregivers, and health care professionals believe if they buy a stroller, high chair, baby swing or playpen, someone, somewhere, has made sure that that product is safe. They are shocked to learn that the U.S. has no law requiring safety testing before a product is sold, and that the Government only takes action after a product is manufactured, sold, and proven to be unsafe, a very backwards approach in most people's eyes.

Marla Felcher and I are both involved in product safety because of the same child. Danny Keysar died in 1998 when the portable crib he napped in at child care collapsed around his neck. While the first death in a Playskool Travel Lite portable crib like the one that killed Danny was in July 1991, just months after it went onto the market, the final product with that same design, the Evenflo Happy Camper, was not recalled until 1998, after the third child had died in that particular product; 16 children in all died in cribs of the same design.

And another portable crib player with a different latching mechanism wasn't recalled until 2001, after a child died in it, despite ear-

lier breakage reports that could point to what was about to happen to that child.

And now we hear new reports of similar lackluster responses to new hazards, and we are very troubled. We learned of Kenny Sweet's death from ingested magnets from the Magnetix toy in December 2005. We immediately covered it in our monthly e-mail alert to parents and caregivers, and in January asked ASTM International to put it on the agenda of the February meeting.

In June, at the following meeting, they did establish the task group that led to the new voluntary standard that Mr. Thomas had mentioned. That standard requires that toys with magnets that are small enough to be swallowed need to be labeled that they have those magnets in them and what the danger is, and that the toys need to be tested so that if the magnet falls out, they can't sell that product. Because that is what happened with Magnetix. They were selling a product that was basically faulty, the magnets were falling out. However, the standard still allows magnetic toys with larger components to be sold without the warning about magnets and still allows toys with loose magnets, small enough to swallowed, to be sold.

In my opinion, no toy that contains small magnets, accessible or not, should be sold without the warning for the parents. And CPSC needs to look at the danger of these very small, powerful magnets to see if they need to be banned in children's products.

Also in the news, baby bibs, lunch boxes, jewelry, flashlights, all children's products containing lead. As of last Friday, CPSC has recalled 19 lead-tainted products just this year, surpassing last year's 17 recalls.

In the best-case scenario, parents have tossed these products and they are now in our landfills, potentially, I suppose, getting into our groundwater. In the worst-case scenario, and more likely, they are still being used and worn by children in thousands of homes across America.

Ask yourself, would anyone in their right mind knowingly hang a neurotoxin around their child's neck and repeatedly scrape food off of it? Of course not. And yet while Illinois, which has a strong lead safety law and a children's product safety act, forced Wal-Mart to recall this lead-tainted bill, CPSC could only offer a weak suggestion to throw away torn bibs.

Again, there is no requirement that children's products be tested for safety before they are sold and no provisions for CPSC to monitor testing of children's products. Instead we rely on the voluntary industry standards that we have heard about here today set by the very manufacturers that are subject to their provisions.

I have been on the Standards Setting Committee since 2001. In a room full of 40 to 50 people, two to three of us at most represent consumer organizations. The vast majority of members are manufacturers. The system doesn't work fast, it doesn't work well, and it isn't complete. New product types, new hazards, and even age-old problems such as hardware failures on cribs are slow to be addressed and even slower to be remedied. Most committee members seem to be well-intentioned, but some do seem only to obstruct the process and slow it down. And even where there are mandatory standards as for full-sized cribs, there is no requirement to certify

that it met the standard before it is sold. So we would urge CPSC to do more in terms of recalls, in terms of mandatory testing, in terms of making sure that our products are safe. Thank you.

Mr. RUSH. Thank you very much.

[The prepared statement of Ms. Cowles follows:]

A nonprofit organization dedicated to protecting children by improving children's product safety

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Testimony of Nancy A. Cowles
Before the House Subcommittee
On Commerce, Trade and Consumer Protection
Protecting Our Children:
Current Issues in Children's Product Safety
May 15, 2007

Good Morning Chairman Rush and Vice-Chair Schakowsky and Committee members. Thank you for this opportunity to present our views on the children's product safety system and ways to better protect children.

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. We were founded in 1998 by Linda Ginzel and Boaz Keysar, after the death of their son Danny Keysar in a poorly designed, inadequately tested and feebly recalled portable crib. Our mission is to promote the development of safer children's products, advocate for children and educate the general public, especially parents and caregivers, about children's product safety.

We have worked with states to implement the Children's Product Safety Act which prohibits the sale or lease of recalled or dangerous children's products or their use in licensed childcare. Currently 7 states have such a law; it is moving through the legislative process in five others this year. We provide educational materials on children's product safety to childcare providers, health care professionals, parents and caregivers to alert them to the minefield of dangers facing children. We are working with

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engineering programs at universities to increase the knowledge of safety and standards that tomorrow's designers will bring to children's products. We are doing all we can to protect children and welcome this opportunity to speak to you about how we believe the Congress and the US Consumer Product Safety Commission could better protect our children.

In 1999, a survey in Illinois[1] showed that 79% of voters believed that manufacturers were required to test children's products for safety before they were sold and 67% erroneously believed that the government oversaw that testing. While that data may seem dated, I predict that any poll of Americans today would show a similar disconnect from the real situation. To a one, the parents, caregivers and health professionals I meet believe that if they buy a stroller, high chair, baby swing, or playpen, especially a name brand they recognize, that someone, somewhere has made sure it is safe for their baby. They are shocked to learn that we have no law requiring safety testing and that the government only takes action after a product is manufactured, sold, and proved to be unsafe -- a very backwards approach in most people's eyes. Subsequent surveys by the Coalition for Consumer Rights show that super majorities – 97% -- support a requirement for premarket safety testing. Yet it is still not required and many products make it to store shelves that do not meet standards or whose design puts children at risk.

Marla Felcher and I are both involved in children's product safety because of the same child. Danny Keysar died in 1998 when the portable crib he napped in at childcare

[1] ***Annual Survey of Illinois Voters***, Coalition for Consumer Rights, Chicago, Illinois 1999.

collapsed around his neck, strangling him. Marla's book, ***It's No Accident: How Corporations Sell Dangerous Baby Products***, outlines the convoluted recall of the 5 cribs with the same deadly top-rail design. While the first death in a Playskool Travel-Lite portable crib was in July 1991, months after it was first sold, the final product with that design, the Evenflo Happy Camper was not recalled until 1998, after the third child died in that brand. And another portable crib/playyard with a different latching mechanism wasn't recalled until 2001 after a child died in it – despite many earlier breakage reports that showed the likely outcome. After two babies died in 2001 in the Baby Trend portable crib, our requests for more information on the recall effectiveness of that particular campaign were met with the astonishing admission that CPSC had lost the file – even though they had new deaths from the product.

And now news reports of similar lackluster responses to new hazards have us very troubled. We learned of Kenny Sweet's death from ingested magnets from a Magnetix toy from a news report in December 2005. We immediately covered it in our monthly email alert to parents and caregivers and also in January 2006 asked ASTM International to add it to the agenda of the February Toy Standards meeting. At that meeting, the group agreed to get more incident data from the CPSC. At the next meeting in June, although the chair had incident data from the CPSC it was not distributed to the group and a task group was formed. That group led to the new voluntary standard which includes a requirement that toys with magnets that are small enough to swallow be labeled with a warning about the dangers of magnets and that toys with magnets be tested

to assure that the magnets do not fall out as was the case with Magnetix. However, the standard still allows magnetic toys with larger components to withhold the information and warning about magnets and still allows toys with loose magnets small enough to swallow to be sold. In my opinion, no toy that contains small magnets, accessible or not, should be sold without the warning for parents. And CPSC should weigh the dangers of small candy shaped magnets and consider a ban of particular shapes and sizes based on the large number of incidents. Read the stories of the children who survived and you'll see what a devastating injury these little magnets cause. Most of the children injured were above the age limit on the toy. Those that weren't usually got the magnets when they broke loose from the toy – not from lack of supervision.

Also in the news -- baby bibs, lunchboxes, jewelry, flashlights, all products containing lead. There is absolutely no reason why lead should be in these products intended for children. CPSC has recalled 19 lead-tainted infant and children products this year already – surpassing last year's 17 recalls. In the best case scenario, parents have tossed these products and they are in our landfills, potentially poisoning our groundwater. In the worst case, and more likely scenario, they are still being used and worn by children in thousands of homes across America. Ask yourself – would anyone in their right mind knowingly hang a known neurotoxin around their child's neck and repeatedly wipe food off of it? No, of course not. And yet while Illinois, with a strong lead safety law and the children's product safety act, forced Wal-Mart to recall this toxic bib, CPSC could only offer a weak suggestion to thrown away worn or torn bibs. This is like suggesting that if

a toy is known to break and release small parts, the recall only takes affect when the toy breaks and presents the hazard – that is nonsense.

While most parents believe that products are required to be tested for safety before they reach store shelves and that the government oversees such testing, the reality is much different. There is no requirement that children's products be tested for safety before they are sold and no provisions for CPSC to monitor the testing of children's products. Instead, we rely on voluntary industry standards, set by the very manufacturers that will be subject to their provisions. I have sat on the standard setting committees at ASTM on children's products and toys since 2001. In a room of 40-50 people, 2-3 of us are consumer representatives and another handful represent testing labs hired by the companies to test their products. The rest of the voting members are manufacturers. CPSC attends and participates, but does not vote. The system doesn't work fast, it doesn't work well and it isn't complete. New product types, new hazards and even age old problems such as hardware failure on cribs are slow to be addressed and even slower to be remedied. Most committee members are well intentioned, but some seem to serve only to obstruct the process. In one recent subcommittee a manufacturing rep said out loud what we had only assumed until then– could the standard have a later effective date to give manufacturers time to sell off current inventory? He wanted a chance to sell unsafe products before more stringent standards went into effect. The lead defense attorney for toy and juvenile manufacturers whose products have injured or killed children participates in every standard setting meeting, a clear conflict of interest.

And even when there are mandatory standards such as for full-size cribs, small parts and lead content, there is no requirement to certify that the product meets the standard before it is sold, leading to the large number of lead and other recalls – a very ineffective way to protect children.

So many dangerous products make it onto the market and some are later recalled – also a flawed process. Manufacturers have editorial veto power over the press release announcing the recall, allowing them to try to downplay the danger. The only requirement is the press release. Many companies do nothing further to publicize the recall and millions of potential users never hear of the danger. I volunteer with an organization in my home town that serves low-income and teen moms. Twice a year the organization has a large rummage sale of clothes and children's equipment to support its work. Before each sale, I survey the products and remove those that have been recalled. Each time, not only do I always find recalled products, but even 10 years after the last collapsing top rail portable crib recall, I almost always find a portable crib similar to the one that Danny died in.

CPSC and manufacturers can do more. I was amazed to learn this year that prior to previous assurances, many retailers learn of recalls the same way I do – they visit the CPSC web site each morning. Over the past several years, I have been able to purchase many recalled products on line even months after the recall. While CPSC seems unable to prevent this, it is illegal now with Illinois law and so our Attorney General has been addressing the problem locally – but it shouldn't be her responsibility. Manufacturers

should be required to notify all their retailers that a recall is imminent. A registration bill such as the one proposed by Congresswoman Schakowsky should be in place to assure that more people learn of recalls.

But simply improving the recall system will not prevent injuries and deaths in unsafe products.

Look just at one product type – the rotating top rail style portable cribs that were made ***and*** recalled in the 1990's. Linda Ginzel lost her son in the first of these cribs, the Playskool Travel Lite. But four other companies picked up on this untested design and used it in their own products. These portable cribs and play yards contained a deadly flaw that allowed the sides to collapse, strangling at least 16 children that we are aware of. The names of these children and some of their stories can be found at our website www.kidsindanger.org in the Family Voices section. Of the deaths we are aware of, nine took place before the recall and seven afterwards. So even the most effective recall will not prevent deaths from unsafe products.

We believe the answer lies in the simple solution that most parents already believe is the case – all children's products should be tested, by independent laboratories, to strict safety standards, before they can be placed on store shelves. Voluntary standards and self-reporting have not worked.

HR 1698, the Infant and Toddler Durable Product Safety Act, introduced by Representative Schakowsky provides a mechanism for strong mandatory standards and independent safety testing before products are sold. The legislation would require the

CPSC to set up a commission to set mandatory standards for durable infant and toddler products, those products we use to care for a baby – high chair, stroller, crib, portable crib, etc. a total of about 12 products. Unlike the ASTM International committee that sets the voluntary standards, this commission must be balanced between consumers, testing laboratories, government and manufacturers. In addition to developing the standards, or adopting current standards as mandatory, the commission will also develop a certification program for independent testing laboratories and the seal that will indicate a product has been independently tested to these strict standards. Then manufacturers will contract with testing labs to certify their products and only products with the safety seal can be sold in the United States. This is the only way to be sure that products meant for our most vulnerable consumers are as safe as we can possibly make them.

In addition, we would urge this committee and Congress to increase its oversight of the CPSC. While companies are required to file monthly reports on the effectiveness of the recall, this information is hidden from view. Congress should request an annual report of all recalls efforts that detail the number of products in consumer use that are returned or accounted for and the efforts made to reach likely users. Perhaps if the woeful numbers shown by most manufacturers were subject to public scrutiny, they might make more of an effort to retrieve the products.

In addition, I believe that CPSC should have the constraints on talking about potential hazards eased. Just as I can see car seat complaints at the NHTSA site, I should be able to see what products are leading consumers to complain to CPSC and why. The

recent Evenflo Car Seat recall illustrates the potential harm done to consumers by secrecy. The car seat/carrier recalled last week injured 160 children before it was made public. How many of those injuries could have been prevented if CPSC had alerted the public when they first learned about the hazard, rather than a year later when they had finally cajoled the company to issue a recall. Evenflo stopped making this car seat in April 2006, presumably because they became aware of the hazard and developed new designs to address it. That leaves unsuspecting parents using the dangerous seat for a year before a recall is issued. That is unacceptable. This committee should ask to see a timetable of those injuries to see what the toll of the delay was on our children.

The US Consumer Product Safety Commission, with a smaller budget than the FDA has to oversee animal medications, has enormous responsibility to keep the public safe from dangerous products. That responsibility is vital to the health and safety of children. We urge Congress to give the agency the tools they need to do an effective job and to require them to fulfill their responsibility to us all.

Mr. RUSH. The Chair recognizes himself for 5 minutes of questioning.

Dr. Felcher, in your opinion, what is the absolute worst constraint on the CPSC? And if you could change one feature of the way that it operates, let's say if it contains one or two features of the way it operates, what would it be?

Ms. FELCHER. The top one by far is 6(b). I would rescind section 6(b) of the Consumer Product Safety Act. I mean, without the information getting out there, which is what 6(b) is doing, there is no way that the public can know about these risks.

I have spent the last 8½ years of my career devoted to this, and I don't know, I would say, 99.9 percent about what goes on in terms of which products are unsafe. There is just no way to know.

Mr. RUSH. How does 6(b) function? Can you explain how it is supposed to function?

Ms. FELCHER. I am not a lawyer but I will give you my interpretation and I will let you know how it has affected me in the work I have done.

Basically, I think someone mentioned earlier, the first panel, about the press releases, the recalled press releases, and I am sorry the acting—Chairman Nord isn't here to continue this discussion. But it is my understanding, and I have seen many, many internal documents from CPSC that every word of a recalled press release is hashed out and negotiated between the manufacturer and the CPSC. I would like to believe that the CPSC has all of the power in the system and I would like to believe, as the Acting Chairman suggested, that what CPSC wants—which is to have a very strongly worded recall press release that really gets the point across that people should stop using these products—is what occurs. But from what I have seen, that does not occur. These press releases too often are—it is watered down language. There is no other way to describe that. I have seen some of these documents that—these internal documents that I have managed to get when Chairman Ann Brown was running CPSC. You see the industry has literally crossed out the language that CPSC wants to use. And I can share some of those documents with you.

So I think that that is No. 1. It is basically secrecy. As I mentioned before, I was a marketing professor when I got into this. I knew nothing about—and I am not proud to say this—but I knew nothing about regulation. The first request that I made with CPSC that was fulfilled—boxes and boxes of information showed up at my house, it might not be a surprise to you who are in this work, but there were these memos about dangerous baby products, there were pictures of dead children that wound up in my house, and the incident reports describing how those children were killed had thick swatches of black magic marker through them so I could not tell which manufacturer made that product. And I, as a product safety reporter at that point, could not warn parents about the danger. So 6(b) I think is the biggest problem that I would like to see fixed.

Mr. RUSH. Thank you very much.

Mr. Korn, the cap on civil damages that the CPSC can impose for violations is right now currently at $1.83 million. In your opin-

ion is this adequate? Or is that an amount that manufacturers easily can write off as a, quote, cost of doing business, end of quote?

Mr. KORN. Yes. I believe the cap should be increased and I will tell you why, Mr. Chairman. Let's say that a manufacturer has got $50 million worth of product in the marketplace and has a problem with that product, an unreasonable hazard, it catches on fire, spontaneous combustion, you can make up your own hazardous risk. There are plenty of examples. I believe that the small cap adds an extra factor in their decision as to whether or not to follow the rules of the Consumer Product Safety Commission. And that is, if they know they only have $1.85 at stake, they may add the economic concern instead of the safety concern in their factor as to whether or not to follow the rules of the CPSA, the Consumer Product Safety Act.

So we would prefer to have some higher cap so it is more of an economic hit, so to speak, to promote good behavior. We do believe that it does not have to be the same cap for every company. Bigger companies can have bigger caps, smaller companies can have smaller caps. Or section 19 that lists the prohibitive act that triggers a civil damage charge, some of them are more egregious than others in my view. Maybe those that are more egregious have the higher caps, those with the lower caps. So certainly the flexibility to increase that; $1.8 5is not enough in our view.

Mr. RUSH. Thank you very much.

The Chair recognizes the ranking member, Mr. Stearns, for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Locker, I just was talking to the staff and we were trying to figure out—we have heard the example of these toys. But isn't it true that most injuries involving toys are not necessarily caused by toys? If I can repeat that, is it true that most injuries involving toys are not necessarily caused by toys?

Mr. LOCKER. I think that what you are talking about is that toy-associated or -related injuries are different from toys causing the injury.

Mr. STEARNS. If you could just explain that.

Mr. LOCKER. Sure. Fifteen percent of the injuries occur when people trip over toys on the steps, and those get reported into the database. Or many of the injuries might be extremely minor, and the CPSC data has determined that toys are among the safest products in the household, as they should be, and that most of the injuries involved when children—minor lacerations when kids hit each other with them. So those types of issues when they get reported, perhaps there is a disservice in terms of the accuracy of the information. It should really be toy "caused" injuries that can be directly related to the toy product as opposed to the general term "related."

Mr. STEARNS. So I guess what happens is doctors or emergency rooms report this to the CPSC? If a child or parent steps on a toy and falls, how does that work that the CPSC would get a——

Mr. LOCKER. Well, actually, the CPSC is a remarkable array of sources of information. There is the Internet now which is the Web. There is the National Emergency Room Injury Surveillance System, which gets reports from participating hospitals. There are con-

sumers. And then, of course, there are the manufacturers who are under the section 15 obligation to report data as well.

And that all gets compiled and then it is actually an extrapolation, it is really an estimate of injuries. If it involves a toy, if the toy is in the vicinity and somehow it is alleged that it somehow be involved or is nearby, it gets reported as a toy-related injury.

Mr. STEARNS. Mr. Thomas, can industry and consumer advocates reach consensus on rulemaking? And can they perhaps do it as fast, if not faster, than the CPSC? And I guess, obviously, the value in this is the speed at which there is potential for an unsafe product that is taken off the market.

Mr. THOMAS. First thing is that ASTM, we are not part of rulemaking. It is a process of building a voluntary standard, and essentially the process benefits from a very very broad cross-section of stakeholders in that process. So you have the manufacturers, you have the Government representation, you have consumers, you have academics that are part of that process. That process can move very quickly when there is consensus around the issues, and there can be resolution of some of the complex technical issues that have to be addressed during the standards development process.

Like on the magnet, although it may not have reached the point where it is completely satisfactory to all, there is a revision that was processed in 9 months that attempted to address the issue that was brought to the committee, and we believe that that is a very, very quick way of addressing problems as they are surfaced.

I would wonder how rapidly a regulatory solution could have been reached in order to address what essentially was a real problem in the marketplace.

So we are fairly proud of the fact that we are able to respond in a timely fashion to the changing dynamics of the marketplace, to the changing way in which products are used, and the way in which new products are introduced. So it is a process that can be very responsive. And can there be improvements in the future? Absolutely.

Mr. STEARNS. Mr. Korn, whenever I come to these hearings, I ask questions. I always want to know, is there a better mouse trap somewhere else? And I guess the question for you is, do you think our standard or standards in the United States are the best in the world? If not, what other countries have a more effective system, and should we adopt that?

Maybe you could elaborate on those countries that perhaps employ a voluntary standard in a manner that is similar to ours, or improved, and then we could benefit from their efforts.

Mr. KORN. Congressman, I have participated in the voluntary standards process, and on several occasions I have seen it work. I have seen good consensus, good balance on the committee, the Standards Committee; everyone with a good exchange of ideas; one that was referenced earlier as one that is about to come out on portable pools that I think is very good.

In other cases, I have seen the voluntary standards process or the makeup of the committee work against the development of a good standard that makes a product safer. And this is how it usually happens. I will be sitting in a room with 35 people who make coffee mugs, and there will be 28 coffee mug manufacturers in the

room, and three or four people of other interests. So when a standard comes to the vote, the vote, not surprisingly, is 26 to 4, or we don't get our opinions—or our motivations are not included in the standard.

I do not know, Congressman, as much about the international standards. I am also certain we can learn something from our countries in how to do things better. History tells us that. I don't know enough to speak intelligently on it. I don't like to pretend to know things I don't. So I would defer to some of my other colleagues on the panel.

Mr. RUSH. The gentleman's time is expired. The Chair recognizes the gentlelady from Chicago. Ms. Schakowsky, is recognized for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I am actually not that interested in whether or not standards in other places—except to the extent that we may be able to learn from them. But I think that it is relevant to say that we can do better.

Mr. Thomas, why is it that when Kids in Danger approached you, your organization, and tried to get the Magnetix on the February agenda it took until June to get on the agenda?

Mr. THOMAS. I don't know.

Ms. SCHAKOWSKY. We are talking about timing here. And we are talking about—am I right, Ms. Cowles?

Ms. COWLES. It was actually on the February agenda, only that no action was taken at that time. And we had decided to get more information from the Consumer Product Safety Commission, which, I assume, arrived sometime before June, but it was not distributed to the group at the June meeting. So, really, when we say it took 9 months from June, in fact it could have started in February, and been done sooner had we hit the ground running, appointed a task group that day.

It was almost a year, almost a year and a half since Kenny's death.

Ms. SCHAKOWSKY. I notice that six times as many durable products are responsible for even six times as many deaths as toys. My legislation would require pretesting of those durable products.

Let me first ask Mr. Thomas. These appear, really, in every household when a new baby is born or where you have a toddler. There is rarely a household without a stroller and a high chair and a crib, or maybe a smaller crib. And there is the assumption that someone, somewhere, as Ms. Cowles said, has decided that this is safe, and yet the products are tested but they are tested on our kids.

What would be the objection, if there is one, of having these durable products actually repretested and have a stamp of approval, so that we know when they go on the shelf that they are safe?

Mr. THOMAS. We at ASTM would have absolutely no objection to that, because what we are doing is providing a standard that could serve as a basis for such certification or approval process. You will, in fact, find, I believe, that in the industry, the Juvenile Product Manufacturers Association has a hang tag certification program that if you go into a store to purchase, I think, high chairs, playpens, baby walkers, some other products, durable products as you are talking about, that there is an indication of a certification that

is being made by the manufacturer with a recognition by the Juvenile Product Manufacturers Association that that product has in fact been tested. They are making a self-declaration based on the certification from JPMA that the product meets the safety standards that were produced.

Ms. SCHAKOWSKY. Let me hear Ms. Cowles' comments on that process.

Ms. COWLES. That is true. There is a JPMA process; however, it is not required. Many manufacturers do test to it. Some do not. Some products, in fact, that may have been safe, say they meet the higher European standard for cribs or the Canadian standard that includes a different test——

Ms. SCHAKOWSKY. Actually, some other countries do have higher safety standards.

Ms. COWLES. They have different tests, especially on the crib standard, that we believe would more adequately address the hardware failure, which is where a lot of deaths come in cribs. And so there is a JPMA program, but there is nothing to say that a product with a JPMA certification is any safer than one without it at this point. What we would like to see is something that the CPSC monitors, such as your bill provides for, so there is like a UL label that has to be there before it could be sold.

Ms. SCHAKOWSKY. I am very concerned Dr. Felcher, about the FOIA requests, Freedom of Information Act. You are saying that you have never gotten a response to those requests?

Ms. FELCHER. No, I haven't. And I haven't gotten a response, basically, to any requests that I've made over the last couple of years. I have had to go to other sources to get the material that I am using to write a book on product safety.

Ms. SCHAKOWSKY. We are going to look into that. Is there any sort of request that was denied?

Ms. FELCHER. Exemptions—I can show you the letters I have gotten, but I can tell you that the most troublesome denial that I got had to do with the denial that those two children had been killed, and I have thousands of pages of documents that say——

Ms. SCHAKOWSKY. Let me get one more question for Ms. Weintraub. First of all, I thank you for supporting the legislation I have introduced. But I wondered if you could give us your priorities in terms of what CPSC needs to do to improve its activity.

Ms. WEINTRAUB. Thank you for your leadership on these very important issues. In terms of priorities our No. 1 request would be that CPSC be appropriated more funds. Almost every single problem, among other things, can be linked to the fact that CPSC is working with diminished resources at every single level. It is really a tragedy, the way in which our country has been prioritizing protecting children and all consumers from unsafe products, and they prioritize us in terms of funding the Agency to such low levels that they have to shed staff and shed experienced staff.

CPSC, it has been said, does not have a very deep bench. And a lot of the staff they have been losing through attrition, and these are staff that have been at the Agency, some of them from the inception of the Agency, and they have knowledge that no one else in the country has. And it is a loss. It is a loss for children especially.

Other priorities are to do what we are doing today, increase oversight of the Commission. I think that through sunshine, shedding the light in, we cannot only highlight problems but find solutions. We also have a number of recommendations for CPSC statutes. We also believe that the cap on civil penalties is absurd. That cap should be lifted, $1.85 million.

Ms. SCHAKOWSKY. Just lift it.

Ms. WEINTRAUB. We believe, yes, that ideally there should not be a cap. We would agree to reasonable caps. For example, the Senate actually passed a cap that unfortunately the House didn't act on, a cap of $21 million, a number of years ago. And we would support that provision.

There are other issues in terms of reporting under 15(b). There was a guidance issued this summer that we are concerned will provide a safe harbor for manufacturers, retailers, and importers not to report incidences that they know of. We have concerns with section 7(b) in terms of reliance upon voluntary standards, acting as a shield for stronger CPSC action. We have concerns about 6(b) amusement parks among others, toys sold on the Internet.

Mr. RUSH. The gentlelady's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman. I just want to get on the record, your Ph.D. Is from Northwestern but your M.B.A. is from where?

Ms. FELCHER. University of Texas, hook them horns.

Mr. BURGESS. Now we can continue.

On the question about the crib, when you started your testimony you talked about the deaths that occurred as a result of the cribs in 1998. You said the product was recalled 5 years earlier. What is the problem there? Is it these registration cards that consumers don't fill out? I am as bad as experts about filling out the warranty cards. I never do it.

Ms. FELCHER. You should.

Mr. BURGESS. What is the problem?

Ms. FELCHER. The problem is lack of overall awareness. The problem is CPSC is not doing, and still is not doing, enough to get the word out. The problem is with the recall press releases that are not worded strongly enough so that parents know they should act. And at the time, the problem was that this information was not even going to child care providers—which I think through the efforts of Kids in Danger, that has been changed.

Mr. BURGESS. I am just drawing from my own experience. I know when my children were very young in the 1970's, getting information about a type of crib that had some sort of finial on the top where a baby could get entrapped, and that information was disseminated. Has there been a change in how things have been handled?

Ms. FELCHER. I am not sure what was going on. What year did you say that was?

Mr. BURGESS. In the 1970's.

Ms. FELCHER. I can tell you it has been happening since 1998. And I can tell you that 80 percent of—let me flip that. Recalls are not effective. Recalls of children's products are not effective, for a

variety of reasons, which I am happy to have a private discussion; 10 to 20 percent of recalled children's products wind up getting out of circulation.

Mr. BURGESS. If there is time, I want to get into that a little bit. Now, on the issue of a 6(b), that provision, was that part of the original consumer product safety law in 1972, or has that been added?

Ms. FELCHER. My understanding is it has been strengthened considerably. It was strengthened considerably in the early 1980's.

Mr. BURGESS. On the foreign manufacturer, say the People's Republic of China, that makes something that is unsafe, cannot our Customs service interdict that product before it comes into this country?

Ms. FELCHER. You are outside of my area of expertise. But I will say, though, that——

Mr. BURGESS. But the Customs Service would have to comply with 6(b)?

Ms. FELCHER. I don't know anything about the Customs service, I am sorry.

Mr. BURGESS. Mr. Thomas, if I could ask you, throughout my life I have just always relied on things to have the Seal of Good Housekeeping, and someone already referenced the Underwriters Laboratory Seal. Is that what ASTM provides?

Mr. THOMAS. No, we don't. We don't provide any certification program. We developed a standard, and the standard is applied by various industry groups, Government—about 1,000 ASTM standards are referenced in Federal regulations.

Mr. BURGESS. Where does your funding come from?

Mr. THOMAS. Through primarily distribution of technical information all around the world.

Mr. BURGESS. Of course this committee, not this subcommittee but the full committee, has jurisdiction over the Food and Drug Administration. I think we already heard reference that—well, the Food and Drug Administration is allegedly proactive. Something has to be approved and deemed to be safe and effective.

For the consumer safety products, it has to be after the fact. It is a reactive organization after a problem is discovered. And I gather that is the source of some of the tension.

In a perfect world, would it ever be possible for, say, these little magnets to have to be certified ahead of time before they come onto the market? Is that even doable? Is that even feasible?

Mr. THOMAS. I don't see why it would not be. It is the same kind of issue that FDA is looking to address. They are essentially dealing with premarket testing and access. I would imagine that if the laws were written in that way and there was a regulatory program for implementation, that, sure, probably anything is possible. We do standards in the areas of FDA, the standards are referenced by FDA——

Mr. BURGESS. Excuse me for interrupting, I am running out of time.

Even if it were voluntary, if some organization was able to put its mark on the product that this has been tested and deemed safe by again whoever. Now, in the FDA hearings we are talking, of course, about things like the prescription drug user fee assessment

and medical device user fee assessment. These are funds paid by the industry to facilitate the testing of their products that come through the FDA.

Has anyone ever given any thought to that occurring with the Consumer Product Safety Commission?

Mr. THOMAS. I have no idea.

Mr. BURGESS. Mr. Chairman, my last 3 seconds as a public service. These are the little magnets, and they really are a lot of fun. You have seen me playing with them, but apparently they have improved them and the edge is crimped so the magnet will not come out. That is a good improvement. But even the toy itself strikes me as being inherently dangerous for children who are apt to put things in their mouth.

The other thing is these magnets are significantly strong, and the reason I bring this up is a group of realtors who met me outside said, oh, yes, we have these new pins that have the same kind of magnets in them. These things are becoming ubiquitous. And, again, I am concerned that health care providers, emergency room personnel, doctors and nurses are not aware of the problem that can be encountered. This thing is not strong enough to go through my full finger, but I can understand how the magnetic attraction could cross through the wall of the small intestine, particularly of a child, and the result could be catastrophic, even worse than a gunshot injury, because there is no external evidence that you have a problem of that catastrophic nature going on inside.

Thank you for that indulgence, Mr. Chairman. I will yield back and I will give these back to their rightful owner.

Mr. RUSH. Thank you.

The Chair now recognizes Mr. Fossella for 5 minutes.

Mr. FOSSELLA. Thank you, Mr. Chairman. Thank you and the panel for your time.

And I think we all support the noble goal of ensuring that no child suffers, as too many have, and I guess in large measure we constantly grapple with what is the appropriate role of government—State and local and the Federal level—court system, public awareness and education, personal responsibility?

Personally, I do feel that there is a significant role of government at least to bring attention and punish those who put into the stream of commerce things that can lead to damage of young children.

Question for Ms. Weintraub and Mr. Korn. First, with respect to furniture tipovers. In your opinion, have things progressed over the last several years—we have had children, I know, in Staten Island who have died as a result of pulling entertainment centers and whatnot back and, regrettably, losing their life.

While there is legislation before us, is the industry moving aggressively enough, whether it is through the anti-tip brackets, and are there better companies out there than others that we should bring attention to, short of legislation, assuming legislation is not passed?

Ms. WEINTRAUB. I think it is a complicated question but ASTM has been moving—ASTM, which is the organization which Mr. Thomas represents, is the voluntary standard setting organization. And within ASTM there is currently a committee that has been

working on setting standards for furniture tipovers. It has been an incredibly arduous task, though it seems that something strong and adequate will be coming out of that subcommittee. So that is progress.

However, in terms of furniture tipping over, there are sad stories, just what occurred in Staten Island, that occurred throughout the country. And not only is it furniture, it is also appliances such stoves. Horrendous stories where children and the elderly get trapped and burned when the stoves tip over.

Unfortunately, requiring brackets alone is not at all sufficient. In terms of stoves, in terms of some information that we have learned about, brackets are supposed to be installed in stoves upon delivery. However, the vast majority of them, over 90 percent of them, have not been installed with these anti-tip brackets. Retailers don't always do that. Sometimes they may leave them for consumers. Sometimes they may not. Consumers often have no idea whether the stove either meets a standard that doesn't require the brackets or should be connected to the wall through a bracket, and is not. So it is still an incredibly problematic, pervasive, and hidden hazard.

Mr. FOSSELLA. I have less than 2 minutes left. I would like to follow up, but let me shift gears to the issue of pools and spas.

And for Mr. Korn and Ms. Weintraub, I notice in your testimony, Ms. Weintraub, the notion that a young child could die in a drowning, and it could be prevented. Obviously we should do everything we can to prevent it.

I notice, Ms. Weintraub, in your testimony you say you support legislation regarding tipovers, yet you say you support the goals of the legislation for the Pool and Spa Safety act.

And if I heard you correctly Mr. Korn, you are satisfied with the most recent efforts on safety of pools and spas or did I mishear you? And I guess the question is, again, is the private sector moving fast enough and what would this legislation do? I have supported this legislation in the past. I am just curious if anything is involved.

And what is the nuance or the difference between supporting the legislation and supporting the goals of the legislation?

Mr. KORN. We are wildly supportive of the Pool and Spa Safety Act. We think it is a nice practical approach that addresses both new pools as they come to the market, giving the CPSC the ability to craft a standard that addresses the dangers associated with these drains; and then, second, crafts a legislative scheme, for lack of a better word, that gets to address those existing pools in which the CPSC has no jurisdiction, no mandate, only incentivizing States to use some of these devices along with four-sided fencing, similar to legislation that is in New York, so that we would protect kids from that unfettered access.

So if I was unclear, let me be very clear. We are very supportive of the Pool and Spa Safety Act. And thank you for your cosponsor of it.

Mr. FOSSELLA. What is the difference between supporting legislation and the goals?

Ms. WEINTRAUB. For us there is a distinction. CFA currently has not yet come to a final decision about where we are on the pool bill.

As I said in my testimony, and as you very accurately assessed, there is a distinction for us, whether we are supporting the legislation or supporting the goals.

Our hesitation has been, and our decision is not yet final, but our hesitation is whether the mechanical way that the bill goes about assuring that the very meaningful standards get implemented is the best way to go about it.

As you know as a cosponsor, the bill goes about it through a grants program that would go through CPSC, and States that would pass and implement a very strong pool and spa safety bill would get money through CPSC.

And what our concern about is whether this grant program through CPSC, who doesn't have experience, who has diminished resources, whether that program is the best way to go about it.

Mr. FOSSELLA. Thank you. And thank you, Mr. Chairman.

Mr. RUSH. Thank you.

The committee has completed its testimony. I want to thank the witnesses. I really want to thank you for your patience, for your testimony, for your contributions on the problem. This is not the final hearing on the issue of children's product safety. We will have additional hearings. We will try to get some legislative remedies passed through this Congress so that our children will be safe in the future from products that are manufactured and that are sold to the American people.

I want to indicate that the record will be open for 30 days to accept statements. And I would ask the witnesses to be prepared to answer further questions that may be submitted in writing by the members of this committee for this record.

Thank you so very much and the committee now stands adjourned.

[Whereupon, at 1:35 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Testimony for the Record by The Honorable Allyson Y. Schwartz
Pennsylvania – 13th District

"Protecting Our Children: Current Issues in Children's Product Safety"
Subcommittee on Commerce, Trade and Consumer Protection of the House Committee on Energy and Commerce

May 15, 2007

Chairman Rush, Ranking Member Stearns and Members of the Committee:

On January 21, 2005, my constituents, Bob and Judy Lambert of Jenkintown, Pennsylvania, suffered a tragedy that no parent should ever have to endure. Their 3-year-old daughter, Katie Elise, died from injuries sustained after a large wardrobe cabinet fell on top of her.

Sadly, the Lamberts soon learned that their daughter's death was not an isolated incident and, in fact, many other children across the nation have been injured or killed as a result of similar accidents. According to the Consumer Product Safety Commission's (CPSC) own statistics, an estimated 8,000 to 10,000 victims are treated annually in hospital emergency rooms in the United States for injuries associated with tipping over of furniture or appliances, and more than 100 deaths have been reported since 2000. Approximately 80 percent of the injuries were incurred by children under age 5. Just last week, another young child – just 2 ½-years-old – died in Mercer County, New Jersey when a television tipped over on her.

Shortly after Katie Elise's death, I sat down with the Lambert family to discuss the incident and their efforts to raise awareness of this safety hazard. As a parent, I was troubled by the frequency of these accidents and the fact that many parents are simply unaware of the dangers associated with furniture in their household, particularly in their children's bedroom.

Since then, I have been working closely with the Lambert family to raise awareness of this issue and to help improve the safety standards on furniture so that no family will ever have to experience a similar incident. In April 2005, I introduced the bi-partisan *Katie Elise and Meghan Agnes Act* (H.R. 1861 in the 109th Congress), named after Katie Elise Lambert and Meghan Agnes Beck, a Massachusetts child who died from a similar incident. This legislation, which garnered the support of 45 cosponsors, would require the CPSC to implement mandatory standards to prevent furniture tip over accidents.

Almost immediately after introducing this bill, I began to hear from families across my district and from around the nation who have either been impacted by similar accidents or know someone who has. I also heard from other Members of Congress, including Energy and Commerce Committee Members Tammy Baldwin and Vito

Fossella, who have lost constituents to similar accidents and expressed a willingness to work with me on this issue.

In addition to introducing this legislation, I have worked closely with ASTM, a voluntary consensus standards organization. In 1998, ASTM issued a voluntary standard that recommends all furniture be able to withstand at least 50 pounds of force. ASTM is currently undergoing a revision of this standard and is considering adding a recommendation that furniture come equipped with anchoring devices and warning labels. While I am eagerly awaiting the implementation of their revised voluntary standard, the fact is that ASTM's guidelines are voluntary and unfortunately not everyone in the furniture industry abides by them. That is why CPSC ought to address this issue by promulgating a mandatory standard.

In response to letters that I sent to CPSC urging them to initiate a rule-making procedure to implement a mandatory standard, CPSC has consistently maintained that they are required, by law, to rely on voluntary standards, such as the ASTM standard, when those standards adequately prevent or reduce an unreasonable risk of injury. While this is true, there is clear evidence that the voluntary standards have not adequately reduced the risk of injury.

For instance, in March 2006, *Consumer Reports* released their results of testing on children's bedroom furniture, which revealed that about half of the brand-name furniture they tested failed to meet ASTM's voluntary standard and tipped over when minimal pressure was applied. Furthermore, statistics released by the CPSC on September 12, 2006 revealed that in the first seven months of 2006, 10 children younger than 5 had died in tip-over accidents. This is double the average annual number – demonstrating that more, not fewer incidents are occurring.

Knowing this, it is disappointing that CPSC has failed to take stronger action to address this issue. Similarly, CPSC has also failed to address the risk of injuries associated with glass tables, which sends more than 15,000 people to the emergency room each year. The European Union requires that glass table tops be made of safety glass, and the CPSC has issued standards for the use of safety glass in doors, storm doors, bathtub doors, shower doors, and sliding glass doors, but not in tables and other furniture despite the high prevalence of injuries.

Over thirty years ago, Congress created CPSC to protect the public against unreasonable risks of injury associated with consumer products. Unfortunately, it appears that CPSC is not fulfilling their mandate with respect to these particular safety hazards. While I recognize that CPSC has been severely hamstrung by inadequate funding in recent years and has been unable to initiate new standards due to the Bush Administration's failure to nominate a chairman in a timely manner, I continue to strongly urge the CPSC to act on these issues as soon as possible.

It is tragic that any family should have to lose a child to such an accident, especially when the federal government knows there is a problem and fails to act. In the

coming weeks, I plan to introduce a revised version of the legislation I introduced last Congress. If the CPSC does not soon act on this issue, I strongly urge the Subcommittee to act on my proposal, which would help save thousands of children from serious injury or death.

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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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June 20, 2007

Marla Felcher, Ph.D.
Adjunct Lecturer in Public Policy
Kennedy School of Government
Harvard University
325 Harvard Street
Cambridge, MA 02139

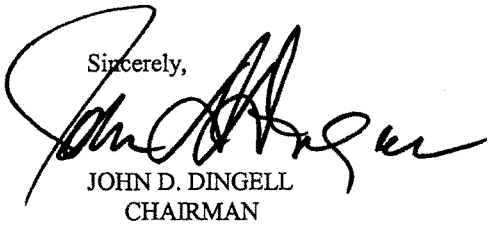
Dear Dr. Felcher:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Tuesday, May 15, 2007, at the hearing entitled "Protecting Our Children: Current Issues in Children's Product Safety." We appreciate the time and effort you gave as a witness before the Subcommittee.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on Friday, July 6, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 226-5577 to the attention of Angela E. Davis. An electronic version of your response should also be sent by e-mail to Ms. Davis at angela.davis@mail.house.gov in a single Word or WordPerfect formatted document.

Sincerely,



JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

E. Marla Felcher, Ph.D.
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July 5, 2007

The Honorable John D. Dingell
Chairman
U. S. House of Representatives
Committee on Energy and Commerce
Washington, D.C. 20515-6115

Dear Congressman Dingell,

Please find below the answers to the questions posed to me by Members of the Subcommittee on Commerce, Trade and Consumer Protection, in response to testimony given on May 15, 2007 during the hearing entitled, "Protecting Our Children: Current Issues in Children's Product Safety."

Thank you for the opportunity to appear before this committee, and for allowing me to respond to these additional questions. Please feel free to contact me if I can be of further service to the Committee.

Sincerely,

E. Marla Felcher, Ph.D.

Responses of E. Marla Felcher, Ph.D.
July 5, 2007

1. CPSC Size. *The CPSC has shrunk in size over the past 30 years – almost in half – as measured by the number of staff. Is there a more accurate way to express this shrinkage when compared to the growth of the economy?*

The size of CPSC, in terms of both its budget and FTE staff, is commonly used as a surrogate for the agency's strength. But these measures are misleading. To understand the agency's ability to do its job, one also needs to look at the number of products under its jurisdiction. Agency officials often report that CPSC oversees 15,000 consumer products. This may have been a good estimate in 1973, but it cannot be a good estimate in 2007; there are many, many more products on the market today than there were a quarter of a century ago.

To understand how quickly many categories of products have grown, we don't need to go back as far as CPSC's inception – we can compare U.S. spending today with what it was just a few years ago. For example, since 1999, the baby products industry has seen explosive growth, as have mega-retailers whose product offerings fall under CPSC's jurisdiction, i.e., Wal-Mart and Home Depot. The Juvenile Products Manufacturers Association (JPMA), the trade group that represents most manufacturers of children's durable products (e.g., high chairs, strollers, cribs, etc.) reported total industry sales of $4.9 billion in 1999.[1] In 2006, sales were up to $7.3 billion.[2] During this time Wal-Mart and Home Depot pursued aggressive growth strategies (see chart below).

	Home Depot[3]		**Wal-Mart**[4]	
	# U.S. stores	U.S. sales (billions)	#U.S. stores	U.S. sales (billions)
1999	870	$ 38.4	2,433	$118.3
2006	2,100	$900.8	3,904	$345.0

In short, CPSC's resources have not kept up with this growth; in fact, considering inflation, the agency's budget is a fraction of what it was thirty-five years ago, and its staff of 400 is less than half of what it was in 1977 (900 FTE).

1. **Product-Related Deaths.** *Despite the agency's shrinkage, Chairman Nord testified that the agency estimates that "overall, injuries and deaths associated*

[1] E. Marla Felcher, "Children's Products and Risk," *The Atlantic Monthly*, November, 2000.
[2] www.jpma.org
[3] www.homedepot.com
[4] Wal-Mart Watch, www.walmartwatch.com

with the use of products under our jurisdiction have declined by almost one-third since the agency's inception." Do you agree with this estimate?

Product-related injuries and deaths, according to CPSC's 2001 and 2008 Budget Requests to Congress, indicate that both are on the rise. Since 2001, product-related injuries have *increased* 11 percent, and deaths have *increased* 25 percent. These numbers are provided below:

	1970[5]	2001[6]	2007[7]
Product-related injuries/yr.	20 million	30 million	33.1 million
Product-related deaths/yr.	30,000	22,000	27,000

2. **Civil Penalties Cap**. *Do you believe increasing the overall cap on civil penalties that the CPSC can collect for knowing violations of its statute would serve as a greater deterrent against failure to reports product hazards?*

Yes, but Congress can, and should, do more than increase the monetary penalty. Language in the statute should be made clearer, CPSC should be prohibited from allowing companies to pay off the fine in multiple installments, and a minimum penalty should be set, as well as a maximum. Specifically:

- Section 15(b) is written vaguely enough to allow a manufacturer's lawyers to build a strong defense of the company's failure to self-report. Because the statute does not explicitly state how many injuries or complaints constitute a "substantial hazard", defense lawyers can, and do, claim that the injuries were a result of "product misuse," in other words, the customer's fault.

- The $1.83 million maximum penalty is viewed by multi-billion dollar companies as little more than a slap on the wrist. Further lessening the financial blow, many companies negotiate to pay the fine in multiple installments.

- Penalties levied by CPSC during the last few years have hovered between $100,000 and $500,000, nowhere near the maximum.

In February 2007, CPSC recalled Maytag dishwashers, after consumers reported 135 fires. In May, GE dishwashers were recalled after 191 units overheated. Also in May, Evenflo car seat/carriers were recalled after 679 consumers reported the handle had broken. Why did *hundreds* of product failures have to occur before these products were recalled? If Section 15(b) were stronger, and the penalties for waiting so long tougher, we would not be seeing large numbers like this on CPSC recall notices.

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[5] Robert S. Adler, "From 'Model Agency' to Basket Case – Can the Consumer Product Safety Commission be Redeemed?" *Administrative Law Review*, 61, Winter, 1989.
[6] CPSC 2001 Budget Request to Congress.
[7] CPSC 2008 Budget Request to Congress.

3. **Product Recalls**. *Acting Commissioner Nord testified that in FY2006, the CPSC achieved an all-time high with 466 product recalls. Do you agree with this statistic and that it represents "an all-time high"?*

Tallying the recalls listed on www.cpsc.gov for FY 2006, one arrives at approximately 300 recalls, a number inconsistent with the acting commissioner's testimony. Even if the true number is 466, it should be noted that in 1979, the agency recalled 588 products under the leadership of Chairman Susan King (see numbers below).

	# CPSC recalls[8]
1979	588
2000	439
2006	300 – 466

The veracity of Acting Commissioner Nord's numbers is difficult, if not impossible, to confirm or dispute, as since 2003, the agency stopped publishing and making available to the public its ***Annual Report to Congress***, an account of its yearly activities.

5. **Information Disclosure.** *To your knowledge, do any other Federal agencies, especially health and safety agencies, have an information disclosure restriction as stringent as section 6(b) of the Consumer Product Safety Act?*

CPSC is the only health and safety agency with an information disclosure restriction as stringent as 6(b). While any car buyer can get information about the safety of most vehicles by visiting the NHTSA website, www.safercars.gov, it is impossible for a parent or caregiver to evaluate the safety of a crib, stroller, television or any other product regulated by CPSC, before he or she buys it. The only brand-specific safety information available to the public is the recall press release. And 6(b) censors what regulators can say in this document, too.

The language used in every recall notice is negotiated in highly secretive meetings between CPSC compliance staff and the manufacturer's lawyers. Virtually every word used in the press release is debated. As in most negotiations between CPSC and the companies it regulates, the balance of power tilts heavily toward the manufacturer. If a manufacturer refuses to give in on a point, CPSC can take the company to court. But given the agency's resource constraints, this doesn't happen. As a result, many recall press releases are watered down, which makes it difficult for a consumer to know exactly how serious the danger is. The most recent example: Mega-Brands toy magnets.

[8] "CPSC Recall Summary," fax sent by Ken Giles, CPSC Office of Public Affairs, September 29, 2001; 2006 number from www.cpsc.gov.

During the May 15, 2007 hearing, "Protecting our Children: Current Issues in Children's Product Safety," Representative Michael Burgess shared his experience searching on the medical websites for information related to the recently recalled magnets. Dr. Burgess was not able to come up with any information on the deadly children's product. I was not surprised that Dr. Burgess's search was futile; in fact I would have been more surprised if he had come up with something. This is one of the reasons consumers remain in the dark about many product dangers: CPSC is prohibited by 6(b) from releasing information about the magnets before they are recalled, a process that can take months. With only 96 hospital emergency rooms reporting in to CPSC, chances are that a single magnet-related injury or death will not reach the staff's radar screen.

6. **Information About Recalled Products**. *What suggestions do you have for improving information about recalled products – what can the CPSC do under its current authority, and what legislative changes would you recommend, to improve the CPSC's ability to inform consumers about hazardous products?*

    - Write stronger, clearer press releases, and do not permit manufacturers' lawyers to negotiate language that minimizes the hazard.

    - Focus on the quality of recalls, not just the quantity, and publicize CPSC's hazard-level ratings (A, B, C, etc.) in the recall press release. For A-level recalls, manufacturers should be required to *directly* notify consumers of the danger, to pay for advertising in targeted media outlets (e.g, Child magazine, American Baby, etc.), and to demonstrate acceptable response rates. Recall response rates should be public. If there is evidence that parents have not gotten the news, companies should be required to offer bounties, well above the product's original purchase price.

    - Legislation should be enacted that creates a mandatory product registration system for frequently recalled children's durable products, similar to the system used by NHTSA for car seats.

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JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

June 20, 2007

The Honorable Thomas Moore
Commissioner
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioner Moore:

Chairman Nord appeared before the Subcommittee on Commerce, Trade, and Consumer Protection on Tuesday, May 15, 2007, at the hearing entitled "Protecting Our Children: Current Issues in Children's Product Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to Chairman Nord from certain Members of the Committee. At the request of the Chairman of the Subcommittee, you also are being asked to respond to these questions. In preparing your answers to these questions, please address your response to the Member who has submitted the question(s) and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business Friday, July 6, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 226-5577 to the attention of Angela E. Davis. An electronic version of your response should also be sent by e-mail to Ms. Davis at angela.davis@mail.house.gov in a single Word or WordPerfect formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ms. Davis at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Tammy Baldwin, Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Charles A. Gonzalez, Member
Subcommittee on Commerce, Trade and Consumer Protection

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Thomas H. Moore
Commissioner

Tel: 301 504-7902
Fax: 301 504-0813
Email: tmoore@cpsc.gov

July 13, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20510-6115

Dear Chairman Dingell:

I want to thank you and the members of your committee for your strong interest in the U.S. Consumer Product Safety Commission. As you know, I have been at the Commission since May of 1995. During that time I saw it begin to rebound from the crippling cuts of the 1980's and then go back into a decline that many at the Commission have referred to as a death spiral. Budget and staff cuts have led to a serious morale problem at the agency. We have seen many staffers "grab the money and run" while others have moved to other agencies hoping to be able to put their talents to work at an agency that has both the will and the power to fulfill its mission. Many of our staff believe the agency is being picked apart with the objective of eventually eliminating it or turning it into solely a data collection agency. Even our data collection and analysis functions have not been immune from the damage.

Your interest, and that of other Members of Congress, gives me hope that the agency's fortunes are once again reversing and that we will be given the tools and the resources to do an even better job of protecting American consumers than we are doing today. I appreciate the opportunity to voice my views in response to questions from Members of Congress. I emphasize that they are my views and mine alone. Without a quorum there can be no attempt at an agency position on these matters, so what you will get are my unfiltered thoughts on the issues you have raised. At this point in the agency's existence I welcome that opportunity.

Sincerely,

Thomas H. Moore

Hearing:
Protecting Our Children: Current Issues in Children's Product Safety
May 15, 2007

Questions and Responses for the Record

To Commissioner Thomas H. Moore:

QUESTIONS FOR THE RECORD FROM THE HONORABLE BOBBY L. RUSH

1. **Statutory Adequacy:** Does the Consumer Product Safety Act provide the CPSC with sufficient tools to protect the American public, especially children, from unsafe products? What statutory changes should Congress consider to help the agency do its job better?

RESPONSE: Eventually, I would like to see the provisions of the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA) and the Poison Prevention Packaging Act (PPPA) consolidated into one statute where, for example, there is just one set of reporting requirements, one civil penalty provision and one preemption provision for products covered under all of these Acts. Previous piecemeal attempts to harmonize certain provisions of the four statutes have sometimes created as many questions as they were designed to answer.[1]

The Congress crafted unique requirements in each statute that relate to the particular type of product being regulated, most of which Congress would likely want to preserve. A complete rewrite of our statutes would be a long-term process, however, and could take several Congresses to accomplish. It would have to be done with much careful thought and consideration of the effect each change would have on related provisions. But much can be done short of that in the interim, including making certain provisions of all statutes truly identical and making sure that certain provisions of the CPSA extend to all the other statutes. Some changes will require policy clarifications or reversals; other changes will be more technical in nature.

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[1]The agency also administers the Refrigerator Safety Act but I am unaware of any recent activity under that statute. The problem of children getting locked inside refrigerators (except to the extent there may still be very old refrigerators in dumps and similar places) seems to have been solved by this Act. It would certainly be simple enough to add the provisions of this statute to any consolidation of the others, should Congress so desire.

The Committee may want to look at certain of the powers that have been granted to the National Highway Traffic Safety Administration (NHTSA) and consider how extending similar powers to the CPSC could enhance our consumer protection abilities. For example, anyone can go onto the NHTSA web site, type in the make, model and year of an automobile and read consumer complaints about the car. The complaints are not censored, nor are they verified, and they do not necessarily result in a recall. They are a compendium of comments by owners of cars who were concerned enough about some feature of their car to file a complaint. It is a car buyer's bonanza. Compare that to CPSC where complaints are kept secret (except from the manufacturer) and consumers only know about a problem with a product from CPSC when the agency has issued a recall. And then they only know what the agency and the company have agreed to make public. I cannot think of any good reason why there should be a difference with what a consumer could be aware of when he is thinking of buying a particular car (or who is having a problem with one he already owns) and, for example, what a prospective or current All-Terrain Vehicle (ATV) owner could know about ATVs?

NHTSA also has the ability to publish initial defect determinations about a vehicle in the *Federal Register* for everyone to see. I think a lot of the foot-dragging and reluctance to provide the agency with information would disappear if companies knew that their lack of cooperation in a recall could result in the public knowing that the agency staff has made a determination that their product presents a hazard.

The information from such an open process would not only benefit the consumer, it would benefit the Commission, for it could not help but generate input from other consumers who had had similar problems with a product, but who did not, for whatever reason, report it to the CPSC. We are always looking for ways to spot potential problems at the earliest possible moment. It is often not easy to recognize when a product incident goes from being what might simply be an aberration involving an unusual interaction between a consumer and one product, to its being a systemic problem with a product line that requires action by the Commission. The more that we learn from consumers about their product experiences, and are able to share with the public, the more likely we are to stop a problem before it causes serious harm. The Commission is forced to operate on a 'need to know' basis and, oddly enough, the consumer is not on the 'need to know' list until after a recall is finalized.

Congress may want to reconsider the accessibility requirement in the FHSA for children's products containing a toxic substance. See my answer to question number 8 on this subject.

There are areas where it would be helpful to have congressional clarification. For example, when Congress added cost/benefit language to most of our statutes, it did not add it to the Poison Prevention Packaging Act. I believe that was because Congress did not want to weigh the risk of poisoning children against the cost of preventing it, particularly in a statute that only deals with packaging requirements.

The agency was given no authority to regulate drugs or chemical formulations or ban their use under this Act and I believe Congress took the limited nature of the statute into account when it declined to add cost/benefit language to the PPPA. Unfortunately, no legislative history exists to explain the distinction that was made between this Act and our other statutes. Consequently, the Office of Management and Budget is trying, through its Program Assessment Rating Tool (PART) process, to force the agency to use a cost/benefit analysis in our PPPA rulemakings. This is an area where Congress could speak authoritatively about whether the agency must do a cost/benefit analysis that is currently not required by the PPPA. Congress, not OMB, decides our rulemaking requirements. I should note that our entire PPPA program seems to be languishing after the loss of our PPPA expert. I would hope increased funding would lead to a reinvigoration of our activities in this area, including funds to find alternate sources of child poisoning data, since our previous data source is no longer available.

My answers to questions number 6 (with respect to retailer responsibility in recalls), number 7 (with regard to giving the Commission the ultimate say in what recall remedy is ordered) and number 8 (removing the accessibility requirement for certain toxic substances in children's products) contain suggestions for changes to our statutory authority as they relate to the issues raised in those questions.

Relied Upon Voluntary Standards

One area that has generated a certain amount of debate recently is the role of voluntary standards versus mandatory standards. In its history, the Commission has only formally relied upon two voluntary standards and, to my knowledge, there is no problem with those products (unvented gas-fired space heaters and gasoline-powered chain saws) being introduced into commerce in contravention of the standards. Suggestions that relied upon voluntary standards be added to sections 17 and 19 of the CPSA appear to be a solution to a nonexistent problem. They are an attempt to lay the groundwork for a policy change that could have far-reaching consequences in the interplay between voluntary and mandatory standards. The changes would give credibility to attempts to reinterpret the reliance provisions of CPSA to allow the Commission to adopt voluntary standards as mandatory standards, with full enforcement powers, and preemption protection, without having to make the usual findings required for rulemaking and to use 'reliance' to mean something quite different than what it was originally intended to mean. I object to these changes and their larger agenda because they are contrary to congressional intent, past agency interpretation and the clear language of the statute. Congress may very well want to make such a policy change, which would also require additional wording changes in the statute, but it should do it with a clear understanding of what is involved.[2]

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[2] Some domestic manufacturers in industries facing increasing price competition from abroad have begun to advocate a reinterpretation of the reliance language to persuade the Commission to elevate their industry's voluntary standard to a mandatory one, as a way to create enforcement roadblocks for foreign competitors who are gaining market share and in an attempt to obtain immunity from state court civil

The reasons given for seeking to rely on a voluntary standard and enforce it as if it were a mandatory one are to reduce the time it takes to promulgate a mandatory regulation and to have the full range of enforcement powers available for relied upon voluntary standards, especially the ability to stop violative imports at their port of entry. If the Commission could simply rely on a voluntary standard, without having to make the cost/benefit and other findings required by our statutes, it could be a much shorter process, or so the argument goes. It is true, it *could* be shorter, but unless the CPSC staff has been closely involved in the development of the voluntary standard, is completely satisfied with its provisions, and has been monitoring industry's conformance with it over a period of time, much of the underlying work that is required in a mandatory regulation should still be done in order for the Commission to feel confident in relying upon the voluntary standard (the only set of circumstances under which the agency should consider relying upon it). And, of course, the premise underlying the current reliance language would have to be changed from one of keeping the federal government out of the way of effective voluntary standards to one of the federal government co-opting them and turning them into mandatory standards because the voluntary standards were not being complied with (a significant change to the present reliance language).

Over the years, Congress has viewed the relationship between voluntary standards and federal mandatory standards in the consumer product area in varying lights. The Commission was founded on the belief that industry-formulated voluntary standards were consensus-driven *minimum* standards that sometimes did more to protect industry than consumers.[3] Over time, after some changes were made to the voluntary standards-setting procedures and CPSC staff began to have active participation in those organizations, Congress became concerned that the Commission was stifling or supplanting acceptable voluntary standards with mandatory ones, and the emphasis shifted from favoring mandatory regulation to requiring the agency to defer to voluntary standards when those standards adequately addressed the risk of injury and the standards were substantially complied with by industry.

It was in the context of Congress wanting CPSC to get out of industry's way when it was doing a good job through the voluntary standards process that the reliance language was added to the Consumer Product Safety Act. The whole thrust of the statute is to allow voluntary regulation (without any rulemaking or mandatory enforcement resources being expended) to fill as much of the regulatory landscape as possible. When we terminate a rulemaking in reliance (formally or otherwise) on a voluntary standard, the mandatory rulemaking ends as do any

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actions through the preemption provisions of our statutes. Absent clear safety issues, foreign competition is not a concern of CPSC, but is in the purview of other government entities.

[3] "Safety itself has been a secondary consideration in the usual process of developing voluntary standards. The need for a consensus commonly waters down a proposed standard until it is little more than an affirmative of the status quo." *Final Report of The National Commission on Product Safety*, Presented to the President and Congress, June 1970, page 62.

agency enforcement powers (other than the ability to make a substantial product hazard determination under section 15). The Commission understood this context at the time and has interpreted the provisions accordingly ever since. The Commission has only used the formal reliance mechanism twice—both times looking back at past Commission actions and determining that they met the requirements for reliance--one involved the revocation of a mandatory regulation for which the industry had adopted a more stringent voluntary standard and one was the termination of a rulemaking in which industry had adopted a solution developed in cooperation with Commission staff.[4] [5]

There are two reasons why the Commission has so rarely formally terminated a rulemaking in reliance on a voluntary standard to obtain the increased reporting authority under section 15(b)(1). First, that reporting requirement only applies to voluntary standards relied upon under the CPSA. Since the CPSA also requires the agency to promulgate regulations under the more targeted provisions of the FHSA, FFA or PPPA whenever appropriate, the result is that most of our regulations are issued under one of these three statutes where there is no advantage to the Commission (in the form of a reporting requirement) to choose formal reliance over merely terminating the rulemaking proceeding and allowing the voluntary standard to fill the void. The second reason the provision has rarely been used is that the premise set up by the statutory language rarely occurs. If a voluntary standard exists that both adequately addresses an identified risk and it is being substantially complied with by manufacturers and importers, the agency would be unlikely to even start a rulemaking process. There is no need for agency intervention in the face of an effective voluntary standard. Only if the standard does not meet one of the two prongs of the test (adequately addressing the risk or likely to be substantially complied with) could the Commission step in, and then it would be to turn the voluntary standard into a mandatory standard through its normal regulatory process.

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[4] In voting to revoke the Mandatory Standard for Unvented Gas-Fired Space Heaters, Commissioner Stuart M. Statler listed among his reasons for supporting the revocation of the mandatory standard in favor of the voluntary standard the following: "The Commission retains powers under Section 15 of the CPSA **to remove from the market** any unvented LP or natural gas-fired heaters not equipped with an ODS device or equivalent means to curtail the asphyxiation risk." He stated further "If [States and localities] believe the voluntary standard is not a sufficient safeguard, States and cities may now regulate the use of unvented gas space heaters **as they best see fit** without having their hands tied by the existence of a Federal rule." [Emphases in the original.] Statement of Stuart M. Statler dated August 16, 1984. Clearly Commissioner Statler viewed the revocation of a mandatory standard in reliance on a voluntary standard as terminating federal enforcement powers (except to the extent section 15 might apply, as it would to any unregulated product) and ending any federal preemption that had attached to the mandatory standard.

[5] It is also worth noting that until the adoption of the 1991 amendments, which added the reporting requirement with respect to relied upon voluntary standards to section 15 of the CPSA, the Commission felt no obligation to make any particular distinction when it was terminating a rulemaking as to whether it was "relying" on a voluntary standard because, until those amendments, no statutory consequences were attached to reliance beyond the termination of the rulemaking. Not until 1992 did the Commission go back and review past actions and identify the two Commission actions in which it was determined that their revocation and termination had been done in reliance on a voluntary standard. The Commission did this in order to give notice to the affected industries that the new reporting requirement would apply to them.

It could be useful to extend the reporting provision for relied upon voluntary standards to the other Acts we administer, such as when our initiation of a rulemaking process spurs industry to develop a viable solution to a problem through the voluntary standards process. For example, until the Commission began a rulemaking proceeding to address the more than 20,000 annual injuries to infants falling down stairs in baby walkers, no solutions were proffered by industry to this serious problem. Industry maintained the only solution was better parental supervision. But once the agency began rulemaking in this area, industry, working closely with Commission staff, began to work on a solution. CPSC held the rulemaking in abeyance until a satisfactory voluntary standard was issued and until staff was satisfied that there was substantial conformance with the standard. Had the baby walker rulemaking been initiated under the CPSA rather than the FHSA, the Commission might have considered formally relying upon the voluntary standard. This would have triggered the reporting requirement under section 15 of the CPSA and would have resulted in that voluntary standard being referenced in the *Code of Federal Regulations* as one upon which CPSC has relied. While it is unknown whether the reporting provision and the *CFR* reference would have prevented any of the recalls of noncomplying baby walkers that occurred after the acceptance of the voluntary standard by the Commission, it is possible that they could have made a difference.[6] [7]

Ultimately it is for Congress to decide whether it wants to again change the interplay between voluntary and mandatory standards. Since Congress last addressed this issue, many industries have often fought long and hard to devise a voluntary standard in order to avoid a mandatory one. It would be instructive to know their reasons for not wanting a mandatory regulation. Is it simply the desire to keep the illusion of control over their product? I say "illusion" because the Commission should not accept a voluntary standard solution that provides less safety for the consumer than it could achieve through rulemaking, whether it formally relies upon the voluntary standard or not. Or is industry reluctant to give CPSC greater enforcement powers over their products? Whatever the reasons, we should move carefully in this area. The ability to too easily transform voluntary standards into mandatory ones could remove any incentive manufacturers have to develop voluntary standards to avoid federal regulation (there would likely be no effective voluntary baby walker standard today had there not been the real threat of mandatory regulation). Given the success the Commission has had over the years in getting various industries to adopt effective voluntary standards in order to avoid federal regulation, we would not want to lose the leverage we currently have in that regard. And given the shrinking resources of the Commission, we often need the resources of industry to develop a workable standard—resources they have been

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[6] The baby walker voluntary standard has been instrumental in the dramatic decrease in injuries to children of almost 90 percent from 1992 to 2005.

[7] Even if no other changes are made to the reliance provisions by Congress, I think the Commission should consider elevating the prominence of the relied upon standards in the text of the *CFR*, particularly if more voluntary standards are added to the current list of two. As it stands now, those standards are effectively buried in the CFR.

much more willing to commit when working on a voluntary standard than when they are facing the promulgation of a mandatory rule. Resources would also be an issue if any significant number of voluntary standards suddenly had to be enforced as mandatory standards. Every new mandatory regulation creates expectations in consumers and industry alike that the Commission is going to be able to keep noncomplying products out of the marketplace. As our budgetary resources and our personnel decline, and the number of imported products grows, this is less and less of a realistic expectation.

While I do not believe the current statutory language can be used to give formal reliance on a voluntary standard any consequence beyond the imposition of the reporting obligations in section 15, I think Congress should address whether other consequences should flow from formal Commission reliance on a voluntary standard in lieu of a mandatory one and clearly state its views on the matter. Congress should also consider giving the Commission the ability to do two-step rulemaking (instead of three-step) when the Commission, in its discretion, feels a shorter process may be appropriate. One case might be where the Commission believes an adequate voluntary standard exists (based on active staff participation in the development of the standard) that addresses a real risk of injury but which, for some reason, is not being adequately complied with and where the Commission's enforcement powers could make a significant difference in that compliance.

Congress also needs to consider the effect the preemption of state regulations, standards, and state civil court actions (in light of the new interpretation by the current Commission in that area) could have if reliance on consensus-developed voluntary standards were too casually used in lieu of full-blown federal rulemaking proceedings. I do not believe we want consensus-driven voluntary standards routinely becoming the ceiling instead of the floor in protecting consumers from product hazards that may present an unreasonable risk of injury or death. That would run contrary to the purpose for which the Commission was established (see footnote 3, above).

Preemption

I have made my views known on the preemption language in our statutes in my statement on the Final Rule for Mattress Flammability (Open Flame). My statement is available on the CPSC web site at http://www.cpsc.gov/CPSCPUB/PREREL/prhtml06/06091.html. I believe this is an area that Congress must clarify. Certainly our mandatory standards should (and do) preempt most state and local standards and regulations seeking to address the same hazard scenario. But whether our standards should become the maximum protection available, which causes litigants to lose their right of redress for personal harm caused by a product that meets those standards, is a question only Congress can answer.

Additional proposals

Congress used to get a copy of our budget submission to the Office of Management and Budget. Several years ago, in an effort to cut down on the reports it was receiving, Congress indicated it no longer wanted to see those budget submissions. OMB has since made these budget submissions confidential so they no longer can be made public by the agency. I think Congress should rethink the issue of whether it (and the public) should be able to review the agency's original budget request before it makes funding decisions about the agency.

Congress should consider giving the Commission the discretion to use two-step rulemaking in all of its statutes, instead of three-step rulemakings. Another example where the Commission might decide to streamline the process (in addition to the one given earlier under the discussion of voluntary standards) is when the Commission is making amendments to current regulations that do not change the overall thrust of the regulation.

To enable the Commission to get more information from lawsuits filed against manufacturers, Congress should amend section 37 of the CPSA to require reporting when three or more individual lawsuits involving the same product are filed (or when one class action lawsuit is filed) instead of when they are settled. Given how long cases can be strung out, it is fairly easy for manufacturers to avoid the current reporting requirement and, indeed, we get few reports from it. The 24-month period should be expanded or eliminated as it serves no useful purpose, other than to cause companies to be creative about their delaying tactics.

Given the growing problem with counterfeit products, particularly electric products that appear to carry the mark of respected testing laboratories, Congress should consider making it a prohibited act to distribute products bearing false certifications.

The rationale for section 6(b) of the CPSA needs to be revisited. Congress should decide what kind of information it wants consumers to have about potentially hazardous products and when that information should become available. See my comments above about NHTSA's authority and whether there is any legitimate reason to treat consumer products under CPSC's jurisdiction differently than those under NHTSA's. I know some argue that being able to provide information to CPSC and having it kept secret from the public somehow encourages fuller disclosure by companies than there would be otherwise. All I can say is that companies are required, by law, to report certain information to the Commission and to respond truthfully and completely to our information requests. Companies can keep certain information out of the public eye by appropriately identifying information such as trade secrets, which they want kept confidential and the Commission can use the law enforcement exception to the Freedom of Information Act, if it feels withholding certain information is necessary. What more assurance companies need for them to provide the information they are required to provide, I

do not know, but given the often very difficult time we have obtaining information from some companies now, I doubt seriously that 6(b) plays much of a role in encouraging disclosure. The provision does come into play at a later stage in the process, after the company has agreed to a recall and when it is trying to paint the brightest picture of its product's failure. The elimination of 6(b) is not going to result in the agency disseminating false information about a product or a company. No purpose would be served by that and it would only further confuse consumers. Consumers want timely, accurate warnings about products that may cause harm to their families; information that is not filtered through some corporate public relations firm.

I will address the current civil penalty provisions in more detail in my answers to the second set of questions sent from the Committee. However, I have gone on record on several occasions as stating that there is no need for a cap on civil penalties when the CPSA already gives the Commission guidance in the form of factors to be taken into account in determining the amount of a penalty.

Chinese Imports

Since part of what is driving the desire in Congress for CPSC reform are the recent well-publicized recalls of products from China, I think it is useful to talk about the import situation. First I should credit former Chairman Hal Stratton for expanding the agency's contact with both the Chinese government and Chinese manufacturers. Acting Chairman Nord has continued this emphasis, seeking to obtain discrete, achievable progress on a large and multi-faceted problem.

However, our agency, through our governing statutes, cannot claim much moral superiority over the Chinese, or any other foreign country, when it comes to our own export policy. As long as a product has not been offered for sale in the United States, but is only made for export, our statute gives us practically no authority over it. The only products that cannot be exported from the U.S. are products that violate either a U.S. mandatory standard or ban, or are deemed a misbranded hazardous substance, AND have been introduced into U.S. commerce. In the 1980's a notice provision was added so that foreign receiving countries now do have to be notified if a product made solely for export, that does not comply with one of our mandatory standards or is a banned hazardous substance, is being exported to them. But it is then up to the receiving country to deal with the product on their end (assuming they have the ability and resources to take action). Products that our agency has recalled under our section 15 authority can be exported to other countries without any notification to the receiving country that the product has been recalled in the United States. Our export policy is based on a desire to see U.S. manufacturers be able to compete in foreign countries in terms of price and marketability, not safety. Our statute makes it clear (as does the legislative history) that it is not CPSC's concern whether products made in the U.S. for export meet the mandatory or voluntary standards of other countries; we do not inquire what those standards are nor do we require our manufacturers to do so. To the extent U.S.

manufacturers follow foreign standards it is for their own self-serving interest, to avoid recalls in countries that pay attention to their imports. There is also a practical aspect to this policy: Our agency does not have, and never has had, the resources that would be required to know every country's mandatory, let alone voluntary, product standards and ensure that our manufacturers' exports comply with them. Internationally, it is truly a buyer beware marketplace.

Given this background, it is somewhat hypocritical of us to berate any other country for not requiring their manufacturers to abide by the myriad U.S. mandatory and voluntary product safety standards (and those in all the other countries they trade with). Other countries expect, as we do, that the receiving countries' regulators (or the marketplace) will find any problems. The problems we are seeing in the U.S. with imported products have been increasing as the volume of imports increases. Our agency's attempts (and attempts by other U.S. government agencies) to go to the source before the problem products arrive on our shores are necessary and admirable, but the system we have set up (back in the days when we were exporting a lot more products, compared to imports, than we do now) weakens our negotiating position.

What is working in our favor at the moment is that a wide assortment of fairly serious recalls from CPSC and other agencies have gripped the public's attention and have also gotten China's. I think this country has to work with China at the highest levels (and not just agency by agency) to address this problem. Along with it, we may want to take another look at our own export policy. A "do as I say, not as I do" policy is hard to sell. We have many issues with China right now, not just consumer products. Gaining leverage in one negotiating area sometimes means giving it up in another. Ultimately the bad publicity surrounding their products may do more to raise the quality of Chinese products than any discussions will.

Whether we have leverage with the Chinese government or not, we surely have leverage with the U.S. companies that have their products made in China and with the U.S.-based importers. Importers who repeatedly bring in violative products should have their import licenses pulled, permanently. U.S. manufacturers who routinely ignore safety standards (whether their products are made in other countries or not) should face escalating and severe penalties. This is easy enough to do with products that violate our mandatory regulations, but products that are found to present a substantial product hazard under section 15 are likely to already be in the marketplace by the time a problem is discovered. The manufacturer or importer may have had no reason to believe the product had a problem until incidents began to be reported. In the toy and children's products area, for the seven years from FY2000 to FY2006, there were 197 regulated product recalls, but there were 480 section 15 recalls. There are a wide range of product problems that only surface after the product is in use for a period of time, regardless of where it was made. While we certainly cannot ignore violative imported products and the difficulties of trying to stop their entry into this country, they are only a part of the problem our agency must deal with daily.

Unfortunately, at the moment our best defense against imported products that violate our mandatory standards is to try to stop them at the docks. For that both CPSC and Customs need more people and the resources to support them. I note that in a recent *Time Magazine* article it stated that the Food and Drug Administration has 1,317 field investigators and inspects just 0.7% of all imports under it jurisdiction. CPSC has perhaps a total of 15 people to visit those same ports of entry out of a total field investigative staff of less than 90. I think that says everything Congress needs to know about why products under our jurisdiction that violate mandatory safety standards find their way into the marketplace.

I must also respond at this point to statements made by the Illinois Attorney General that, "The entire process designed to protect our children from unsafe products is a disaster. The Consumer Product Safety Commission is understaffed and underfunded and uninterested."[8] The entire process is not a disaster. It is actually quite rare, given the number of children in this country and the unfathomable number of products they come into contact with each day, that a child dies from a children's product. Yes, we are dreadfully understaffed and criminally under-funded. But to say that our staff is uninterested does an enormous disservice to the employees of this agency, many of whom have spent their entire lives working to keep all of our children safe from harm.

2. **Structure of Commission:** Should the CPSC return to its original architecture and be governed by five commissioners? Why or why not?

RESPONSE: Congress, in its wisdom, originally established a 5-member Commission. This provided for diversity of views and allowed different combinations of alliances to be formed on various issues. Political affiliations were less important than ideological views. Larger Commissions make it more likely that an Independent could become a Commissioner, giving a less partisan flavor to decisions.

The current 3-member structure usually only allows for one alliance to be formed—by the majority political party at the Commission. The change voted by the Commission in December of 2005, which altered the Commission's former policy of annually rotating the Vice Chairmanship among all of the Commissioners, to one that gives control of both the Chairmanship and the Vice Chairmanship to the same party, has further politicized the Commission. This is precisely how independent agencies are not supposed to work. With only 3 Commissioners, the Chair assumes greater significance than our statute contemplates. The "executive and administrative functions," which should be the only authority that sets the Chair apart from his colleagues have morphed into control over policy matters. Now the Chair only has to secure one vote—that of his fellow party member—to

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[8] From a *Chicago Tribune* article of June 28, 2007.

control the Commission. If the Chair had to secure two votes, his ability to have unchecked say over policy matters would be lessened.

Having two additional Commissioners might put more of a burden on staff in terms of private briefings, but maybe the result would be more public briefings, which have been exceeding rare these last few years. The tendency has become for the majority in power to pre-negotiate decisions that are then presented to the public as staff recommendations requiring Commission consideration.

The interplay of other statutes can have unintended effects on a 3-member independent agency. In 1976, the "Government in the Sunshine Act" was signed into law. Its purpose was to ensure that government agency decisions were made in the open, not behind closed doors. The Congress wanted the public to understand and see the decision making process. Thus whenever a majority of the decision makers in an agency get together to discuss significant matters which are pending before their agency, that meeting must be announced a week in advance and must be open to the public (with a few exceptions). When you have an agency with five members, the Sunshine Act does not hamper the normal dialogue that should go on in an agency because any member can still talk to any other member about agency business. But where you have only three Commissioners, the result is that no Commissioner should ever talk to another Commissioner about any matter of substance before the Commission except in an open meeting after public notice because two members constitute a quorum. Consequently no thoughtful give and take should take place on issues except through intermediaries and much can get lost in the translation in those discussions.

The inability of Commissioners to talk to each other about agency business can have other consequences. I believe it undermines the collegiality that should be the hallmark of an independent agency's way of doing business. Having to be constantly vigilant about not straying into areas of common concern at the agency makes the Commissioners hesitant to explore ideas with each other and makes it difficult to understand the reasoning behind a fellow Commissioner's decisions. We can read each others written decisions, but nothing takes the place of a conversation where questions can be asked and ideas are challenged. That breakdown in the collegial system can give the Chairman of the agency greater control of agency policy than would likely be the case if the Chairman was subject to having to justify or explain his actions privately to the other Commissioners.

For all of the above reasons, I support restoring the agency to its original five member complement.

3. **Budget:** The House Appropriations committee just voted out an increase for the CPSC for FY 2008 to $66.8 million, $4.1 million (6.5%) over FY 2007 and $3.6 million (5.7%) over the President's Budget. How should the CPSC use this increase?

RESPONSE: The increase in our appropriations voted on and approved by the House represents a 6.5% increase over Fiscal Year (FR) 2007 funding and provides the necessary funding ($2,087,000) that the agency needs to staff up to the FY 2007 appropriated FTE level of 420 FTEs. In addition, it will provide funds ($1,600,000) which will allow us to establish a capital investment fund to make critical IT investments without using further FTE decreases as the funding source, implement mandated upgrades and changes to the IT infrastructure, convert existing client server software applications to a new Web-based environment and ensure life cycle replacement of core IT hardware to maintain compatibility with upgraded software that staff relies upon to get its work done. Moreover, there will be additional funding ($423,000) to fund important testing to support our ongoing rulemaking activities in the areas of ATVs and reducing CO emissions by portable gas-powered engines, to support improvements in our hazard data collection and analysis and to support increasing our, all too critical, port surveillance activities.

4. **Mandatory Safety Standards:** The U.S. relies to a great extent on voluntary product safety standards. Do these voluntary standards work well enough to protect children, especially when it comes to critical nursery products, such as high chairs, strollers, and play yards?

RESPONSE: There are many voluntary standards governing products under our jurisdiction that work extremely well to protect American consumers and their children. Some of these standards, such as the one providing stair fall protection for children in baby walkers, have been developed with significant input from our engineering, human factors and other professional staff. There are other voluntary standards that have had little or no CPSC staff input or where the CPSC staff input has been rejected, although a lack of CPSC involvement does not necessarily result in a poor standard. Voluntary standards run the gamut of being identical to what the Commission would mandate in a federal safety regulation to being little more than window dressing.

Why are some voluntary standards good and universally followed by the industry and why do other voluntary standards provide little in the way of real safety and/or are ignored by many industry members? The reasons are as varied as the industries involved. Industries dominated by a few large companies can control the development of a standard for good or ill, depending on how they rank consumer safety in their list of corporate responsibilities. CPSC staff involvement, and whether staff feels at any given time that it has the support of the Commission for its views, can have a dramatic effect on standard development. Whether there are any sophisticated non-industry members on the standard-making subcommittee; who the subcommittee Chairman is and what he or she sees as the subcommittee's

mandate; the overall makeup of the subcommittee or task group; how aggressively the industry works to educate its members about new standards; whether conformance rates have been driven down by foreign competition: all of these things can impact the effectiveness of a voluntary standard.

What difference does it make if a standard is mandatory or voluntary? In some cases it does not make any difference. There is a voluntary hair dryer standard that requires emersion protection on hair dryers to prevent electrocution if the hair dryer is dropped in water. The standard has worked very well. Deaths have decreased dramatically. While there are still occasional imports of nonconforming hair dryers, when Customs sees them, they notify us so that we can take appropriate action.

In general we get more cooperation from Customs in searching out and seizing products that fail to meet mandatory standards than we do on products that fail to meet voluntary standards because distributing the former is a prohibited act, while distributing a product that fails to meet a voluntary standard is not. However, no one should be surprised to learn that we come nowhere near to stopping all imported products that fail our mandatory standards at their Port of Entry. While the new Customs computer system will help, the number of imports is just too vast. Thus, turning a voluntary standard into a mandatory one is no guarantee that a noncomplying product will be found before it gets into the stream of American commerce. There is no magic bullet that comes with the promulgation of a mandatory standard. We often face exactly the same scenario in terms of having a hazardous product on the market, whether there is a mandatory standard in place or not. Making more voluntary standards mandatory, without a significant increase in our import surveillance, testing and recall resources would stretch our already thin capabilities even thinner.

Makers of complex, mechanically sophisticated products often do a better job of researching all of the standards that are applicable to their products. Products that are simpler to make and that may be made through a cottage industry are more problematic. While the manufacturer or distributor of such goods may be aware of mandatory standards, they may not be aware of the existence or the significance of voluntary standards. Even the nomenclature—"voluntary" and "mandatory"—creates problems. Most people think "voluntary" means you can do something or not, as you choose. In our context "voluntary" means the industry (with more or less input from consumers and the CPSC) created the standard as opposed to having a government mandated standard. Thus there can be value in certain circumstances to having a mandatory government standard, which is more likely to rise to the notice of small manufacturers than industry standards do.

One clear advantage to mandatory standards is that the Commission controls how they are written. While we obviously take the comments of all interested parties into account, we do not have to obtain the consent or agreement of industry, or any other group, to promulgate the best possible standard. We can let data and

science lead us to the proper conclusion. Standards written in the voluntary standards process may be more heavily influenced by financial and liability concerns of the affected industry members than by the more narrow focus of consumer protection.

Just starting the rulemaking process can have beneficial results, whether a mandatory standard is ever issued or not. Once industry sees the Commission is serious about tackling a hazard they often find innovative solutions to problems that had eluded them before. The threat of a mandatory standard has produced some very effective voluntary standards.

In terms of having an effective recall, it makes no difference whether a product violates a mandatory or voluntary standard or presents another hazard. The recall process is the same. Certainly the sooner a company reports (if they report at all) the faster our staff can get the product off of the market. Companies tend to report less serious hazards. They are reluctant to inform our agency about the more serious ones. It is frequently up to the Commission to find out whether a product fails to meet mandatory or voluntary standards, too often after a product has injured someone. The more minor hazards tend to be reported through our Fast Track reporting program which attempts to get a recall notice out within 20 days of the company reporting to us under that program. Other recalls can take months or longer depending on how and when the Commission learns of the problem and the companies' willingness to do a recall. Companies can, if they choose not to do a recall, force us to issue an administrative complaint, regardless of what type of standard their product fails. These proceedings can take years.

With regard to critical nursery products or juvenile products such as high chairs strollers and play yards, I believe that the voluntary standards process can work well to protect children, but that depends on a vigilant, aggressive Commission, willing to seek prompt mandatory solutions if industry actions are inadequate.

5. **Manufacturer Duty to Report Defects and Unreasonable Risks:** Consumer groups have charged that the CPSC 's Final Interpretive Guidance (issued last July) on manufacturers' duty under section 15(b) to report immediately any product defects has, in effect, watered down that requirement. The list of factors that CPSC guidance allows a manufacturer to take into account – such as the number of defective products on the market, product misuse, adequacy of warning, obviousness of risk – appears to shift the burden of not reporting away from the manufacturer and could be interpreted to create sort of safe harbor for them. How do you respond to this criticism?

RESPONSE: On May 19, 2006, I voted to go out for public comment on revisions to Part 1115 of Title 16 of the Code of Federal Regulations. I thought it would be useful to get the opinions of <u>all</u> interested parties on proposed changes to the interpretive regulation on the reporting requirements in section 15 of the Consumer Product Safety Act. These proposed changes had been put forward by industry.

The consumer community, being largely unaware of them, had had no opportunity to present their views. In my statement that accompanied my vote, I expressed my extreme discomfort with many aspects of the proposal. While a few minor changes were made to the final interpretive rule, it remained largely unchanged from the proposal and I voted against it on July 13, 2007. My statement explaining my problems with the proposed revisions follows.

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE PUBLICATION OF THE FEDERAL REGISTER NOTICE SEEKING
PUBLIC COMMENTS ON PROPOSED REVISIONS TO 16 C.F.R. PART 1115

May 19, 2006

I am voting today to seek public comment on a Federal Register notice that proposes changes to Part 1115 of Title 16 of the *Code of Federal Regulations*. I have serious concerns about the proposed revisions and I hope that the public will take the opportunity that this notice affords them to provide us with their views. For some time, various business groups have been urging the Commission to make changes to our interpretation of the section 15 reporting requirements (see, for example, letters to James Fuller, former Chief of Staff, from AHAM and TIA dated June 16, 2004 and August 23, 2004, respectively and the meeting log of the public meeting held on June 24, 2004, on the AHAM proposals). The revisions being offered for public comment are apparently being proffered in response to those overtures. The rationale given in this Federal Register notice for these revisions is to "provide further guidance, clarity and transparency to the regulated community on reporting obligations under section 15 (b) ...." I certainly have no quarrel with the goals of "guidance, clarity and transparency" but I am not sure these revisions accomplish them.

DEFINITION OF "DEFECT"

No reasons are given for the additions to the definition of "defect," other than that the "Commission" has concluded, "based on experience and practice in applying the criteria, that the four proposed additional factors ... will enable a better analysis of whether the risk of injury associated with a product is the type of risk which will render the product defective." But how will these criteria accomplish this? Upon what Commission experience are they based? And why <u>these</u> four criteria? Examples of their use in a defect situation would be instructive because I am not sure how relevant these factors are in determining a "defect" or how often our staff really considers them in a defect determination.

A defect, by its very nature, results in an unintended consequence, and, therefore, there would not likely be warnings or instructions to mitigate the risk with regard to it.[9]

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[9] We do take warnings and instructions into account, but not in the narrow way described by this revision. See example (d) in our current Part 1115.4, which describes **the failure to have** adequate warnings and safety instructions as a defect.

The obviousness of the risk[10] and consumer misuse[11] seem to stem from the AHAM letter mentioned above, in which we are urged to adopt an approach that allows " ... manufacturers to take into account and **require** the Commission to consider the reasonableness of consumer use and hazard obviousness." [Emphasis added.] The AHAM letter goes on to state that "the need for consumers to be responsible for their own behavior goes much beyond [the 'ultra-simple' knife example]" and that manufacturers should be able to "rely on adults to reasonably exercise care for their own affairs and, within reason, supervise their children." The Commission was created to protect consumers, sometimes even from what might be viewed as an obvious risk and, with regard to children, sometimes even from the inattentiveness of their own parents. Our work on child-resistant cigarette lighters and baby walkers are evidence of that.

The section 15 reports that we receive have led to changes in voluntary standards and to the creation of new voluntary or mandatory standards. We should not only be concerned that the *volume* of reports does not decline under any new interpretation, but we should also make certain that the types of potential hazards being reported are not diminished.

The power of section 15 (b) is its requirement that information that could prevent the injuries or deaths of consumers be reported to the Commission. Even with these revisions, the Commission's position remains, **when in doubt, report**. It is the Commission that will ultimately decide whether a product defect presents a substantial product hazard, not the manufacturer. Adding more unexplained factors that manufacturers might grasp at to decide they do not need to report is likely to do the manufacturers (not to mention consumers) a disservice and adds nothing by way of real guidance, clarity or transparency.

NUMBER OF DEFECTIVE PRODUCTS STILL IN USE

The intent of the next proposed revision is to indicate that, as the number of defective products still in consumers' hands declines, the Commission will "recognize" that the risk of injury from these products may also decline. The number of defective products still in consumer hands has played a role in determining whether to initiate a recall in one recent case of which I am aware. However, I worry that, as drafted, this criterion could encourage companies that manufacture a defective product, particularly those with a shorter useful life, not to report promptly, but rather to wait to report until the product is near the end of its useful life, in order to minimize or avoid the cost of a recall. The Commission should make clear that in such a case, the few number of products left in consumers' hands at the time the Commission was notified of the product hazard will be irrelevant to the penalty determination.

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[10] Note that in the infamous knife example it was not the obviousness of the risk, but the utility of the product that determined it was not defective. Considering the utility and the necessity of the product (factors already listed in our current interpretation) would seem to cover concerns raised by the obviousness of a risk.

[11] Consumer misuse can be the direct result of a defect, rather than a mitigating factor, such as the lack of adequate instructions mentioned in the first footnote.

While the cumulative risk of injury may decline over time as the number of defective products decreases, the relative risk to any one consumer owning that product does not. In addition, we have seen products that fail near the end of their useful life, so that the number of injuries may actually increase as the products age although the number in use declines. Looking at the number of products without factoring in the injury trend could give a very misleading picture of the hazard. We should also recognize that estimating the number of products actually still in use is an inexact exercise at best. For products that have the potential to kill or cause serious injury, there can never be so few left on the market that we would not require a recall.

VOLUNTARY STANDARDS

I am not sure what the paragraphs about compliance with voluntary standards are meant to convey or what they add by way of additional guidance. Take this sentence from the preamble, for example: "Therefore, by this provision the Commission urges firms to consider compliance with voluntary standards in evaluating whether or not a substantial product hazard should be reported to the Commission." Our statute makes clear that substantial product hazards must be reported to the Commission immediately. It makes no difference what standards such a product does or does not meet. To suggest otherwise creates confusion, not clarity. The language from the preamble is transformed somewhat in the actual text of the revision to read: "... whether a product is in compliance with applicable voluntary safety standards may be relevant to the Commission staff's preliminary determination of whether that product presents a substantial product hazard under section 15 of the CPSA." I would be very interested in learning of any examples where compliance with a voluntary standard has had any impact on the determination of whether a product defect presented a substantial product hazard. This new language could be read as a "safe harbor" provision for industry at the expense of the safety of American consumers. It appears to flow from the suggestion in the AHAM letter that we should make clear "that there is a positive inference that products are not defective if they are listed with UL, CSA or other recognized SDOs and if the product can be shown to comply with that listing."

The Commission has, and will continue, I trust, to make hazard determinations based on the particular aspect of the product that is alleged to be capable of causing, or that has already caused, injury. These determinations can result in recalls and they can also lead to changes to the relevant voluntary standard. Voluntary standards are continually evolving and changing as new injury and incident data comes to light. In addition, many voluntary standards have never been reviewed by the Commission and the efficacy of their requirements is unknown to us. To treat them at any point in time as if they were the gold standard in consumer protection by giving them special weight in a hazard determination would be a mistake.

If you look at the **non**compliance side of the issue, it is worth emphasizing that companies act at their peril by not complying with voluntary safety standards. On a case-by-case basis, there have been many instances where a failure to comply with an important safety provision of a voluntary standard has resulted in a determination of a

substantial product hazard and a recall. There have also been instances where compliance has told entire industries in a blanket policy statement that the failure of their products to comply with provisions of certain voluntary standards will be considered to be a defect. Getting that message out is an important one and I would encourage the Commission to make that message clearer in any revisions that are adopted.

MANDATORY STANDARDS

The section on mandatory standards indicates that a product's compliance with a mandatory standard could make a difference as to whether a product that would otherwise be deemed to create a substantial product hazard would be subject to a recall. Failure to comply with a mandatory standard is clearly a prohibited act under our statute. Compliance staff already has the authority to allow a company to do a corrective action that is less comprehensive than a consumer-level recall when the failure to comply pertains to a relatively minor part of a mandatory rule, such as an incorrect type font on a required label. But any significant failure to meet a mandatory standard should require an appropriate recall remedy.

This proposed revision may be suggesting that if the alleged defect stems from some aspect of the product's manufacture that is not covered by the relevant mandatory standard for that product, that, nevertheless, complying with the mandatory standard is a relevant factor to take into account in determining whether a recall is warranted—a version of the "safe harbor" interpretation discussed above. Every company is expected to meet all mandatory requirements. No standard, whether mandated by the Commission or developed by industry is guaranteed to cover every possible way a product could fail or otherwise present a substantial product hazard. No mandatory standard is an immutable solution to all possible safety problems a product may have. The way products are made can change over time or new injury scenarios may arise with an old product. Whenever a product *could* present a potential hazard, the company's responsibility is to report that to the Commission and to work with our staff to find the best way to protect consumers. Sometimes that will entail a recall, but many times our staff finds no substantial product hazard and deems a recall unnecessary. The only true safe harbor for a company is to report promptly and fully, and then the safe harbor is protection from the assessment of civil penalties, not necessarily protection from a recall.

One other problem with the revisions that appears in both the voluntary and mandatory standards paragraphs is that the language in the preamble and the language in the revisions to Part 1115 are not consistent. Within the preamble to the voluntary standard language it says both that the Commission "may" consider compliance with a voluntary standard and that it "will" consider it. While the actual change to Part 1115 uses the word "may," the inconsistent Preamble language causes unnecessary confusion. The same "may" versus "will" language confuses the Preamble and the change to Part 1115 with regard to mandatory standards. If some language with regard to standards is finally approved, there is no reason to tie the Commission's hands by forcing it to consider factors that may or may not be relevant in any given situation.

Finally, I note the sentence in the Summary that states that in the future the Commission may consider an interpretive regulation on the statutory factors for assessment of civil penalties. Our statute is quite specific as to what we **shall** consider in determining the amount of a civil penalty. It is not clear that we have the authority to go beyond these enumerated factors and we should be extremely careful in adding additional factors that Congress did not specifically address.

6. **Recalls:** The commentary and testimony from consumer groups reveal extreme frustration with the CPSC's effectiveness in mounting recalls of dangerous products. Is there more that the CPSC can do to get unsafe products off the store shelves more quickly, even with the limitation imposed by section 6(b)?

RESPONSE: Your question raises two very important issues: the underlying question of what constitutes an effective recall and the narrower question of what the retailers' role should be in making a recall effective. In March of 2003, I voted to grant a petition filed by the Consumer Federation of America that would have begun a rulemaking on the use of product registration cards to enhance recall effectiveness. I said at the time that I was not sure if the proposed remedy of product registration cards was necessarily the appropriate solution because we needed to define the problem first. I saw the rulemaking as an opportunity to define the problem and its scope and to look for solutions to any problems found. The Commission did not vote to proceed with rulemaking although both of the other Commissioners indicated an interest in looking at the issues informally. A copy of my March 2003 statement is attached and is also available at http://search.cpsc.gov/query.html?col=pubweb&qt=%22product+registration+cards%22&x=16&y=4. **While a recall effectiveness project was commenced, staff was given little guidance as to its objective and, without the formal rulemaking structure to help guide the project, and little focus on it from the Commission, the recall effectiveness project languished. When Acting Chairman Nord came to the Commission, she took an interest in the issue and tried to move it forward, but the big question remains unaddressed. How do you define an effective recall? And not just after the fact. Companies should have an idea of what goal they will be expected to reach before they embark on a recall.**

I believe you have to look at a number of factors in crafting an effective recall goal and that one size does not fit all. Consumers are not going to have the same reaction to a recall notice about a cheap promotional toy that they got for free at a fast-food restaurant as they are to a recall notice about a collectible item or one about an expensive appliance. The first item may simply be thrown away; the second may be kept even more zealously as its collectible value may increase because its production was limited; and in the latter case the consumer may take prompt action, particularly if the short-term utility of the appliance is affected until a repair can be made. The range in quality, the cost, and the intrinsic value that a particular item has to a consumer all play a role in determining the effectiveness of a recall campaign.

The nature of the hazard also affects the consumers' response, as does the likelihood of injury. Consumers tend to take fire and electrocution hazards more seriously than they do laceration hazards, for example. The remedy chosen is also a factor. The more attractive the remedy and the less action that needs to be taken by consumers to obtain the remedy, the more likely consumers are to respond. I believe that an analysis of the Commission's own data bases, informed by the many years of experience of our Compliance employees, could give us a better handle on how to evaluate different product hazard situations and, therefore, provide us with more concrete effectiveness expectations at the outset of a recall.

We must also recognize that there will be a certain irreducible number of consumers who, for various reasons, will not respond to the recall no matter how well publicized, no matter what the hazard and no matter what the remedy. That number will fluctuate with different types of recalls. There will also be consumers who will take perfectly sensible protective actions, about which the Commission will never know, such as throwing the product away, or fixing it on their own without contacting the manufacturer. This means we have to have a realistic view about the numbers we get from manufacturers in terms of how many consumers took advantage of the offered remedy. That number will always be a low and inaccurate picture of the actual consumer response and, for that reason, I think the consumer groups who are concerned about recall effectiveness, and who are focusing on that number, may be overstating the real need for concern. However, that does not mean that we should not try to set realistic goals for recalls and I, for one, would like to see real resources devoted to finding out how well the Commission is doing in defined classes of recalls so that we can find out what more, if anything, we should be doing to increase effectiveness.

I also think our recall notices (putting to one side the 6(b) constraints) may not be designed in a way that garners them the attention they deserve. They have been formalized and homogenized over the years to the point where they look like corporate press releases about quarterly profits, rather than serious safety warnings that people need to heed. I think we need to look at these releases in a different way. To the extent staff feels they are constrained in making the releases more attention-getting because of 6(b), then 6(b) needs to be changed.

The second issue your question addresses is how to get the recalled products off of store shelves. Recent well-publicized recalls have shone the spotlight on the difficulty of reaching the many retailers (from the mom and pop stores to the larger ones) that may carry a product. We are nearly always negotiating a recall with a manufacturer or an importer, not the retailer. Manufacturers usually object to our even letting their retailers know about a pending recall until it is finalized. So the retailers have little or no advance notice that they need to sweep their shelves of the recalled product. Some of the retailers will only hear about it from the news reports as it is not always the case that a manufacturer will know where all of his products end up. Is that a flaw in the system? Yes. How you go about ensuring that all

retailers, of whatever size and however they may have ultimately received the product, know of a recall, is a difficult question. Retailers could be held responsible for not removing recalled products from their shelves within a set timeframe. Most of them should be able to access the Internet and could sign up to receive recall notices through the CPSC web site for the types of products they carry. Policing such a requirement would still be haphazard, as the agency does not have the investigative force to do more than spot checks. But perhaps a few fines (or whatever penalty Congress decides to impose) would bring most retailers in line. The larger stores could certainly be held accountable under such a system, but it is unclear how the mom and pop stores would fare.

Identifying the product to be recalled can also be a problem. Manufacturers are not required, in most cases, to put date codes or other distinguishing marks on their products every time they change them. Thus they often cannot tell the Commission at what point in a product's production it presented a risk, and at what point the problem was fixed (particularly if they fixed the problem before the Commission became aware of it). Because old product can stay on store shelves for quite a while and be intermingled with newer versions of the same product, this has presented problems for retailers and the Commission staff in identifying which products in stores are subject to the recall. I believe the law should put the burden squarely on the manufacturer/importer/distributor to mark their products periodically (date codes, for example) so that problem products can be readily distinguished by everyone (including the consumer who has the product in his home). Failure to do that should result in the recall of all similar products made by that manufacturer. The Commission should not have to guess (or test) every possible permutation of a particular product to determine if it has been remedied (although we certainly should test the alleged 'fix' to make sure that the hazard has indeed been eliminated). A company that misrepresents the scope of the products affected by a recall should be subject to a penalty. In fact, a company that knowingly misrepresents any material fact in a recall investigation that delays or otherwise hinders the agency's ability to promptly initiate an effective recall should be subject to penalties by the Commission.

7. **Election of "Recall Remedy":** Testimony by Safe Kids states that once the CPSC determines that a product presents a substantial hazard and that remedial action is required, the CPSC may order the manufacturer of that product to elect – at the *manufacturer's* discretion – among several types of "recalls." Is this an accurate statement of the way recalls work? Does the CPSC feel constrained in its ability to implement recall programs that serves the best interest of Americans?

RESPONSE: Under the Consumer Product Safety Act, if we fail to negotiate a cooperative recall with a company, we can take the matter to an administrative proceeding before an administrative law judge. If at the end of that proceeding, the Commission determines that a recall of a product is required in the public interest, the Commission may "order the manufacturer or any distributor or retailer of such

product to take whichever of the following actions the person to whom the order is directed elects ...." The election is among the options of repair, replacement or refund. The statute goes on to say, "An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act." [Emphasis added.] Thus, by statute, the Commission cannot require a certain remedy but it can insist that whatever remedy is chosen be satisfactory to achieve an effective recall. I do not know if the Commission has ever been in that situation.

Companies have used the fact that they can elect a remedy if the agency were forced to take administrative action, as a basis for arguing with Commission staff that their proffered recall action plan is as much as they will do, even when staff believes that the remedy is insufficient. Staff is thus constrained by the statutory consequences of failing to negotiate a voluntary recall. Because time is of the essence in removing a hazardous product from the marketplace, having to go through an administrative process (in addition to the issue of limited CPSC staff resources), I believe, has led to less than robust recalls on occasion. It is true that the agency can get an injunction to stop future distribution of the product during the pendency of the administrative proceeding, but that does not get the product out of the hands of consumers who already own it.

In May of 2000, I voted to endorse draft legislation that would give the Commission the ability to order manufacturers, distributors or retailers to take whatever other action the Commission determines is in the public interest, if the Commission determines that the remedy chosen by the company is not in the public interest. A copy of the draft legislation and the press release that accompanied the vote on the legislation (as well as the statement in opposition by Commissioner Mary Sheila Gall) can be found at the following link
http://www.cpsc.gov/library/foia/ballot/ballot00/ballot00.html.

8. **Lead in Children's Products:** Issues have arisen concerning the amount of lead in children's products. Is the CPSC's authority under the Federal Hazardous Substances Act or other statutory authority sufficient to address lead hazards to children?

RESPONSE: I wish the Commission had the authority to find it unacceptable for any amount of lead (or any other toxic substance) to be in a children's product. However, our statute requires us to assess the accessibility of the lead (or other toxic substance) and that is the key measure under the Federal Hazardous Substances Act (FHSA) of whether or not a product can be deemed to contain a banned hazardous substance. The Commission did issue a guidance document back in January of 1998, which went so far as to urge manufacturers "to eliminate lead in consumer products." The link to this guidance document follows as well as a similar one the Commission issued dealing with hazardous liquid chemicals in children's products.
http://a257.g.akamaitech.net/7/257/2422/12feb20041500/edocket.access.gpo.gov/cfr

2004/janqtr/16cfr1500.230.htm;
http://a257.g.akamaitech.net/7/257/2422/12feb20041500/edocket.access.gpo.gov/cfr_2004/janqtr/16cfr1500.231.htm

Given the provisions of the FHSA, the Commission does not have the authority to enforce the total elimination of lead or other toxic substances from children's products, and the Commission went as far as it could in expressing its views on the subject. I would welcome congressional attention to this important issue.

9. **Lab Conditions:** Do you agree with critics that the CPSC lab in Gaithersburg is inadequate and failing to keep up with technological advances? What would it take to make your lab effective?

RESPONSE: We have been trying to obtain funds to modernize our lab since before I arrived at CPSC in 1995, yet we have never received any significant funding for that goal. We have been working with GSA on a modernization plan since at least 1999. The Lab Modernization Feasibility Study, completed jointly with GSA in 2005, formed the basis for a capital project submitted to OMB by GSA as part of their FY 2007 Budget. However, other national priorities precluded the project from being funded. There certainly has been a level of frustration associated with the process. We have been forced to accept a band-aid approach to fixing the lab, when what we really need is a major modernization commitment.

I have seen other testing labs, such as those at Underwriters Laboratories, which are much more sophisticated, spacious and up-to-date than our lab. Given that we are the federal agency designated to protect consumers from product hazards and that our laboratory testing plays a key role in making hazard determinations, I think the state of our lab should concern everyone. However, whenever I go to our lab I am constantly amazed at the ingenuity of our lab staff in overcoming space and resource limitations. We often talk about the agency making do with what it has and nowhere can that be seen more strikingly than at the lab. I would like to see a real investment made in upgrading our lab so that we can do more testing in our own facility rather than having to contract the work out and so that tests don't stack up because of a lack of adequate space or other resources, which prevent us from doing simultaneous testing on various products.

We are currently looking at different "real estate" solutions with GSA that would give us a better physical plant. However, these solutions may or may not allow us to function at the same capability we currently have and they would not include any modernization of equipment. The cost to truly modernize our lab, if we were to stay on the current site, would be somewhere around thirty million dollars. This would expand our capabilities plus give us new equipment and a physical plant that is both energy efficient and an effective use of space. A modern facility would also put us in a better position to deal with emerging technologies, such as

nanotechnology. It is difficult for us to even contemplate how we would assess potential product-related nanotechnology hazards when we struggle to provide the basic lab capabilities to meet our current needs.

STATEMENT OF THE HONORABLE THOMAS H. MOORE ON THE FINAL RULE AND PREAMBLE FOR THE FLAMMABILITY (OPEN-FLAME) OF MATTRESS SETS
February 16, 2006

The new open flame mattress flammability standard represents a significant improvement in fire protection for consumers. It is anticipated that between 240 and 270 deaths will be prevented and that another 1150 to 1330 people will escape injury **each year** from fires due to mattress ignition once this standard is implemented. The National Institute of Science and Technology and the mattress industry were instrumental in making this new standard possible. I would be remiss if I did not also acknowledge the work done in this field by the State of California's Bureau of Home Furnishings and Thermal Insulation. States are often pioneers in consumer protection, providing the impetus for new or improved federal regulation and California is usually in the forefront on consumer issues.

Much will be said about the benefits of this new federal flammability standard. I would prefer to devote my entire statement to those benefits, but unfortunately there are other issues in this rulemaking proceeding that require comment. Since the issuance of Executive Order 12988 in 1996, the Commission has routinely inserted into the Preamble of any new regulation, the specific preemption provisions that apply to that regulation as stated in the authorizing statute. No commentary has accompanied the statement of the preemption provisions and, with one exception, the Commission has never expressed a view about their scope in a Preamble.[1] The proposed Preamble language in this Final Rule is a departure from Commission precedent and, in my opinion, errs on several important points. It errs when it makes the sweeping statement that in the absence of an exemption, "the federal standard will preempt all non-identical state requirements." It errs when it concludes that the preemption provisions preempt inconsistent "court created requirements." And it errs when it implies that the Executive Order requires the Commission to draw any such conclusions.

Non-identical Federal or State flammability standards can and do exist without an exemption from the Commission. Section 16 (b) of the Flammable Fabrics Act (FFA) allows the Federal Government, and the government of any State or political subdivision of a State, to establish a flammability standard "for its own use" that establishes a higher degree of protection from the risk or occurrence of fire than has been established under the Act. The legislative history gives certain examples of what "for its own use" means, such as for a State hospital, institution or old age facility. In some cases it is this language that has allowed most states to adopt stricter fire standards for mattresses used in high risk occupancies, such as prisons, dormitories, and nursing care facilities than the current federal cigarette ignition mattress standard. The intention of the new mattress open-flame standard, as stated in the Preamble on pages 14 and 37, is to cover the same mattresses that the existing cigarette ignition mattress standard covers. I take from that,

[1] There is a discussion about preemption of a California Bureau of Home Furnishings standard in the Preamble to the Notice of Proposed Rulemaking to this regulation, which is discussed later in this statement.

that state standards for high risk occupancies, for example, are in no more danger from preemption under this standard than they were under the cigarette standard, which appears to have had little or no affect on them.

The next issue is the attempt to read the preemption provisions in the Flammable Fabrics Act to preempt non-identical state court rulingss. The starting point of any analysis must be the statutory preemption language itself. Subsection (a) of section 16 lays out the basic preemption provision:

> "(a) Except as provided in subsections (b) and (c), whenever a **flammability standard or other regulation** for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a **flammability standard or other regulation** for such fabric, related material, or product if the same **standard or other regulation** is designed to protect against the same risk of occurrence of fire with respect to which the **standard or other regulation** under this Act is in effect unless the State or political subdivision **standard or other regulation** is identical to the Federal standard or other regulation."[2] [Emphasis added.]

This language is plain on its face. That the phrase "standard or other regulation" is used both in describing action by this agency and in describing the State actions that are preempted is strong evidence that the same type of actions are being referenced in both instances.

The Commission has addressed the issue of whether the phrase "standard or other regulation" included judicial decisions, when it gave guidance to the public on the exemption provisions in subsection (c) of section 16, which allows States or their political subdivisions to apply to the Commission to exempt a flammability standard or other regulation of such State or subdivision from the preemptive effect of the Act. The Commission concluded that this phrase did <u>not</u> include court actions.[3] Indeed it would be very odd for a court, or any other State entity, to petition the agency for an exemption to the federal standard because of a ruling in a particular court. As the Commission noted, "Generally, courts do not establish prospective standards or regulations applicable to a category of persons, but instead deal with the specific parties before them." The agency's interpretation of that subsection is not out of date, as some have stated. It was then, as it is now, a commonsense reading of the statutory language. That finding was tied directly to the exemption subsection. However, as has been noted above, Congress did not vary its choice of language in the three subsections of the preemption section. It seems unlikely that this phrase would mean one thing in subsection (c) but, without explanation, something else in the other two subsections.

It is also worth noting that the primary section of the FFA, section 4, which lays out the basis for Commission action, uses the same phraseology:

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[2] Subsection (b) was described in the preceding paragraph; subsection (c) is the provision by which States can apply for exemption for the preemption provisions for higher State standards.

[3] *See* Fed. Reg. 3414 (January 30, 1991).

"(a) Whenever the...[Commission] finds on the basis of the investigations or research conducted pursuant to section 14 of this Act that a new or amended **flammability standard or other regulation**, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage... [it] shall institute proceedings for the determination of an appropriate **flammability standard** (including conditions and manner of testing) **or other regulation** or amendment thereto for such fabric, related material, or product." [Emphasis added.]

When a preemption provision plainly does not preempt state court remedies, there is no need for a savings clause. Thus the absence of one in the FFA is not remarkable.

As the statutory preemption language is clear, looking beyond it to the legislative history of that language does not seem necessary. However, since the proposed preemption interpretive language in the Preamble attempts to rewrite the phrase "standard or other regulation" as if the wording in the statute was "requirements," and then use that potentially broader term to justify preemption of state common law, a few words must be said on the legislative history of section 16. While it is true that the 1976 House Conference Committee Report uses the word "requirements" to describe both this agency's regulatory actions and the State and local actions that are preempted, there is absolutely no indication that this shorthand for the longer and unwieldy phrase "standard or other regulation," was meant as anything more than that. In fact, the examples that are given in the report refer to state administrative standards, not court rulings. Nothing in the legislative history indicates Congress intended this language to preempt common law remedies and without a clear statement by Congress that this was intended, no preemption of court common law remedies can be assumed. There is similarly no legislative history to support that the language which the 1976 preemption section replaced ("any law of any State or political subdivision") was intended to encompass state common law.

As stated in section 4, the purpose of Commission action under the FFA is to "...protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage...." That is the Commission's primary responsibility. Obviously, because federal regulations are meant to have national effect, we want them to replace any non-identical state regulations which provide <u>less</u> protection for consumers. After the adoption of a federal regulation, no State should go through a duplicative standard-setting process (with the attendant costs that this entails for industry) when that State had the opportunity to present information to the Commission in the federal proceeding, unless of course such information was simply not available at the time of the Commission's rulemaking proceeding, or the State feels a stricter standard is essential to protect its citizens. The longer our standards are in effect, the more likely it is that new information or new technology may make stricter standards desirable. The FFA provides both a blanket exclusion from preemption for stricter State standards and regulations and an opportunity to apply to the Commission for an exemption. Thus Congress did not intend for CPSC regulations to occupy the field in fire

protection related to consumer products covered by the FFA and contemplated that States might come up with better solutions.

The exclusion and exemption provisions reflect the recognition that no agency promulgates perfect regulations (although I think our agency does an extremely good job). For example, in this regulation, the T-shaped burners in the test method are meant to simulate burning bed clothes, since most beds will have sheets and blankets and other items on them when they catch fire that create a larger flame impinging on the mattress than the initial ignition source. However, the tests have shown that in many, if not most, cases (particularly with the new one-sided mattresses) the burners do not accurately reflect the effect of burning bed clothes. In a number of instances where the new mattresses failed to perform as staff hoped, the solution was to lower our expectations as to how many people the standard would save, not to make the standard tougher. Nevertheless, we do know that this standard will result in significant improvements in fire resistance over the old non-flame resistant mattresses. It appears, for the time being, that this rule is the best that can be done. But it makes no sense to risk eliminating sources of new information that might come from private litigation. Just as litigation informs our compliance activities, so should we allow it to inform our regulatory process.

I do not think any state court cases should be foreclosed by the preemption language in the FFA. The Commission has always, wisely to my way of thinking, stayed out of the business of trying to read anything more into the language of the preemption statute than is there.[4] It is always possible that some state court cases will be preempted by other principles the courts may apply. But that is for the courts to decide, not the Commission. It is the courts, with specific fact patterns in front of them, that are best

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[4] It is worth noting that Conference Committee Report 94-1022, which described the change in the preemption language in the FFA, contains language that has been construed by the agency's Office of General Counsel to mean that our current cigarette ignition mattress standard would preempt State standards dealing with open-flame ignition of mattresses. To date, the Commission has treated cigarette ignition and open flame ignition of complex products as very different fire scenarios requiring different types of standards. I believe the Report language was focusing on different testing methods for determining compliance with the same fire scenario. It used the flammability of a simple piece of fabric as the example of when a standard that used a match to test a fabric's flammability did not differ from a standard that used a lit cigarette. And for a single piece of fabric stretched in a holder, these test methods probably would result in no significant difference in fire protection. But the Commission has found, when dealing with complex structures such as upholstered furniture and mattresses, which contain multiple materials all of which may react differently to a smoldering or to a flaming ignition, that there are differences in the way the fires are started and in the way in which the fires progress and that different product construction methods are needed to address each type of fire situation. That we started an open-flame mattress proceeding when we already had a cigarette ignition mattress standard is proof of that. Technology may eventually overcome the need to have separate standards in these situations but they certainly had not done so at the time the Conference Committee Report was written.

equipped to decide whether a case should go forward or not. If we have gotten this standard right, then law suits against manufacturers should be a rarity and prevailing ones even less common. But if we have gotten it wrong, the fastest way we will find out is through people bringing lawsuits that challenge our conclusions. That people bring lawsuits in which they do not prevail is not an indication that our judicial system is broken. It is an indication that it is working.

Absent a clear mandate from Congress, the Commission should not put its thumb on the scale of justice to tip it one way or the other. We all have the same objective: keeping consumers safe from unreasonable risks of fire. Federal regulation is not the only way of achieving that goal.

Finally, we have the Presidential Executive Order which has been read to require the Commission to state whether or not this regulation issued under the FFA preempts not only non-identical positive State actions issued by legislative bodies and administrative agencies, but whether it also necessarily preempts State court holdings.

When he issued the Executive Order, the President stated the purpose was "...to improve access to justice for all persons who wish to avail themselves of court and administrative adjudicatory tribunals to resolve disputes, to facilitate the just and efficient resolution of civil claims involving the United States Government, to encourage the filing of only meritorious civil claims, to improve legislative and regulatory drafting to reduce needless litigation, to promote fair and prompt adjudication before administrative tribunals, and to provide a model for similar reforms of litigation practices in the private sector and in various states...."

The preemption language is placed in the Order under Section 3, which is entitled "Principles to Enact Legislation and Promulgate Regulations Which Do Not Unduly Burden the Federal Court System." It states that a regulation specify "in clear language the preemptive effect, if any, to be given to the regulation." Nearly every principle in this section deals with eliminating errors, using clear and specific language to reduce needless misunderstandings and to make sure all the necessary information that pertains to a regulation is included it in. Since this Order was signed in 1996, the Commission has interpreted it to mean that we should make sure each new regulation lays out the preemption language in the governing statute so that people affected by it are aware of the preemption provisions. The Commission has not felt it was required to go beyond the words of the governing statute which would risk creating misunderstandings or confusion. The President who signed this Order never expressed any dissatisfaction with the way the Commission responded to it on this subject. I do not know why there is a need now to define what the Commission considers to be preempted. But I do know that the need does **not** flow from this Executive Order.

I do want to thank my colleagues for responding to my request and releasing the new proposed preemption language to the public, although I still do not understand why it was withheld in the first place. One explanation I have received is that there is really nothing new in the language. If that were the case, it makes the withholding of the

language even odder. Its release at the twelfth hour, buried in the tabs of the briefing package on our web site, did not give it the public exposure it deserved. The way in which it was handled may give it more exposure than intended.

It has been said that the public got notice of this new interpretation in the Notice of Proposed Rulemaking of January 13, 2005. Nothing in that language, except for the discussion of a General Counsel Advisory Opinion with regard to the preemptive effect on a California **standard,**[5] is different from the language the Commission had been using since 1996. If that discussion was meant to alert the public that the Commission was about to embark on an interpretive exercise on preemption, it escaped not only the public's notice, but mine as well.

I would have preferred if both the Preamble language, and our General Counsel's memo, which gives the rationale behind that language, had been made public and if more time for public comment on these documents had been allowed. This would be in keeping with the one other time in which I am aware that the General Counsel's office proffered a rationale for interpreting language in one of our statutes in a restricted memo to the Commission. When a new interpretation of the term "substantial compliance" was going to be inserted in the preamble to the bunk bed rule, based on a General Counsel memo, the Commission voted unanimously to release that General Counsel memo to the public and to give interested parties ample time to respond to it. We received some very good comments on it, which helped the Commission come to a different, and unanimous, rewording of the Preamble language. That model was not followed in this case, although the outline of the General Counsel's reasoning is to be found in the language that is proposed to be inserted into the Preamble.

I am voting today to approve the text of the mattress (open-flame) rule because it is an important and needed improvement in fire safety for this country. However, I cannot support the preemption language in the Preamble which purports to expand the scope of the preemption provision in the FFA. To some, this new preemption language may not seem of much consequence in the mattress context, but it (or something very like it) will be inserted in every new regulation the Commission issues. The consumer's right to sue a manufacturer, potentially any manufacturer of a regulated consumer product, for injuries from that product, may be seriously curtailed. That surely is not without consequence. The courts will eventually decide how much deference to give the agency's interpretation of the preemption language. Perhaps they will heed the opinion of Supreme Court Justice Sandra Day O'Connor when she said, "It is not certain that an agency regulation determining the pre-emptive effect of *any* federal statute is entitled to deference...."[6]

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[5] *See* footnote 2. This Conference Report language is now being used to bolster the argument that FFA regulations preempt state common law remedies. This is not supported by anything in the legislative history.

[6] *Medtronic, Inc. v. Lohr,* 518 U.S. at 512, 116 S.Ct. 2240.

If we were the ones having to sit in judgment of whether a potential lawsuit should be preempted, then we would have to make such a determination. But we are not, and we should not.

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

STATEMENT OF THE HONORABLE THOMAS H. MOORE
On Petition CP 01-1 Requesting that the Commission Issue a Rule Requiring Product Registration Cards with Every Product Intended for Children
March 7, 2003

Today I offered a motion to grant the petition of the Consumer Federation of America as a vehicle for a formal, comprehensive review of recall effectiveness at this agency. That motion was defeated. I then voted against a motion to deny the petition. That motion was adopted. While I am disappointed that we have not begun the formal process that I believe is necessary to give this issue the prominence it deserves, I believe that my fellow Commissioners are also serious in wanting to address the issues raised by our staff in the briefing package.

There are enough legitimate questions surrounding the best method for determining what constitutes an effective recall in any particular case to merit careful review before we make assumptions about the present recall system or about a possibly more effective future one. I view an ANPR as a fact-finding step. It may lead to a full-blown rulemaking proceeding, or it may not. However, the answers we might have gotten through the ANPR process to the questions staff posed in their recent briefing package could have helped determine what future steps are necessary.

There are many types of products, many ways of notifying consumers about recalls and many reasons why consumers who have received notice of a recall fail to respond to it. Certainly we should examine the petitioner's proposal regarding children's products. The recent study by the National Highway Traffic Safety Administration should provide us with many insights into the effectiveness of a product registration card proposal. But, again, I think that it is important to look at the larger picture before we focus on the particular. An ANPR would help us achieve that focus.

Notwithstanding today's vote, the Commission staff is planning a recall effectiveness forum later this year. This forum will bring in many of the people who have already presented specific, discrete issues, such as product registration cards and direct notification of credit card customers, together with others who have information to share of a broader nature. If we had issued an Advance Notice of Proposed Rulemaking (ANPR), it could have helped to define the scope of that discussion and given the forum more visibility and perhaps more credibility than similar forums have had in the past.

At this stage, it is unclear what might flow from the upcoming forum. The issuance of an ANPR (or even a Notice of Proposed Rulemaking) is still a possibility. However, deferring or denying action on the petition, at this time, could send the wrong signal, even though we intend that staff will continue to work on this issue. I fear that if the recall effectiveness issue is kept at the informal project level that it may be overwhelmed by projects having more formal standing. For this reason I think it is important to put it in a procedural framework now where it will get the visibility and funding it deserves.

Everyone who spoke at the briefing recognized the need for attention to improved recall effectiveness. Industry has offered its help and I look forward to working with them. I know they realize that having the most effective and efficient recall procedure works to their benefit as well as to that of the consumer. I thank the petitioner and our Compliance staff for raising this issue. The proposal put forth by the Compliance staff in June 2001 should also be incorporated into any future proceeding on recall effectiveness.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot *

Commissioners Voting: Chairman Ann Brown
Commissioner Mary Sheila Gall
Commissioner Thomas H. Moore

ITEM

Draft Bill and Press Release Concerning Legislation to Expand CPSC's Enforcement Authority

DECISION

The Commission voted 2-1 to approve a draft press release, and the position taken in it, concerning draft legislation to amend provisions of the Consumer Product Safety Act and the Federal Hazardous Substances Act with respect to repair, replacement, or refund actions; civil penalties; and criminal penalties, to help expand CPSC's authority to crack down on firms that are not reporting defective products to the agency. Chairman Brown and Commissioner Moore voted to approve. Commissioner Gall voted in dissent and filed a statement concerning her vote, copy attached.

For the Commission:

Sadye E. Dunn
Secretary

* Ballot vote due May 12, 2000

STATEMENT OF THE HONORABLE MARY SHEILA GALL IN OPPOSITION TO THE CONSUMER PRODUCT SAFETY COMMISSION ENHANCED ENFORCMENT ACT OF 2000

May 12, 2000

The Commission has been presented with a ballot asking it to endorse, oppose, or modify a press release accompanied by a draft bill labeled the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000." I write to express my opposition to this draft legislation.

Restricting Election of Remedy

Section 2 of the draft legislation modifies the procedures governing the election of the "repair, replace or refund" remedy that Section 15 of the Consumer Product Safety Act (CPSA) and Section 15 of the Federal Hazardous Substances Act (FHSA) give to manufacturers, distributors and retailers. The change enables the Commission to *reject* the election made by the manufacturer, distributor or retailer to repair, replace or refund the defective item, if the Commission finds that the election was not in the public interest. The effect of this change would be to enable the Commission to virtually dictate the remedy.

Under present law the Commission is not helpless if a repair, replace or refund program is not protecting the public. If the Commission concludes that the remedy elected *and carried out* by the manufacturer, distributor or retailer has not eliminated or adequately reduced the risk from the defective product, the Commission may reopen the case. The present system strikes an adequate balance between product safety and economic rationality and I do not support a change.

Eliminating Civil Penalty Limits

Section 3 of the draft legislation eliminates any limits on civil penalties for violations of the CPSA or the FHSA. Eliminating limits would obviously increase the stakes of any failure to report. At the same time, there has been no civil penalty during the time during which I have served as Commissioner that came close to the present limit of 1.6 million dollars. (A staff-developed list of civil penalties assessed in the last five years is attached.) It is, therefore, difficult to see how eliminating the civil penalty limitation would materially improve the Commission's enforcement ability. It is the certainty of a penalty, rather than its theoretical upper limit that serves as a better deterrent to failures to report product hazards.

Criminal Violations

Section 4 of the draft legislation amends the CPSA to create two tiers of criminal violations. A "knowing" violation of Section 19 is a misdemeanor. Under present law a violation must be *both* knowing and willful to be even a misdemeanor. Section 4 of the draft legislation further amends the CPSA to make a knowing and willful violation of Section 19 a felony. The legislation eliminates the present requirement that there be a notice of noncompliance from the Commission, and an opportunity for a company to come into compliance, prior to a criminal violation of the CPSA. The same section of the draft legislation makes willful violations of the FHSA a felony.

I do not oppose making criminal violations of the CPSA and FHSA felonies, but I firmly oppose removing the requirement that companies be told that they are in noncompliance with the CPSA, and be given an opportunity to come into compliance, before being prosecuted for criminal violations of the CPSA. While the Commission does deal with many large companies that have staff and counsel who are aware of the Commission and its activities, the Commission also encounters many small companies who have no idea that the Commission even exists and that there are regulations or standards concerning the products that they make. These companies should not be subject to criminal prosecution for violation of the CPSA without receiving at least a notice that they are in violation and an opportunity to correct the violation.

During my over eight years of service as a Commissioner, I have been a strong supporter of the Commission's enforcement function. This legislation, despite its label, would do little to actually enhance that function and contains elements of both economic irrationality and of unfairness to manufacturers, distributors and retailers.

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 da
		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 wrists/arms	$50,000	metal pad	70 injured/fractured
Cosco toddler bed guardrails	$725,000	strangulation	25 entrapments, 1 death

News from CPSC

U.S. Consumer Product Safety Commission
Office of Information and Public Affairs Washington, D.C. 20207

For Immediate Release
, 2000
Release # 00-DRAFT

Contact:
(301) 504-0580 Ext.

White House Proposes Legislation to Expand CPSC's Authority to Crack Down on Firms Not Reporting Dangerous Products

WASHINGTON, D.C. - First Lady Hillary Rodham Clinton joined U.S. Consumer Product Safety Commission (CPSC) Chairman Ann Brown today to announce legislation to help expand CPSC's authority to crack down on firms that are not reporting defective products to the agency. CPSC conducts 200 to 300 product recalls each year, yet half of the most serious product hazards are discovered by CPSC investigators, not reported by the company as required by law.

The following proposals were announced today at a White House news conference:

- **Eliminate the $1.65 million cap on the maximum fine that CPSC can impose on a company that fails to report a serious product hazard.**
- **Increase the penalty for serious criminal violations of product safety laws from misdemeanors to felonies, and eliminate the requirement that the agency give prior notice to the company that is criminally violating the law.**
- **Give CPSC more authority over company remedies for product recalls.**

CPSC also is expanding its partnerships with the American Academy of Pediatrics, the American Medical Women's Association, the Emergency Nurses Association and other health care organizations, to help find products that have the potential to cause death or serious injury, especially to children. This new product injury reporting network will provide even more sources of product injury data. CPSC currently collects information from a wide variety of sources, including hospital emergency rooms, fire investigators, news reports and coroners. The new network will expand its reach even further.

QUOTE FROM FIRST LADY

"The combination of this increased enforcement capability and higher civil and criminal penalties for not reporting would provide a strong deterrent against companies failing to notify CPSC about dangerous products," said CPSC Chairman Ann Brown.

-more-

When companies ignore the law, dangerous products can stay on store shelves, putting consumers at risk. CPSC has to do its own detective work to find out about the problem products and seek recalls. Increasing CPSC's authority and expanding its product injury reporting network will mean that dangerous products are recalled faster. This will prevent injuries and save lives.

The U.S. Consumer Product Safety Commission protects the public from unreasonable risks of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at http://www.cpsc.gov/talk.html. For information on CPSC's fax-on-demand service, call the above numbers or visit the web site at (http://cpsc.gov/about/who.html. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information at CPSC's web site at http://www.cpsc.gov. To establish a link from your web site to this press release on CPSC's web site, create a link to the following address: http://www.cpsc.gov/cpscpub/prerel/prhtml00/00XXX.html. ####

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106TH CONGRESS

2D Session

H.R. _____

_____

IN THE HOUSE OF REPRESENTATIVES

_____ introduced the following bill; which was referred to the Committee on _____

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. The Consumer Product Safety Act, Section 2064(d) of title 15, United States Code, is amended –

(1) by striking "If" in line 1 of paragraph 1 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. The Federal Hazardous Substances Act, Section 1274(b) of title 15, United States Code, is amended –

(1) by striking "If" in line 1 of paragraph 1 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. The Federal Hazardous Substances Act, Section 1274(c)(2) of title 15, United States Code, is amended to read as follows:

(1) by striking "If" in line 1 of paragraph 1 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. The Consumer Product Safety Act, Section 2069(a) of title 15, United States Code, is amended to read as follows:

(a)(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. The Federal Hazardous Substances Act, Section 1264(c) of title 15, United States Code, is amended to read as follows:

(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. The Consumer Product Safety Act, Section 2070 of title 15, United States Code, 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. The Federal Hazardous Substances Act, Section 1264(a) of title 15, United States Code, is amended to read as follows:

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.

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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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June 20, 2007

The Honorable Nancy A. Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Nord:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Tuesday, May 15, 2007, at the hearing entitled "Protecting Our Children: Current Issues in Children's Product Safety." We appreciate the time and effort you gave as a witness before the Subcommittee.

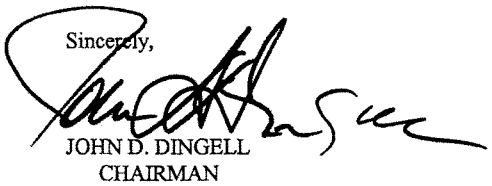
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response. Please begin the responses to each Member on a new page.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on Friday, July 6, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 226-5577 to the attention of Angela E. Davis. An electronic version of your response should also be sent by e-mail to Ms. Davis at angela.davis@mail.house.gov in a single Word or WordPerfect formatted document.

The questions from Chairman Rush are also being sent to Commissioner Moore for his responses.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact me or have your staff contact Ms. Davis at (202) 225-2927.

Sincerely,



JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Tammy Baldwin, Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Charles A. Gonzalez, Member
Subcommittee on Commerce, Trade and Consumer Protection

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Nancy Nord, Acting Chairman

Tel: 301 504-7901

July 13, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of June 20, 2007, related to the hearing by the Subcommittee on Commerce, Trade and Consumer Protection entitled "Protecting Our Children: Current Issues in Children's Product Safety." Attached to your letter were additional questions submitted by Chairman Bobby L. Rush, Congresswoman Tammy Baldwin and Congressman Charles A. Gonzalez.

Please find enclosed my answers to these questions. I should note that these responses reflect my own views and have not been considered by the Commission which, as you know, continues to lack a quorum.

Sincerely,

Nancy A. Nord
Acting Chairman

Enclosures

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Bobby L. Rush

1.) **Statutory Adequacy.** Does the Consumer Product Safety Act provide the Consumer Product Safety Commission with sufficient tools to protect the American public, especially children, from unsafe products? What statutory changes should Congress consider to help the agency do its job better?

The U.S. Consumer Product Safety Commission (CPSC) was last reauthorized in 1990. Clearly, the dynamics of the marketplace have changed significantly since that time. The explosion of imports of consumer products, now accounting for over two-thirds of our product recalls, is confronting the Commission with a number of new issues. Products being sold via the Internet and other direct-to-consumer sales pose a growing challenge to the agency's enforcement capabilities. Emerging and ever more complex technologies challenge the agency's expertise and resources.

I believe it is in the best interest of consumer product safety to modernize CPSC's statutes and to strengthen the agency's hand in protecting the American public, especially children, from unsafe products. In that regard, I am attaching a copy of my proposed *Product Recall, Information and Safety Modernization Act of 2007* that describes important revisions that I believe the Congress should consider making to CPSC's statutes. I am hopeful that these suggestions will begin a conversation about how the agency's authority can be modernized.

As the marketplace continues to evolve, ensuring that the CPSC maintains adequate statutory tools will not only help address existing product safety issues but will also make sure that we are able to respond effectively to the 21st Century challenges of growing imports, emerging hazards and modern technology.

2.) **Structure of Commission.** Should the CPSC return to its original architecture and be governed by five commissioners? Why or why not?

Considering the current size and budget of the CPSC overall, it may be an unreasonable strain on the resources of the agency to return to a five-member Commission. While doing so would make the loss of a quorum under our governing statutes less likely, adding two additional commissioners, with staff support, could cost the agency nearly $400,000 in design and construction costs to house them and at least $1,500,000 million annually to maintain salaries and overhead. These are funds that would be better put to use in carrying out our mission. (In fact, I have reduced my personal staff budget by one FTE and would like to see the rest of the Commission, when the quorum is returned, do likewise to conserve the agency's valuable resources.)

3.) **Budget.** The House Appropriations Committee recently approved an increase for the CPSC for FY2008 to $66.8 million, $4.1 million (6.5 percent) over FY2007 and $3.6 million (5.7 percent) more than the President's Budget. How should the CPSC use this increase?

House Report 110-207 (accompanying H.R. 2829 making appropriations for the CPSC) was approved by the House of Representatives on June 28, 2007. In this Report, the Appropriations Committee stated that it recommended funding sufficient to maintain staff at a level of 420 FTEs. CPSC staff estimates that the cost of that would be $2,087,000. The Report also includes an additional $1,500,000 above the President's Budget for information technology improvements, including upgrades to administrative systems and databases.

I would recommend that the remaining $513,000 balance be applied toward modernization of the testing laboratory and funding support of compliance work and standard-setting activities.

4.) **Mandatory Safety Standards.** The U.S. relies to a great extent on voluntary product safety standards. Do those voluntary standards work well enough to protect children, especially when it comes to critical nursery products, such as high chairs, strollers, and play yards?

In the United States, there is a well established system of voluntary – or what we prefer to call consensus – product safety standards. Under the guidance of respected groups like the American National Standards Institute, ASTM International, and Underwriters Laboratories, literally thousands of such standards have been written and are continuously being revised. With regard to children's products, CPSC staff over the last year participated in numerous consensus standards activities.

There exists a strong preference in CPSC's statutes for deference to such consensus standards over the promulgation of mandatory CPSC-drafted regulations. As an historically small agency, this consensus standards process allows the CPSC to leverage its resources and achieve much greater coverage over the consumer products that fall under our jurisdiction. It also recognizes the dynamic and evolving nature of product development and marketing by streamlining the process to amend and improve safety standards.

It is important to underscore, however, that in any case where a voluntary standard fails to adequately address a product hazard or where there is a lack of substantial compliance with an adequate standard, the Commission may issue mandatory product safety regulations. For example, the CPSC is currently proceeding with rulemaking related to lead in children's jewelry.

5.) **Manufacturer Duty to Report Defects and Unreasonable Risks.** Consumer groups have charged that the CPSC's Final Interpretive Guidance (issued last July) on manufacturers' duty under Section 15 (b) to report immediately any product defects has, in effect, watered down that requirement. The list of factors that CPSC guidance allows a manufacturer to take into account – such as the number of defective products on the market, product misuse, adequacy of warning, obviousness of risk – appears to shift the burden of not reporting away from the manufacturer and could be interpreted to create a sort of safe harbor for them. How do you respond to this criticism?

This criticism lacks merit. In the three calendar quarters after the revision was adopted, there have been more Section 15 reports than in the first three quarters of *any* year in CPSC's history.

With respect to all the factors mentioned, the regulation adopted in July 2006 merely clarified the prior rule and/or codified existing practice. For example, the prior rule (in explaining when the risk of injury associated with a product is the type of risk that will render a product defective) listed factors that the Commission and staff may consider. These included such broad factors as "the case law in the area of products liability..." 16 C.F.R. § 1115.4 (2006). The revised rule retains these general considerations but also spells out some of the factors that have been highlighted by the case law in the area of products liability and frequently are considered by the Office of Compliance, such as the obviousness of the risk and the foreseeability of consumer misuse. 16 C.F.R. § 1115.4 (2007). Consistent with this purpose of clarification, the revision to the reporting rule was not expected to lead to any decline in the number of defective product reports, nor has it.

6.) **Recalls.** The commentary and testimony from consumer groups reveal extreme frustration with the CPSC's effectiveness in mounting recalls of dangerous products. Is there more that the CPSC can do to get unsafe products off the store shelves more quickly, even with the limitations imposed by section 6(b)?

In fiscal year 2006, the CPSC announced a record number of recalls of defective products. While the agency has the authority to require a mandatory product recall, due to the lengthy and resource-intensive nature of the proceeding required to issue such a recall, the reality is that the overwhelming majority of the recalls that we oversee are voluntary on the part of the recalling firm, the details of which we negotiate with that firm.

Today approximately half of our recalls are initiated under our innovative "Fast Track" recall program. Under this program the subject firm agrees to initiate a recall within 20 days after notifying the CPSC of a product problem. The program has been extremely successful at getting unsafe products off the market in a faster timeframe than would be possible if resort to litigation were the norm.

Within the constraints of the agency's resources and statutes, CPSC staff conducts surveillance in retail establishments and via the Internet to assure that recalls have been effective in getting defective products off retail shelves. CPSC also works closely with state and local partners in this regard.

As noted in the attached legislative proposal, I would encourage Congress to consider amending Section 19 of the CPSA to make it unlawful for anyone knowingly to sell a product that has been recalled. I believe that this would be an effective tool that the agency should be provided to get unsafe products off the store shelves more quickly.

7.) **Election of "Recall" Remedy.** Testimony by Safe Kids states that once the CPSC determines that a product presents a substantial hazard and that remedial action is required, the CPSC may order the manufacturer of that product to elect -- at the *manufacturer's* discretion – among several types of "recalls." Is this an accurate statement of the way recalls work? Does the CPSC

feel constrained in its ability to implement recall programs that best serves the best interests of Americans?

This is an accurate statement of the law concerning involuntary recalls under Section 15 of the Consumer Product Safety Act, 15 U.S.C. § 2064(d) and Section 15 of the Federal Hazardous Substances Act, 15 U.S.C. § 1274©(2). With regard to mandatory recalls, I have proposed that Congress clarify in both Acts that the CPSC must approve the consumer remedy (refund, repair, or replacement) proposed by a firm.

8.) **Lead in Children's Products.** Issues have arisen concerning the amount of lead in children's products. Is the CPSC's authority under the Federal Hazardous Substances Act or other statutory authority sufficient to address lead hazards to children?

The adverse health effects of lead poisoning in children are very serious. These effects include neurological damage, delayed mental and physical development, attention and learning deficiencies, and hearing problems. From its inception, the CPSC has been a leader in protecting the public, particularly children, from the hazards of lead and other toxic substances. In 1978, the agency banned lead in excess of 0.06 percent (600 parts per million – ppm) in paint for homes, toys and a variety of other products, due to the risk of ingestion and/or inhalation of lead-containing paint chips and dust.

Since then, the agency has been aggressive in removing accessible lead from hundreds of other products and product categories, through recalls, standards development, hazard identification, product testing, public education, industry guidance, retail surveillance, port inspections, and state and local partnerships. Recent examples include vinyl miniblinds (where lead rose to the surface of the blinds and lead dust was ingested by children), crayons and chalk (ingestion), and children's jewelry. In this last product category, there have been over 20 product recalls in the last two years, representing millions of units of jewelry containing lead accessible to children by mouthing or accidental ingestion. These recalls were largely triggered by enforcement guidance issued by CPSC Compliance staff in 2005. Building on this activity, the Commission voted unanimously in December 2006 to issue an advance notice of proposed rulemaking (ANPR) that may result in a regulation effectively banning lead in children's metal jewelry.

The CPSC's authority in regulating lead hazards to children generally falls under the Federal Hazardous Substances Act (FHSA). This law establishes a ban for "any toy or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted." Since its inception, CPSC's existing authority has proved adequate for the agency to engage in the aggressive and ongoing activities described above that address the hazards to children of accessible lead.

9.) **Lab Conditions.** Do you agree with critics that the CPSC lab in Gaithersburg, MD, is inadequate and failing to keep up with technological advances? What would it take to make your lab effective?

CPSC staff has been working with the General Services Administration (GSA) for the last several years to improve our laboratory facilities. Our lab provides critical support to compliance investigations and the development of safety standards. Over the past 7 years, GSA has made over $3 million in capital improvements including construction of an 18,000 square foot sample storage facility, the development of a master plan/feasibility study for modernization (completed in 2005), as well as improvements to the electrical distribution system at the lab site. A laboratory modernization capital project was proposed by GSA in FY 2007 and FY 2008, but was not funded due to other priorities (Hurricane Katrina recovery projects). The CPSC and GSA are currently exploring other approaches to updating our laboratory capabilities that will meet our requirements, reduce operating costs, and provide for a more effective overall real estate solution. Our goal is to have a plan in place before the end of this fiscal year.

The Honorable Tammy Baldwin

1.) Chairman Nord, the Commission has cited Section 7(b) of the Consumer Product Safety Act as a statutory barrier inhibiting the Commission from promulgating mandatory safety standards. It has also described a rather protracted rulemaking process to create any mandatory standards. Would you support modifying Section 7(b) of the Act to grant the Commission more authority in moving ahead with mandatory standard? Would you support any modification to the current existing three-stage process in promulgating mandatory rules?

In the United States, there is a well established system of voluntary – or what we prefer to call consensus – product safety standards. Under the guidance of respected groups like the American National Standards Institute, ASTM International, and Underwriters Laboratories, literally thousands of such standards have been written and are continuously being revised.

There exists a strong preference in CPSC's statutes for deference to such consensus standards over the promulgation of mandatory CPSC-drafted regulations. As an historically small agency, this consensus standards process allows the CPSC to leverage its resources and achieve much greater coverage over the consumer products that fall under our jurisdiction. It also recognizes the dynamic and evolving nature of product development and marketing by streamlining the process to amend and improve safety standards. It is important to note, however, that in any case where a voluntary standard fails to adequately address a product hazard or where there is a lack of substantial compliance with an adequate standard, the Commission may issue mandatory product safety regulations.

With regard to voluntary standards, I would support a clarification in the statute that a voluntary standard on which the Commission formally relies is subject to the same enforcement as are CPSC's mandatory standards. Additionally, I would support a modification to the existing three-stage process in promulgating mandatory rules. I believe that the regulatory process could be streamlined by eliminating the requirement for issuing an advance notice of proposed rulemaking (ANPR) while maintaining the ANPR as an option to use when the Commission determines it is appropriate.

2.) Have you reviewed legislation, introduced by Congresswoman Allyson Schwartz last Congress that creates mandatory safety standards that include warning labels, anchoring devises, and a weight requirement? If not, would you generally support such a bill? Would you support a rule that would make current voluntary furniture tipping standards mandatory? Do you think the Commission has the resources to do so?

It was a pleasure to meet with you last month on the important product safety issue of tipping furniture. The Commission, which is currently without a quorum, has not taken a stand on any specific legislation, nor have I personally. As you know, among CPSC's safety activities, and in accordance with our governing statutes, the agency staff participates in the development of voluntary standards (as discussed above in my response to your first question). In 1996 CPSC

requested that ASTM International, a recognized standards development organization, create a special subcommittee to address the hazard of tipping furniture. They did so, and subsequently in 2000, ASTM adopted a safety standard for chests, door chests and dressers.

Since the approval of that standard, CPSC staff has continued to work with the appropriate committee of ASTM on ways to further improve the standard. For example, ASTM is balloting changes to the standard to require "brackets/attachment hardware" to be included with the furniture along with a warning label alerting consumers to the hazard of unstable furniture. ASTM is also considering enhancement to the performance requirements currently in the standard.

A key benefit of a voluntary safety standard is that it can be more easily revised and improved, as is the case with the furniture standard, than can a mandatory standard which to be amended requires that the agency go through an arduous three-part rulemaking process and make the attendant statutory findings. With regard to the tipping furniture hazard, CPSC currently plans to continue to focus its resources on improving the voluntary standard and on public education, such as the education campaign that the agency initiated last year regarding the dangers of television and furniture tipovers.

The Honorable Charles A. Gonzalez

1.) Why has the Commission failed to support rulemaking based upon voluntary safety standards on lighters that are widely supported by the industry and proven effective? Is there a statutory prohibition to the CPSC relying on these voluntary standards? If not, what has been the delay to date in issuing a rulemaking?

The Lighter Association filed a Petition for Rulemaking with the Consumer Product Safety Commission in 2001. The Petition sought to have the Commission rely upon the existing ASTM F-400-04 lighter safety standard, in essence making it a mandatory safety standard. All U.S. manufacturers adhere to this voluntary standard.

Over five years later, this Petition has still not been acted upon even though the CPSC staff reported to the Commissioners that over 75 percent of the lighters imported from China still failed one or more of the well established safety tests in the ASTM standard. Nearly 1000 Americans are burned every year by faulty lighters that fail to meet the standard.

I certainly share the concerns expressed in this question. In November 2004 the Commission voted to grant the petition and initiate a rulemaking proceeding. An Advance Notice of Proposed Rulemaking was published in April 2005. While our information collection mechanism have not found a sizeable number of serious injuries or fatal incidents related to malfunctioning or substandard lighters, nevertheless, those serious incidents that do occur are a concern to me. Last year, prior to the loss of our quorum, I unsuccessfully sought support from my colleague for the agency to put out for public comment a proposal to rely on the voluntary lighter standard (ASTM F-400-04), under the authority granted to the Commission under our governing statutes. Moving forward in this way might have enabled the CPSC to more effectively address the issue of unsafe lighters being imported into the United States. I continue to seek ways in which to address this important issue.

WORKING PAPER ...WORKING PAPER ...WORKING PAPER

PRODUCT RECALL, INFORMATION AND SAFETY MODERNIZATION ("PRISM") ACT

Note: CPSC = Consumer Product Safety Commission;
CPSA = Consumer Product Safety Act;
FHSA = Federal Hazardous Substances Act;
FFA = Flammable Fabrics Act.

Title I. Improved Enforcement Tools

Section 1. Additional Prohibited Acts

(a) Make it unlawful (under Section 19 of CPSA) to knowingly sell to a consumer a recalled product after the date of public announcement of the recall;

Rationale: Creates incentive to halt sales of recalled products quickly.

(b) Make it unlawful for a recalling firm to fail to provide notice to any retailer or distributor to whom it has previously distributed the recalled product at least 24 hours before notification to the general public or purchasers of the product (Section 19 of CPSA and relevant sections of other statutes);

Rationale: Assures recalling firm's distributors/retailers have advance notice so that they can comply with "stop sale" requirement.

(c) Clarify that it is a prohibited act to manufacture *etc.* a product which violates a voluntary standard upon which the CPSC has relied under Section 9(b) of the CPSA or other statute administered by the Commission;

Rationale: Makes clear that once the Commission has formally relied upon a voluntary standard, its stature is equal to a mandatory standard for enforcement purposes. Makes requirement uniform across all CPSC statutes.

(d) Make it unlawful to fail to furnish a certificate of compliance with a mandatory standard under any statute administered by CPSC or any voluntary standard relied upon by the Commission or to issue a false certificate of compliance (CPSA Section 19 and relevant sections of other statutes);

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Rationale: Applies CPSA certificate requirement uniformly across all CPSC statues, and treats voluntary standards formally relied upon by the Commission as equivalent to mandatory product safety standards for certification purposes.

(e) Make it unlawful to fail to provide information in timely response to a subpoena from the Commission (CPSA Section 19 and relevant sections of other statutes);

Rationale: Provides explicit enforcement mechanism for failure to respond to a Commission subpoena in timely fashion.

(f) Prohibit stockpiling under all statutes administered by the Commission to the same extent as under the CPSA (Section 9(g));

Rationale: Conforms other CPSC statutes to anti-stockpiling provisions of CPSA

Section 2. Civil and Criminal Penalties and Other Remedies

(a) Add asset forfeiture as a potential additional criminal remedy under any statute administered by the Commission (Section 21 of CPSA and relevant sections of other statutes);

Rationale: Allows CPSC to act to assure that any gain from criminally violative activity is not retained by perpetrator.

(b) Give the CPSC the authority to impose penalties of up to $2 million administratively without need for Department of Justice referral and initiation of federal court action under CPSA, FHSA and FFA (penalty would still be subject to judicial review);

Rationale: Streamlines civil penalty process by allowing CPSC to proceed administratively rather than via judicial action in many cases

(c) Increase the cap on civil penalties under the CPSA, FHSA, and FFA to $10 million, to be phased in over 4 years. (Section 20 of CPSA; Section 5 of FHSA; Section 5 of FFA);

Rationale: Gradual phase-in reduces likelihood of unmanageable surge in unnecessary reports from firms or that some firms may stop submitting necessary reports. Uniformity across all statutes makes enforcement tools consistent for all products under Commission jurisdiction.

(d) Clarify that the list of 5 statutory factors to be considered by the CPSC in determining a civil penalty amount under the CPSA, FHSA or FFA is not

exclusive [Section 20(b),(c) of CPSA; Section 5(c)(3),(4) of FHSA; Section 5(e)(2),(3) of FFA].

Rationale: Makes clear that while Commission must consider factors enumerated in the statute, it may in its discretion address other factors as appropriate to the particular matter under consideration.

Section 3. Recalls

(a) Clarify that the CPSC must approve the consumer remedy (refund, repair or replacement) proposed by a firm in a mandatory recall under Section 15 of the CPSA or section 15 of the FHSA;

Rationale: Makes clear that Commission is the final arbiter of the remedy in rare instances of mandatory recalls (recalls that are mandated after failed negotiation, an administrative law hearing, Commission review and subject to judicial review).

(b) Authorize CPSC to order further notification of consumers and additional corrective action if consumers are not adequately protected by the original corrective action.

Rationale: Provides clear authority to the Commission to take additional action if remedy as initially implemented proves insufficient to adequately protect consumers.

Section 4. Information and Reporting

(a) Require reports under section 15 whenever a manufacturer, distributor or retailer obtains information which reasonably supports the conclusion that a product fails to comply with (i) a mandatory standard or ban adopted by the Commission under any statute it administers; or (ii) a voluntary standard relied upon by the Commission under any statute it administers;

Rationale: Adds reporting requirements for violations of mandatory standards under all statutes, as well as voluntary standards upon which the Commission may rely.

(b) Require any retailer or distributor of any consumer product to provide, to the extent practicable, the name and address of any company who supplied the product to such retailer or distributor (would amend Section 16 of CPSA);

Rationale: Such information should be in the hands of the retailer or distributor. Access to it would allow CPSC to reach other possible routes for product to get to consumers.

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(c) Require any manufacturer, importer or distributor of a consumer product to provide, to the extent practicable, the name and address of any entity to which it sold or otherwise made available such product for resale (CPSA Section 16).

Rationale: Such information should be in the hands of the manufacturer, importer or distributor. Access to it would allow CPSC to identify other possible routes for the product to get to consumers.

Section 5. Bonding of Violative Imports

(a) Permit the Commission or Customs to require the posting of a bond sufficient to pay for the destruction of a shipment of consumer products where the expense may be substantial or there are concerns that a firm may disappear or abandon the shipment.

Rationale: Assures that if CPSC must address disposal of violative products, funds to do so are available from the importer. As an example of the need, disposal of violative fireworks can involve significant costs.

Section 6. Foreign Internet Sales

(a) If a consumer product is sold or offered for sale to consumers on the internet by an entity located outside the United States, that entity shall be deemed the manufacturer/importer and shall maintain the original or a copy of the records relating to such sales within the United States.

Rationale: Allows CPSC to reach extraterritorial internet sellers and assures that records necessary to track such sales are available in the United States.

Section 7. Information Disclosure Reform

(a) Reduce the notice period of CPSA section 6(b) from 30 days to 15 days and allow for electronic notice to a firm by the CPSC;

Rationale: Reduced timeframe facilitates timely recalls and recognizes 21st Century modes of electronic communication.

(b) Expand the exemptions from CPSA section 6(b) to include (i) violations of any CPSC mandatory standard, ban or relied-upon voluntary standard (not just CPSA-promulgated standards); and (ii) prohibited acts under any statute administered by the Commission;

Rationale: Extends application of section 6(b) exemption to relied-upon voluntary standards and clarifies that section 6(b) exemption runs to prohibited acts under any CPSC statute.

(c) Amend Section 29(e) of the CPSA to allow the CPSC to share information with any other federal agency for law enforcement purposes and to share any product safety-related information with any federal, state, local or foreign government who has established the ability to protect such information from premature public disclosure and who agrees to protect such information;

Rationale: Clarifies that CPSC can share any information with government enforcement partners, not just "reports." Adding foreign governments recognizes global marketplace.

(d) Clarify that section 6(b) does not prohibit the disclosure of information to foreign governments concerning products manufactured within their own national territory by companies not subject to U.S. jurisdiction;

Rationale: Recognizes global marketplace and addresses situations where direct U.S. jurisdiction over foreign manufacturer may not be.

(e) Provide that reports to the Commission under section 15 shall be given the same consideration as reports under section 37.

Rationale: Increases incentive to provide prompt and full information to CPSC. Makes section 15 provisions consistent with existing section 37 provisions.

Title II. Regulatory Reform

Section 1. Streamline Overall Regulatory Process

Eliminate the requirement (but not the option) of issuing an advance notice of proposed rulemaking (ANPR) prior to the issuance of a notice of proposed rulemaking (NPR) relating to standards or bans under any statute administered by the Commission.

Rationale: Enables Commission to issue and update mandatory standards more efficiently where warranted. Commission could still, in its discretion, issue ANPR with regard to either potential mandatory or relied-upon voluntary standard.

Section 2. Efficient Enforcement Authority

Grant CPSC authority to promulgate regulations for the efficient enforcement of any statute it administers (just as the CPSC now has under Section 10 of the FHSA).

Rationale: Clarifies that Commission can issue enforcement regulations in addition to consumer product safety standards under any of its statutes where warranted to carry out mission.

Section 3. Eliminate Unnecessary Regulatory Requirement

Correct disparity in rulemaking process between Sections 2 and 3 of FHSA by eliminating the requirement that the CPSC follow the procedures of the Federal Food, Drug and Cosmetic Act.

> Rationale: Eliminates confusion between rulemaking under Food, Drug and Cosmetic Act and informal rulemaking procedures otherwise called for in these sections.

Section 4. Strike Section 30(d) of CPSA

Eliminate the requirement to make findings, with public notice, before regulating under the CPSA vs. other statutes.

> Rationale: By eliminating two step proceeding, allows for more expedited issuance of CPSA rather than FHSA, FFA, or PPPA standard where warranted.

Section 5. Treaty Conformity

Eliminate the 60 day deadline for publishing final rules. Executive Order 12889 requires minimum 75 day comment period. (Section 9(d) of CPSA).

> Rationale: Conforms rulemaking process to notice requirements under North American Free Trade Agreement.

Section 6. Expand Certification Requirements

Extend existing certification requirement under CPSA (Section 14) to all statutes administered by the Commission.

> Rationale: Avoids confusion among disparate certification and labeling provisions of CPSA, FHSA, FFA, and PPPA.

Section 7. Relied-upon Voluntary Standards

Clarify that informal APA rulemaking requirements are to be followed under the "notice and comment" provisions of Section 9(b) of the CPSA (after other, existing prerequisites to Section 9(b) are met, e.g., that there be an extant mandatory rulemaking underway, etc).

> Rationale: Makes clear that full notice and comment rulemaking using Administrative Procedure Act process is the mechanism for the Commission to make "relied-upon" determinations.

Section 8. Rulemaking Authority

Authorize the Commission to adopt rules implementing any of the provisions of this Act ("PRISM").

Rationale: Explicitly enables the Commission to implement the other provisions of PRISM.

Title III. Technical Revisions

Section 1. CPSC Jurisdiction

(a) Clarify the jurisdiction of the National Highway Traffic Safety Administration vs. the CPSC over "dual use" motor vehicle equipment (*e.g.*, infant carriers and children's car seats that can be removed and used away from the vehicle) (Section 3 of CPSA; Section 2 of FHSA);

Rationale: Eliminates confusion over which agency can take action depending on whether issue involves in-car or out-of-car problems.

(b) Add "medical devices" to list of products not within CPSC jurisdiction under FHSA (Section 2(f)(2)).

Rationale: Eliminates inconsistency with CPSA and places "medical device" jurisdiction with the Food and Drug Administration.

Section 2. Other Technical Revisions

(a) Under FFA, delete reference to enforcement under the FTC Act and replace with CPSA enforcement mechanisms. (Section 5(b));

Rationale: Modernizes and simplifies FFA enforcement process to be consistent with other CPSC Acts.

(b) Delete section CPSA section 36, FHSA section 21 and FFA section 17;

Rationale: These congressional veto provisions are superseded by the Congressional Review Act.

(c) Add "records" to inspection authority under FHSA to make consistent with CPSA (FHSA Section 11(b));

Rationale: Clarifies that FHSA inspection authority is coincident with that under CPSA.

(d) Strike "dealer" and replace with "retailer" under Section 15 of FHSA;

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Rationale: Makes clear in the FHSA that Commission has authority over the last commercial entity before the ultimate consumer.

Title IV. Reauthorization of CPSC

Section 1. Authorization of Appropriations

CPSC to be authorized to be appropriated such sums as may be necessary to carry out its activities for FY '09 and thereafter. (Amends section 32 of CPSA).

Rationale: Multi-year authorization avoids decade and a half lapse like that which has occurred since 1990.

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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
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June 20, 2007

Ms. Rachel Weintraub
Director of Product Safety and
Senior Counsel
Consumer Federation of America
1620 I Street, N.W. Suite 200
Washington, D.C. 20006

Dear Ms. Weintraub:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Tuesday, May 15, 2007, at the hearing entitled "Protecting Our Children: Current Issues in Children's Product Safety." We appreciate the time and effort you gave as a witness before the Subcommittee.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on Friday, July 6, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 226-5577 to the attention of Angela E. Davis. An electronic version of your response should also be sent by e-mail to Ms. Davis at angela.davis@mail.house.gov in a single Word or WordPerfect formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact me or have your staff contact Ms. Davis at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Consumer Federation of America

July 3, 2007

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade and Consumer Protection
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush:

I appreciated the opportunity to testify before the Subcommittee on Commerce, Trade, and Consumer Protection on May 15, 2007 at the hearing entitled, "Protecting Our Children: Current Issues in Children's Product Safety." The hearing was positive and productive. I look forward to working with you and your staff to move forward some of the bills focused on at the hearing.

I also appreciate the opportunity to respond to questions posed to me by Chairman Rush. Below are the questions directed to me as well as my answers.

Question:
1. **Civil Penalties Cap.** Are you aware of whether other Federal agencies, especially agencies focused on health and safety, have any overall cap on the civil damages they can assess, similar to the cap limiting the Consumer Product Safety Commission (CPSC)?

Answer:

CFA has reviewed the civil penalty provisions of three other Federal agencies focused on health and safety and found that there is a wide variation among civil penalty provisions. These agencies are illustrative of the range in methodology used in assessing civil penalties throughout the U.S. government.

NHTSA
The civil penalty authority of the National Highway Transportation Safety Administration (NHTSA) was amended by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in 2000 because it became clear that the existing civil penalty provisions were not adequate. Section 5(a) of the TREAD Act increases NHTSA's statute's maximum civil penalty from $1,100 to $5,000 for each violation of any of the statute's general provisions. Significantly, this revision removed the $925,000 cap on civil penalties for any related series of violations by increasing the

maximum for any related series of violations to $15,000,000.[1] The TREAD Act also established the current prohibition for violations of reporting and other informational requirements as a separate provision, setting a new penalty structure for violations of this provision of $5,000 for each violation per day, and the maximum penalty for any related series of daily violations of $15,000,000.[2] Thus, while CPSC is capped at assessing civil penalties at $1.83 million, NHTSA can assess civil penalties up to $15 million.

FDA

The Civil penalties that the Food and Drug Administration can assess vary widely depending upon under which statute the penalty is being assessed. For example, under the Safe Medical Devices Act (SMDA), there is a $16,000 per violation penalty that is capped at $1.1 million.[3] Under the Prescription Drug Marketing Act (PDMA) civil penalties are linked to specific violations of the Act. For each violation of section 333 (b)(2)(b), after the second conviction in any ten year period, there is a penalty of $1.1 million with no reference to a maximum amount that can be levied.

Similarly for violations of provisions of the Food Quality Protection Act (FQPA), "any person who introduces into interstate commerce or delivers for introduction into interstate commerce an article of food that is adulterated . . . shall be subject to a civil monetary penalty of not more than $55,000 in the case of an individual and $275,000 in the case of any other person for such introduction or delivery, not to exceed $550,000 for all such violations adjudicated in a single proceeding."[4]

The FDA also has civil penalty authority under the Generic Drug Enforcement Act (GDEA) (per violation for an individual, $275,000; per violation for any other person, $1.1 million);[5] under the Radiation Control for Health and Safety Act (RCHSA), (per violation per person, $1,000; capped for any related series of violation, $325,000);[6] the Mammography Quality Standards Act ($11,000 per violation)[7]; and the National Childhood Vaccine Injury Act of 1996 ($110,000 per occurrence).[8] Thus, there are not caps on civil penalties for the aggregation of violations under most of the statutory provisions over which FDA has authority.

USDA

The United States Department of Agriculture levies numerous civil penalties under various statutory provisions under the administration of at least eight agencies: 1) Agricultural Marketing Service; 2) Animal and Plant Health Inspection Service; 3) Food and Nutrition Service; 4) Food Safety and Inspection Service; 5) Forest Service; 6) Grain Inspection, Packers and Stockyards Administration; 7) Federal Crop Insurance

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[1] Federal Register: November 14, 2000, Volume 65, Number 220, page 68108.
[2] http://www.nhtsa.gov/cars/rules/rulings/TREAD/MileStones/index.html
[3] See 21 U.S.C. 333(g) (1) (A).
[4] See 21 U.S.C. 333 (g) (2) (A).
[5] See 21 U.S.C. 335b(a).
[6] See 21 U.S.C. 360pp(b)(1).
[7] See 42 U.S.C. 263b(h)(3).
[8] See 42 U.S.C. 300aa-28(b)(1).

Corporation; and 8) Rural Housing Service.[9] I will provide examples of some of the civil penalty provisions levied by USDA agencies to illustrate the variance in the amount and structure of these provisions.

The Agricultural Marketing service has the authority to levy civil penalties under fifty-three different statutory provisions.[10] For example, civil penalties for a violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $1,200 for each such offense and not more than $350 for each day it continues, or a maximum of $350 for each such offense if the Secretary determines the violation was not willful.[11] Civil penalties for a violation of a cease and desist order, or for deceptive marketing, under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b) has a minimum of $650 and a maximum of $11,000.[12] Civil penalties for a violation of a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,200 and a maximum of $12,000 for each day the violation occurs.[13]

The Animal and Plant Health Inspection Service has the authority to levy civil penalties under thirteen different statutory provisions.[14] For example, a civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $11,000.[15] A violation of the Agricultural Bioterrorism Protection Act of 2002, regarding transfers of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum civil penalty of $275,000 for an individual and $550,000 for any other person.[16]

The Food and Nutrition Service has the authority to levy civil penalties under six different statutory provisions.[17] For example, the civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $27,000 for each violation, except that the maximum civil penalty for violations occurring during a single investigation is $54,000.[18] The civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(1)(B), has a maximum of $11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $44,000.[19]

The Food Safety and Inspection Service has the authority to levy civil penalties under four different statutory provisions.[20] For example, the civil penalty for certain violations

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[9] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005.
[10] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, pp 29575- 29577.
[11] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29575, Subpart E, § 3.91(b)(1)(ii).
[12] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29575, Subpart E, § 3.91(b)(1)(xi).
[13] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29576, Subpart E, § 3.91(b)(1)(xliv).
[14] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29577.
[15] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29577, Subpart E, § 3.91(b)(2)(iv).
[16] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29577, Subpart E, § 3.91(b)(2)(vii).
[17] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, pp 29577-29578.
[18] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29577, Subpart E, § 3.91(b)(3)(ii).
[19] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29577, Subpart E, § 3.91(b)(3)(v).
[20] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578.

under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $6,500 for each violation,[21] and civil penalties for the failure to timely file certain reports, codified at 21 U.S.C. 1051, has a maximum of $110 per day for each day the report is not filed.[22]

The Forest Service has the authority to levy civil penalties under five different statutory provisions.[23] For example, civil penalties for a willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $650,000 per violation or three times the gross value of the unprocessed timber, whichever is greater,[24] and the civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $65,000 per violation.[25]

The Grain Inspection, Packers and Stockyards Administration has the authority to levy civil penalties under eight different statutory provisions.[26] For example, the civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $11,000,[27] and the civil penalty for a violation codified at 7 U.S.C. 86(c), has a maximum of $97,500.[28]

The Federal Crop Insurance Corporation has the authority to levy civil penalties under two different statutory provisions.[29] For example, the civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to an insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum of $11,000.[30]

The Rural Housing Service has the authority to levy civil penalties under three different statutory provisions.[31] For example, the civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified at 42 U.S.C. 1490p(e)(2), has a maximum of $110,00 in the case of an individual, and a maximum of $1,100,000 in the case of an applicant other than an individual,[32] and the civil penalty for equity skimming under

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[21] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(4)(i).
[22] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(4)(iv).
[23] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578.
[24] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(5)(i).
[25] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(5)(iii).
[26] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578.
[27] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(6)(i).
[28] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(6)(viii).
[29] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578.
[30] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(7)(i).
[31] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578.
[32] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(8)(i).

section 543(a) of the Housing Act of 1949, codified at 42 U.S.C. 1490s(a)(2), has a maximum of $27,500.[33]

Question:

- Does the Consumer Federation of America (CFA) have specific recommendations for legislation addressing the CPSC civil damages cap?

Answer:

CFA supports legislation that would eliminate the cap on the amount of civil penalties that CPSC could assess. We would also support the over ten-fold increase in the cap, such as increasing it to $20 million, though our preference is to eliminate the cap entirely. The current cap of $1.83 million does not provide a meaningful deterrent to non-compliance with CPSC statutes and such an increase is desperately needed. The cap should be eliminated or extended under all statutes over which CPSC has jurisdiction. Thus, we recommend that H.R. 2474 be amended to increase the maximum civil penalty assessment under the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA) and the Refrigerator Safety Act in addition to the Consumer Product Safety Act (CPSA).

Question:

2. **H.R. 1721.** At the hearing, you testified that you supported the goals of H.R. 1721, dealing with pool and spa safety, but were still studying details of the bill's provisions. Since the hearing, does CFA have any further comments on the specific provisions of the legislation?

Answer:

CFA strongly supports the goals of H.R. 1721. The bill seeks to increase the Safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems by establishing a swimming pool safety grant program administered by CPSC to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety. However, we are concerned that the grant program upon which H.R. 1721 relies is not practical. First, we are concerned that CPSC already is struggling to achieve its current goals, and due to its limited resources and diminishing staff has had to limit its "results- oriented hazard reduction strategic goals," including drowning prevention. The burden of administering a grant program would drain CPSC's already very limited resources and would drain resources from other critical activities. In addition, CPSC does not have experience administering a grant program and thus would likely have to contract out this administration or hire new qualified staff for this sole purpose. The legislation does not make clear how much money CPSC could retain from the $10 million annual appropriation to cover Commission expenses related to administration of the grant.

Question:

[33] Federal Register, Vol. 70, No. 99, Tuesday, May 24, 2005, p 29578, Subpart E, § 3.91(b)(8)(ii).

3. **H.R. 1699.** Please respond to critics of H.R. 1699, who claim that the bill would provide limited improvement to the effectiveness of recall of durable nursery products. Specifically:

- Some argue that manufacturers have provided product registration cards for years and see only a small percentage returned. To your knowledge, does this experience focus on cards that (a) are postage-paid; (b) intended for the specific purpose of product recall; and (c) provide privacy protection?

Answer:

Based upon Consumer Federation of America's knowledge, manufacturers have not provided registration cards for years. Rather, manufacturers have provided "warranty cards" with their products which (a) are not postage paid; (b) are not intended for the specific purpose of a product recall; (c) do not provide privacy protection; (d) ask invasive information such as income and education level, which are disincentives for consumers to submit them; and (e) are provided in a stack of papers not affixed to the product and thus not easily visible. Thus, most manufacturers have never provided registration cards of the type contemplated by H.R. 1699. Imbedded with the "warranty cards" that do accompany many consumer products are many elements that encourage consumers not to return them including: invasive questions about income, education and purchasing decisions; no representation that such information provided will not be sold or used for marketing purposes; and no indication that such card would be used for a safety purpose.

A number of pilot studies from approximately seven years ago, including two from large consumer product manufacturers, have shown that direct to consumer notification cards without marketing information have improved consumer compliance rates.[34] The Toro Corporation included four specially designed consumer registration cards with two different models of electric leaf blowers. Toro reported that the results of the study "clearly show that taking the market research off the card increases the return rate." Mattel, Inc. included a special consumer registration card with a motorized ride-on car. Mattel achieved a 30% registration rate: 27% through returned cards, 3% through call-in registration and less than 1% through email registration. As CPSC pointed out in its October 11, 2001 Product Safety Card Proposal Memo, these results may not necessarily reflect actual results because the official logo of CPSC was not included, language was not included that specified that the information would be included solely for the purpose of a recall, and no promotion of the cards was undertaken.

Question:

- What can we learn from the experience of postage-paid registration cards for infants' and children's car seats?

[34] http://www.cpsc.gov/LIBRARY/FOIA/meetings/mtg00/recall3.pdf

Answer:

While CPSC has limited direct experience with product registration cards, the National Highway Transportation and Safety Administration (NHTSA) implemented a mandatory registration card program for child safety seats in March of 1993, which required manufacturers to provide a postage paid registration form with each new child safety seat sold. The rule also specified the format of the card, including that the information pertaining to the car seat was preprinted. In addition, the product registration card was attached to the seat at a location where owners would see it and handle it before they could buckle a child into the seat. An amendment to the rule required a label on the car seat itself including the manufacturer's contact information for subsequent owners of the product.

In a study released January 6, 2003, NHTSA evaluated its child safety seat registration program. The study found that child safety seat registration was successful in notifying purchasers of recalls. Specifically the NHTSA study found:

1) Nine times more child safety seats are now being registered than before the mandatory registration card rule was implemented.
2) Increased registration rates increased recall compliance rates: the repair rate on recalled seats in 2003 was 21.5% vs. 13.8% in 1993- a statistically significant 56% increase.
3) The indirect cost to consumers of the mandatory standard was 43 cents for each car seat sold.
4) Return rates for registration cards were at 27% vs. 3% before the rule was implemented.

NHTSA's experience with registration cards over the last decade provides an important model for CPSC to emulate. NHTSA's study evaluating their product registration card proves that the cards are not only effective in increasing consumer compliance with recalls, but also achieve a successful result at a low cost to consumers.

Question:

- Do you believe that the success rate of recalls could be improved by these cards if consumers were encouraged to include e-mail addresses and cell phone numbers, which are portable and often retained even when consumers move to different home addresses?

Answer:

Yes, CFA believes that recall effectiveness would be improved if product registration cards accompanying durable consumer products would include a space for consumers to include their email addresses and/or cell phone numbers since most consumers maintain cell phone numbers and email addresses for significant periods of time. While critics of product registration cards have argued that consumers move so often that home address information becomes outdated quickly, contact information could be obtained from consumers that would outlast home address information such as

cell phone numbers and email addresses.

Question:

- When the CPSC addressed the issue of product registration cards several years ago, was there a difference in the scope of the products considered when compared to the scope of products addressed by H.R. 1699? What effect would any such difference in scope have on the overall desirability of legislation requiring such cards?

Answer:

CFA filed a petition with CPSC in July of 2001, which urged CPSC to initiate rulemaking to require all manufacturers (or distributors, retailers or importers) of products intended for children to provide along with every product a consumer registration card that allows the purchaser to register information through the mail or electronically. The scope of CFA's petition was intentionally broad to include all children's products. CFA believed that the Commission would modify the scope as part of the rulemaking process. The scope of H.R. 1699 is different than that of CFA's 2001 petition. H.R. 1699 would require manufacturers of durable infant or toddler products to provide consumers with a product registration card. Section 3 of the bill includes the definition of the bill which defines durable infant or toddler products as one reasonably expected to be used by a child under the age of 5 years, and lists thirteen specific products.

The specificity of the bill's scope should make the legislation less subject to the criticism faced by CFA's petition. For example, opponents of CFA's petition argued that our petition would include small and inexpensive items that could not reasonably be accompanied by a product registration card due to size of the product and reasonable size and font of the type on the cards. Further, it was argued that inexpensive items may cost less than the cost of the card and would therefore not be cost effective.

Question:

- Besides product registration cards, what other efforts could the CPSC undertake to improve recall effectiveness?

Answer:

To further improve recall effectiveness, CPSC should require manufacturers, retailers and importers to report the existence of the recall to retailers and all commercial customers within 24 hours after issuing the recall or warning. All entities within the stream of commerce should be required to post the recall to web sites, if in existence, within 24 hours of issuance of recall. CPSC should require manufacturers, retailers, distributors and importers to communicate notice of the recall with all known consumers. Retailers, after receiving notice of the recall, must remove the recalled product from their shelves and web site within three business days and retailers must post notice of the recall in their stores for 120 days after issuance of the recall. Further, if deaths or serious injuries are linked to a recalled product, bounties should be provided to consumers in an

amount that exceeds the value of the recalled product.

Conclusion

We appreciate the opportunity to answer your questions covering important and relevant product safety issues. We look forward to working with you on these bills as well as on other product safety issues.

Sincerely,

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America