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REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS AND PRODUCT SAFETY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JUNE 17, 2003

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REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

TUESDAY, JUNE 17, 2003

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS AND PRODUCT SAFETY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:35 p.m. in room SR–253, Russell Senate Office Building, Hon. Peter G. Fitzgerald, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. PETER G. FITZGERALD, U.S. SENATOR FROM ILLINOIS

Senator FITZGERALD. Thank you all for waiting. I am sorry I was delayed. And I am glad to call this Committee hearing to order in order to hear testimony on the reauthorization of the Consumer Product Safety Commission. We hope to get an authorization in place for the Commission very soon.

I would like to thank Chairman Stratton, Commissioner Gall, and Commissioner Moore for being here with us today. I would also like to welcome the other witnesses to the Committee. I would also like to thank Senator McCain for his leadership on this and other issues before the Committee and for his interest in addressing these and other issues related to the reauthorization of the Consumer Product Safety Commission.

The CPSC's mission is to, "reduce unreasonable risks of injury and death from consumer products and to assist consumers in evaluating the comparative safety of consumer products." It has jurisdiction over some 15,000 products. According to the CPSC, since its inception there has been an almost 30 percent decline in the rate of deaths and injuries related to hazardous consumer products. Without doubt, the CPSC has contributed significantly to this decline.

In 2002, the CPSC completed 387 cooperative recalls involving about 50 million product units. It completed 13 civil penalty cases that resulted in over $4 million in fines last year. The CPSC has also attempted to keep up with the effects that modern technology has had on how consumers purchase products.

I was interested to learn that the CPSC joined forces with Amazon.com and eBay to alert their customers to products for sale on their auction sites that may have been recalled, and direct them to CPSC's website for recall information.

I would like to congratulate the Commissioners and the CPSC on the work that has been done over the last several years to protect American consumers.

The CPSC was last reauthorized in 1990, for Fiscal Years 1991 and 1992. Since the expiration of that reauthorization, its funding has been increased by approximately 5 to 6 percent each year, mainly through the appropriations process. This funding has not adequately allowed the CPSC to keep pace with the growing number of consumer products and its increased workload. Since 1990, the CPSC staff has decreased by 10 percent.

According to the CPSC, there is still an average of 23,900 deaths and 32.7 million injuries each year that are related to consumer products under its jurisdiction. The deaths, injuries, and property damage associated with consumer products cost the United States over $700 billion each year. These statistics underscore the need to reauthorize the CPSC this year.

I am proud to be an original cosponsor of the Consumer Product Safety Commission Reauthorization Act of 2003, which Senator McCain introduced last week. This bill will reauthorize the CPSC through Fiscal Year 2007. It will provide it with the funding increases that it needs to update its laboratories and technology. This reauthorization bill is essential to the CPSC being able to continue to carry out its mission and to meet the demands of the continual technological advances that are part of our society.

I look forward to hearing testimony today on the reauthorization of the CPSC, as well as their thoughts on how the CPSC should carry out its mission in the coming years. I am pleased we have such a diverse group of consumer organizations here today. I am also interested to learn more about some of the current consumer issues, such as fire safety, the fire safety of various household products, all-terrain-vehicle safety, recall effectiveness, as well as other issues that affect the CPSC.

And with that, I would like to thank the Commissioners for being here, Chairman Stratton, Mr. Moore, and Ms. Gall. I would like to ask you each if we could limit our testimony to 5 minutes each. We will allow your written statements to be introduced and submitted for the record. I would think that most of you would be in a position to talk off the top of your heads and be more succinct than your well-written, well-done reports that we will file for the Committee's record today.

So, Chairman Stratton, thank you very much for being here.

STATEMENT OF HON. HAL STRATTON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Chairman STRATTON. Thank you, Mr. Chairman. I appreciate that. Frankly, your statement was better than mine is going to be——

[Laughter.]

Chairman STRATTON.—so I am going to try to shorten up my statement as I go through, because, I agree, I would just as soon respond to the questions on things you want to hear about.

I appreciate the opportunity to come before your Subcommittee today, along with my colleagues, to answer any questions that you

and other Subcommittee Members may have as you work to reauthorize the Consumer Product Safety Commission.

As you know, I had the honor of being sworn in as the Chairman of the Commission on August 2, 2002. Before my swearing in, the CPSC was ably led by my friend and colleague, Commissioner Moore, who was the Acting Chairman, with strong support from my friend, Commissioner Gall. And I might just indicate that we, up here, now have, collectively, almost 20 years of experience at the CPSC. My tenure contributes 10 months to that.

[Laughter.]

Chairman STRATTON. So sitting beside me, we have almost 20 years of experience, and I expect them, should I get in trouble today, to bail me out.

[Laughter.]

Chairman STRATTON. The Commission has jurisdiction, as the Chairman has said, over some 15,000 types of consumer products. To effectively enforce the law, the CPSC divides itself into three main divisions: hazard identification and reduction, enforcement and compliance, and public information. To support these divisions, the CPSC operates advanced hazard identification systems, including an internationally recognized injury reporting system, a toll-free hotline, and a website, all of which have been cited as models among Federal agencies.

The Commission has a range of options available to address consumer-product problems, including the power to promulgate safety regulations, implement recalls, and exact civil and criminal penalties, where appropriate. We are very serious about our mission at the CPSC. As the Chairman stated, last year we had 387 cooperative recalls, which involved 50 million product units. Our enforcement division concluded 13 civil penalty cases that resulted in $4 million in fines for failure to report a hazardous defect to the Commission or for selling products in violation of the CPSC's mandatory standards.

The authorization before you today would allow us to maintain our current safety programs and employee levels, while increasing our efficiency through modernization of our laboratory and improved technology.

As an information-driven agency, CPSC needs to continually invest in our data-handling resources. As one example of the importance of this, we have just launched a new burn center reporting system to collect better data and better identify the origins of burn injuries to children under 15 years of age. We are pleased to be working on this project, along with the Shriners Hospitals for Children, the American Burn Association, and the National Association of State Fire Marshals, in developing and implementing this new and important system. And I would just like to thank them publicly for coming together with us. It is the first cooperative effort like this ever, and I think it is going to be very successful.

As a former State Attorney General, I am committed to strong enforcement of the law. American consumers and Congress should expect that the CPSC will assertively use the tools that you provide us to get unsafe products out of the marketplace. Further, I believe that our decision-making process should include the full participation of the public, and that is why we have opened up the Commis-

sion's meetings, inviting petitioners, stakeholders, and other interested parties to testify directly before the Commission.

Earlier this month, we held a very successful field hearing in Morgantown, West Virginia on ATV injuries. We heard from medical doctors, ATV dealers and riders, consumer-safety advocates, and families of victims. We returned to Washington much enlightened, I believe—at least I am speaking for myself there—and much better prepared to make intelligent decisions on this matter of great concern.

In conclusion, I would like to say that I appreciate the Committee's support for the CPSC. Mr. Chairman, I will be happy to answer whatever questions you have.

Thank you.

[The prepared statement of Commissioner Stratton follows:]

PREPARED STATEMENT OF HON. HAL STRATTON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Thank you, Chairman Fitzgerald, and good afternoon. I appreciate the opportunity to come before your subcommittee today, along with my colleagues, to answer any questions that you and other subcommittee members may have as you work to reauthorize the Consumer Product Safety Commission.

As you know, I had the honor of being sworn in as Chairman of the Consumer Product Safety Commission (CPSC) on August 2, 2002. Before my swearing-in, the CPSC was ably led by my friend and colleague Commissioner Thomas Moore with the strong and active support of my friend and colleague Commissioner and Vice Chair Mary Gall. I never miss an opportunity to applaud their leadership and commitment to the CPSC during that period, and I want to express my appreciation for their continued support and guidance.

Mr. Chairman, the CPSC has a very important mission. Thirty years ago, Congress established the CPSC to protect children and families against unreasonable risks of injury and death from hazardous consumer products. Over that time, the work of the Commission has contributed significantly to the 30 percent decline in the rates of deaths and injuries from these products.

The Commission enforces five Federal statutes: the Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Federal Hazardous Substances Act and the Refrigerator Safety Act. Through these laws, we have jurisdiction over the safety of some 15,000 consumer products.

In enforcing these laws, the CPSC divides itself into three main divisions—hazard identification and reduction, enforcement and compliance, and public information and education. These divisions are staffed by the 471 employees at our headquarters, our laboratory and our field offices around the country, and I should note that one of our three regional centers is in the Chairman's hometown of Chicago. Our employees and the skills that they bring to their jobs are the most critical component of the CPSC success story. Because of the nature of our work, the Commission relies on a highly educated scientific and technical staff. Their expertise covers a wide range of disciplines and is central to our safety mission.

In fulfilling this mission, the CPSC operates advanced hazard identification systems, including an internationally-recognized hospital emergency room injury reporting system, a toll-free hotline and a website that have all been cited as models among Federal agencies. When a hazard is identified, the Commission has a wide range of options available to address the problem including voluntary standards, safety guidelines, labeling and consumer information, cooperative product recalls, and when necessary, mandatory rulemakings and litigation.

The Commission's actions are based on rigorous risk-based analysis to assure that our solutions are fair and effective. We initiate our safety efforts by working cooperatively with affected industries, and this has resulted in hundreds of voluntary safety standards that have assured safer products for American consumers.

The Commission's current appropriation is $56.6 million, and we believe that is a great value to the American people. We don't put a price on the loss of any human life, but beyond the human grief and tragedy of injuries and lost lives from unsafe products, there is also the measurable economic toll of medical bills, legal costs and property damage. As the Committee members well know, these societal costs can be extraordinary. Just one avoided serious injury can save society literally hundreds

of thousands of dollars. In this regard, CPSC is a bargain for America's tax-paying families.

We are very serious about our mission at the CPSC. Last year alone the Commission completed 387 cooperative recalls involving about 50 million product units. These recalls ranged from promotional toys to power tools. Our enforcement division completed 13 civil penalty cases that resulted in over $4 million in fines for failure to report a hazardous defect to the Commission or for selling products in violation of CPSC's mandatory safety standards.

We are a results-oriented agency, and our current strategic plan has focused on clear, measurable goals that have reduced death rates from fires, electrocutions, poisonings and children's head injuries. As called for by the Government Performance and Results Act, we are currently developing our new strategic plan for the next six-year cycle to begin in 2004.

The authorization levels before you would allow us to maintain our current safety programs and employee levels while increasing our efficiency through improved information technology and a modernized laboratory. Our funding increases since our last authorization in 1990 have averaged 3.3 percent annually, a figure that is outpaced by the agency's mandatory cost increases for such items as salary cost-of-living adjustments, health benefit increases, and rent increases.

Any authorization above these mandatory expenditures would be applied to quality improvements in our ability to collect and examine data through upgrades to our technology infrastructure, laboratory equipment and staff training. As you know, expenditures such as these can significantly increase agency productivity without increasing agency employment.

As a data driven agency, CPSC needs to continually invest in data handling resources to maintain our capabilities as well as take advantage of technological efficiencies. Many of these investments are mandated by legislation such as the Clinger-Cohen Act, the Government Information Security Results Act and the Government Paperwork Elimination Act.

As one example of our continuing efforts in this regard, we have just launched a new Burn Center Reporting System to help us collect better data and better identify the origins of clothing related burn injuries to children. We have been pleased to work closely with the Shriners Hospitals for Children, the American Burn Association and the National Association of State Fire Marshals in developing and implementing this important new system.

There are about 115 burn centers nationwide that treat children. Some burn centers are already reporting under this new system, and the system is expected to be fully operational this summer. For each of the burn incidents reported in this new system, the burn center will provide the CPSC with preliminary information on the incident. A CPSC investigator will then be assigned to the case to conduct an in-depth investigation. All reports will be reviewed and logged into the CPSC's epidemiological databases. That data will be available for all interested parties to analyze through the Commission's Injury Information Clearinghouse.

I know this is an issue of great concern to many members of the Committee, especially to Senator Burns and Senator Breaux, and I am pleased to be able to report the significant progress we have made on this matter.

The authorization before you would also enable us to establish a planned annual three to four year equipment and software replacement cycle and to improve our data access and the security of our information technology. The authorization would also enable us to establish a one-stop query capability for agency staff use. Currently, staff must query five different databases to complete research. Such integration would also reduce redundancy in data collection and data entry.

Additionally, since CPSC makes its decisions based on injury and death data, the agency should continually invest in its capabilities to identify, analyze and perform in-depth study of product hazards. CPSC has pilot-tested an improved fire injury and death system in response to a General Accounting Office audit; however, we do not have the funds to operate the system.

With regard to our laboratory modernization, funding would be used to establish a replacement cycle for major laboratory equipment. CPSC does not have a capital equipment replacement fund. The laboratory testing facility is a key tool underpinning much of our work, and our goal is to maintain it in modern, state-of-the-art condition to the greatest extent possible.

This authorization would allow us to improve training for agency staff and to establish training for our state and local partners. We greatly increase our effectiveness by working with state and local officials to conduct recall effectiveness checks and safety programs such as our highly successful annual recall round-up safety campaign.

When I accepted this position last year, I began this job with a number of goals. First, because we are a small agency with a small budget and a large mandate, it is critical that our resource allotments be based on the most accurate and optimum risk assessment and data collection. Every CPSC dollar spent on identification and reduction of any given safety hazard is a CPSC dollar not spent on some other safety hazard. Our goal is to use each taxpayer dollar to its maximum safety effectiveness, and I am pleased that the Office of Management and Budget has recognized CPSC's performance and has given the agency an overall rating of 83 percent under their Program Assessment Rating Tool, one of the highest ratings of any agency. We are building on that excellent performance assessment.

Secondly, as a former attorney general, I am committed to strong enforcement of the law. American consumers—and Congress—should expect that CPSC will assertively use the tools that you provide us to get unsafe products out of the marketplace. In my nine months as Chairman, I have overseen 249 product recalls and over $3.5 million in civil and criminal penalties.

Further, I believe that our decision-making process should include the full participation of the public. To a great extent that is provided for in our regular rule-making process, but beyond that we have opened up Commission hearings to full public participation inviting petitioners and other interested parties to testify before the Commission. Earlier this month, we held a very successful field hearing in Morgantown, West Virginia, on ATV injuries. We heard from medical doctors, injury prevention researchers, ATV dealers and riders, consumer safety advocates and families of victims from ATV-related crashes. It was an extraordinary day, and I believe that Commissioners Gall and Moore agree that we returned to Washington much enlightened and much better prepared to make intelligent decisions on this matter of great concern.

In conclusion, I would like to say that I appreciate the Committee's support for the Consumer Product Safety Commission over the years. We are certainly not the largest agency within your jurisdiction, but we do have an impact beyond our size on America's families and the safety of their homes and playgrounds. We are pleased to work with your local offices in your home states in helping your constituents learn more about unsafe products and help them protect themselves and their families from the tragic accidents that we receive reports on every morning.

Mr. Chairman, product safety is our goal, our commitment and our mission as public servants. Thank you for your interest in reauthorizing our agency, and we look forward to answering your questions.

Senator FITZGERALD. Thank you.

Mr. Moore?

STATEMENT OF HON. THOMAS MOORE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Commissioner MOORE. Thank you.

Mr. Chairman, I am here to support the reauthorization of the United States Consumer Product Safety Commission. Without a doubt, the Commission is charged by Congress——

Senator FITZGERALD. Could you pull your microphone closer to your mouth? Thank you.

Commissioner MOORE. The Commission is charged, by Congress, with the critical responsibility of protecting the American public against unreasonable risk of injuries and deaths associated with consumer products. Protecting life, without question, is a crucial responsibility. Our work has resulted in an almost 30 percent decline in the rate of deaths and injuries related to hazardous consumer products since about 1974. However, despite significant reductions, there remains, on average, about 23,900 deaths and 32.7 million injuries each year related to unsafe products. Moreover, the deaths, injuries, and property damage associated with unsafe products cost the Nation over $700 billion annually.

In 2002, alone, the Commission took direct action against nearly 55 million products units through recalls, repairs, replacements, re-

funds, design changes, or seizures. Ensuring the removal of unsafe products from potential consumer use is essential.

Another issue in the enforcement area relates to civil penalties. I support the elimination of the monetary cap on civil penalties for business failure to report the marketing of unsafe products. The reality is that a $1.65 million fine means nothing to many of the corporations we regulate. Why do we need a cap at all? We already have statutory considerations which guide our decision as to how large a penalty to assess.

I believe that regulatory policies should recognize that the private markets are the best engines for economic growth. Regulations, therefore, should be cost effective, consistent, sensible, and understandable.

Whenever appropriate, we encourage voluntary industry action to address safety requirements. Voluntary actions. Since 1990, we have worked cooperatively with industry to conduct more than 4500 recalls, and resorted to litigation to compel recalls only seven times. Effective voluntary action is always preferable.

The Commission's successes are a major source of optimism. I have been very pleased to have been involved in many of these successes. The agency, with a $56.6 million budget for Fiscal Year 2003, really pays for itself many times over by reducing societal costs associated with hazardous consumer products.

By all current measures, CPSC provides both tremendous service and value to the American people. CPSC's reductions in deaths, injuries, and costs associated with unsafe products saves the Nation many times the agency's annual budget. This year, we expect to reduce societal costs by over $13 billion. These savings are over 200 times CPSC's Fiscal Year 2003 budget.

In addition, I still advocate the idea of a product-safety research effort at the Commission. Clearly, Congress envisioned research as part of the Commission's safety efforts. The language in Section 5(b)(1) of the Consumer Product Safety Act explicitly addresses conducting research. Yet, for too many years, we have had to defer any research program for lack of funding.

In closing, I think that reasoned Commission action reflects a pragmatic approach to resolving product-safety problems and recognizes that regulation is only one of many options for addressing safety issues. But, if safety is not the goal of a certain industry or manufacturer, the Commission stands ready to protect the consumer expeditiously and without compromise.

However, the key to the Commission's continued success is funding. To successfully continue the mission of the agency, the Commission must have the resources to respond quickly and effectively where the lives and health of the American public are at risk. Our U.S. CPSC is a worldwide example of how a free-market economy protects its people.

I thank you for allowing me to address my concerns at this hearing, and I look forward to working with you and your staff in the reauthorization process. And of course, I will try to respond to any questions you may raise.

Thank you.

[The prepared statement of Commissioner Moore follows:]

PREPARED STATEMENT OF HON. THOMAS H. MOORE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to provide testimony on the reauthorization of the United States Consumer Product Safety Commission (CPSC). The Commission is charged by Congress with the critical responsibility of protecting the public against unreasonable risk of injury and death associated with consumer products. This is a crucial responsibility because, often without CPSC's intervention, the consequences of exposure to the hazards associated with dangerous products may literally be of a life and death nature for individual consumers unknowingly in possession of unsafe consumer products.

As you are aware, CPSC has not been reauthorized since 1992 and has not had a reauthorization hearing before this body since 1996. Although these proceedings could be an exceedingly intensive undertaking for the CPSC, I welcome this reauthorization process because I believe it presents a unique opportunity to focus on the Commission's present and future agenda.

The Mission

In examining the legislative history of the statute creating the CPSC 30 years ago, we find that Congress, in its *wisdom* and *foresight*, was concerned about technological advances creating a variety of new products with greater potential for injury which would be less easily recognized and comprehended by the American consumer. Congress recognized that the dramatically increasing number of consumer products and the consumer's increasing reliance on more complex labor saving and recreational devices would create increasing risk of injury from their use. Additionally, continuing product development demonstrated that previously acceptable risk levels were no longer reasonable in light of available safety technology.

Today, the risk of injury and death from unsafe consumer products continues to be enormous and costly. CPSC's mission is to protect children and families against unreasonable risk of injury and death from about 15,000 types of consumer products. Our work has contributed significantly to the almost 30 percent decline in the rate of deaths and injuries related to hazardous consumer products since the agency's inception. However, despite significant reductions over the years, there remains on average about 23,900 deaths and 32.7 million injuries each year related to consumer products under CPSC's jurisdiction. These numbers represent almost 9 deaths and 12,000 injuries per 100,000 people each year. Moreover, the deaths, injuries, and property damage associated with consumer products cost the Nation over $700 billion annually.

Unintentional injuries are the leading cause of death for all Americans under the age of 45 and are the fifth leading cause of death in the Nation. Individuals 65 years of age and older are three times as likely to die of unintentional injuries than their representation in the population. We know that for the most part, we accept national and state governments' responsibility to protect citizens from *intentional* injury or death. Aside from questions of justice, do loved ones grieve less when a serious injury or premature death occurs through *unintentional* means? Is there less grief if one is, say, paralyzed for life after a fall from a defective stepladder as opposed to a spinal cord injury from a robber's knife or bullet?

Today, our reliance on consumer products in our lives is tremendous and growing. We rely on manufactured mechanized and electrical devices to assist us in too many of life's activities to mention—at play, at work, in education, in travel, and particularly inside and outside of the home: in food preparation, in cleaning and making repairs around the home, in child-care, in trimming trees and grass, and on and on and on. To further complicate matters, more and more of these products are manufactured abroad. Increasingly, other western nations are following our lead in having recognized a governmental responsibility to become actively engaged in reducing the consumer's risk of injury or death from hidden dangers in hazardous consumer products. In today's complex marketplace it is going to be exceedingly difficult for any amount of libertarian sophistry to overwhelm these obvious facts of modern life.

It is suggested in some circles that the modern, sophisticated marketplace of today can effectively regulate itself for product safety. I strongly submit that the previously discussed justification for governmental involvement in the protection of the consumer's right to safety is even more compelling today than it was 30 years ago. Very simply put, competition and voluntary actions of today's businessmen do not always suffice to safeguard the public interest. Competition does not and will not inevitably take the form of a rivalry to produce the safest product. The role of the CPSC in today's consumer product marketplace remains compelling, substantial and relevant.

Addressing Product Safety Hazards

Aside from using its rulemaking authority, CPSC can act forcefully and quickly to remove dangerous products from the marketplace through two main enforcement activities. The first is in vigorously enforcing its current regulations; and the second is in utilizing its Section 15 authority to achieve recalls or corrective action plans when it is believed that a product meets the level of a substantial product hazard.

I point out to you that in 2002 alone, the Commission obtained 625 corrective actions involving regulated products. Fifty-one of these actions involved consumer level recalls covering more than 2.4 million products units that violated the Commission's regulations. We accepted another 342 corrective action plans involving approximately 48 million product units that were not subject to mandatory standards, but which may have contained a product defect.

With the help of U.S. Customs Service, we detained an additional 3.5 million foreign products that violated our regulations. Unless interdicted, those goods would have competed with U.S. manufactured products, often undercutting them on price because the foreign manufacturers did not bother complying with our safety regulations. Our efforts to keep these violative products out of the marketplace protect not only the American consumer, but the American manufacturer as well.

Thus, in 2002 alone, the Commission took direct action against nearly 55 million product units through recalls, repairs, replacements, refunds, design changes or seizures. If these millions of products were left in the hands of or reached unsuspecting consumers, the consequences could be death or serious injury to loved ones.

Requiring a manufacturer, distributor or retailer to recall defective products is a primary mechanism in CPSC's continuous undertaking to address product safety hazards. However, announcing the recall is just one step in an overall process of eliminating the hazards presented by unsafe products in consumer's homes. Ensuring the removal of those unsafe products from potential consumer use is also essential. Given the limitations presented by CPSC's resources, it is tremendously important that the Commission maximize the effectiveness of this particular aspect of the recall process.

Recently, there have been questions raised about just how effective the Commission has been in facilitating the removal of unsafe products from consumer use: Is the unsafe product message being effectively communicated to the public, are enough products being effectively removed, and are there additional things that the Commission can do? I think that there are certainly enough legitimate questions surrounding the best method for determining what constitutes an effective recall in any particular case to merit careful review.

In July 2001, the Consumer Federation of America petitioned the CPSC to require manufacturers (or distributors, retailers, or importers) of products intended for children to provide a product registration card along with every product sold. In March 2003, after being briefed on the issue by CPSC staff and hearing presentations from representatives of consumer groups and industry, a majority of the Commission voted to deny the petition. 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 my fellow Commissioners are also very serious in wanting to address issues raised by this petition. To that end, a multi-disciplinary team of CPSC staff is exploring the issue of recall effectiveness. The team has developed a multi-stage plan to determine how best to address the way we do recalls including scheduling a series of three meetings to obtain information on this issue from outside experts.

Another issue in the enforcement area lies within the civil penalty arena. I have supported, and continue to support, the elimination of the monetary cap on civil penalties. While the cap does rise periodically, the reality is that a $1.65 million fine means nothing to many of the corporations we regulate. Why do we need a cap at all? We already have statutory considerations which guide our decision as to how large a penalty to assess, and those should be sufficient. It is one thing to limit the amount *one* consumer can recover against a company (and not a position I necessarily support either), but it is quite another to limit the government's ability to penalize a company on behalf of *all* consumers, thereby limiting the deterrent effect of civil penalties. Perhaps some companies would be less likely to try to stall our agency by putting off reporting hazardous products if we had penalties that were more commensurate with the harm they can cause.

Cooperation as a Key Element

I believe that regulatory policies should recognize that the private sector and private markets are the best engines for economic growth. Regulatory approaches should respect the role of state and local governments. And, regulations should be cost effective, consistent, sensible, and understandable.

Our regulatory decisions are intensely scientifically based. We rely on the analyses of dozens of high-level and well-experienced Epidemiologists, Pharmacologists, Toxicologists, Physiologists, Chemists, Engineers, Statisticians, and Economists as the underpinning of CPSC decision-making. As confirmation, the Office of Management and Budget (OMB), in applying its new Program Assessment Rating Tool (PART) to CPSC, found that the Commission scored relatively high (83 percent) among the 20 percent of Federal programs rated this year. While the OMB assessment suggested areas for improvement, OMB found that CPSC performs very well, thus giving support to our overall regulatory policies.

Additionally, the Commission works well with, and understands the needs of, corporate America. Whenever appropriate, we encourage voluntary action by industry to address safety requirements. Since 1990, we have worked cooperatively with industry to conduct more than 4500 recalls and resorted to litigation to compel recalls only 7 times. Further, we worked with industry and others to complete about 6 times as many voluntary standards as mandatory standards (CPSC assisted in completing 214 voluntary safety standards while issuing 35 mandatory standards). The Commission recognizes that, in this time of shrinking resources, voluntary action is preferable to mandatory regulations when such action is implemented in a timely fashion, carried out productively and, most importantly, when such action adequately addresses an unreasonable risk of injury.

As an example, CPSC worked with industry to revise the voluntary 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 70 percent since 1995 likely due in large part to the new voluntary standard requirements. CPSC projects societal costs decreasing about $600 million annually from this one action. So in this time of shrinking resources, the Commission is always looking for faster, more cost-efficient ways to reach our goals.

Furthermore, many product problems involving safety-minded corporations have been resolved through carefully negotiated high-integrity agreements. Co-operative engagement with industry contemplates and facilitates the amelioration of product safety hazards without resorting to the time-consuming and costly use of the regulatory process.

An example of this is the continued success of the Fast Track Product Recall Program. This program is designed to speed up corrective actions, including product recalls, and, most importantly, quickly remove unsafe consumer products from the marketplace. Over 700 firms have participated in the program since its inception, resulting in almost 1,100 corrective action plans involving over 124 million product units. This effort was a winner of the 1998 "Innovations in American Government Award" sponsored by the Ford Foundation in conjunction with the Harvard University's Kennedy School of Government and the Council for Excellence in Government.

Additionally, the Commission has learned that finding and assessing hazards, developing and enforcing standards and regulations, and informing and educating the public about product safety matters can best be handled as a partnership between CPSC and appropriate state/local agencies.

Success Stories

The Commission's successes are a major source of optimism. During my time at the Commission, I have been very pleased to be involved in many of the Commission's successes. The agency, with a $56.8 million budget for FY 2003 really pays for itself many times over by reducing societal costs associated with hazardous consumer products.

By all current measures, CPSC provides both tremendous service and tremendous value to the American people. Each year through reductions in deaths, injuries, and other costs associated with unsafe products, such as health care costs and property damage, CPSC saves the Nation many times the agency's annual budget. As I indicated earlier, CPSC is the major factor in the *30 percent* decline in the rate of deaths and injuries related to consumer products since 1974. Through our standards work, compliance efforts, industry partnerships, and consumer information, this year we expect to prevent *1,600* fire deaths, *460* electrocution deaths, *40* child-poisoning deaths, *140* infant deaths from suffocation and strangulation hazards associated with cribs, and *60* carbon monoxide (CO) poisoning deaths. In addition, we expect to prevent over *13,000* children's head injuries and *40,000* injuries associated with dangerous fireworks. We expect the annual number of deaths and injuries prevented by just these examples to reduce societal costs by over *$13 billion*. These savings by themselves are over 200 times CPSC's FY 2003 budget.

Currently, the Commission collects information about product-related injuries treated in hospital emergency rooms through our National Electronic Injury Surveillance System or "NEISS." This unique system provides statistically valid national

estimates of product-related injuries from a probability sample of about 100 hospital emergency rooms. These estimates provide the data support for many of the Commission activities allowing the Commission to spot hazard patterns, set priorities, and give direction to product safety efforts. These estimates are also valuable to industry, which can use the data to spot hazard patterns to help give direction to their own product safety efforts.

In 2002, NEISS supplied about 350,000 product-related cases from its sample of hospital emergency rooms. Several foreign governments have modeled their national injury data collection systems after the Commission's system. Additionally, in 2000, NEISS was expanded to provide data on *all* trauma-related injuries. This expanded data provides other Federal agencies, researchers, and the public with more comprehensive information on injuries from all sources, not just consumer products.

Present and Future Activities

Protecting the most vulnerable segments of our society is a special interest of mine. Children, the elderly, the infirm, low-income families, minorities, and those for whom English is not their native language are often disproportionately represented in our injury and death data. I think that it is a reasonable conclusion that if we concentrate on lowering the risk of injury and deaths due to consumer products in these vulnerable groups, overall reductions would be proportionally reflected.

Balancing the concerns of product safety in vulnerable populations, against product safety concerns in the population as a whole, will always be one of my more challenging tasks at the Commission. It just seems to naturally follow that the more educated the general public is to the dangers of the use or misuse of a product, the more sensible their use of that product will be. Keeping the public properly informed about product safety hazards continues to be key. In 2002 alone, we informed the public of hazardous products through *247* press releases, *19* Video News Releases (VNRs), *1.9 million* distributed publications, specific consumer product safety discussion appearances on network TV shows, and through CPSC's consumer hotline, website, and National Injury Information Clearinghouse. I would like to see continued emphasis at the Commission on education and information campaigns. In particular, the Commission's use of VNRs has proven to be an effective, inexpensive way of quickly reaching tens of millions of consumers with critical product safety information.

Just as disseminating information is an essential role of the Commission, collecting all relevant product safety data is also essential to protecting vulnerable segments of our population. To address any possible issues related to sleepwear-related thermal burn injuries to children, the Commission, in cooperation with the American Burn Association, the Shriners Hospitals for Children, and the National Association of State Fire Marshals, is developing a new National Burn Center Reporting system for collecting and sharing information on clothing-related burn injuries to children under the age of 15. There are about 115 burn centers nationwide that treat children. Some burn centers are already reporting under this new system and it is expected that the system will be fully operational this summer.

I also strongly feel that the role of the Commission is essential to the U.S. marketplace in an increasingly competitive international marketplace. The Consumer Product Safety Commission and the marketplace must work together to ensure international consumer product safety standards and enforcement compatibility so we can enhance international trade and export opportunities without lowering U.S. safety standards.

Just as the Commission played an essential role in the development of uniformity in domestic product safety standards and has thereby minimized conflicting state and local regulations, that role should now be expanded to working with industry internationally to harmonize safety standards and thereby reduce non-tariff trade barriers that varying international safety standards can create.

It is also worth noting that there is now, at CPSC, an *added* emphasis on public participation in our overall safety efforts. The Commission has added a new dimension of public participation to our decision-making process by inviting the interested public to make oral presentations at our public staff briefings on regulatory matters under consideration by the Commission. The public provided both written and oral presentations at recent Commission meetings on chromated cooper arsenate (CCA) treated wood and product registration cards, and is invited to make similar presentations at our meeting to consider a notice of proposed rulemaking on baby bath seats scheduled for July 28. In addition, the Commission, on June 5, held a field hearing in Morgantown, West Virginia on issues related to the hazards associated with All-Terrain Vehicles (ATVs). From 1997 to 2001, annual ATV-related injuries rose 104 percent, from an estimated 54,700 to 111,700. This was the first field hear-

ing held by the Commission since it held hearings on this same issue in the late 1980s.

I have also given considerable advocacy to the idea of a product safety research effort at the Commission. Most other Federal health and safety agencies have research budgets that are a vital part of their programs. Clearly, Congress envisioned research as part of the Commission's safety efforts when it adopted the Consumer Product Safety Act and established the Commission. The very first Commission Annual Report in 1973 indicated that research was an important component of the agency's work. The language in Section 5 (b)(1) of the Consumer Product Safety Act explicitly addresses conducting research. Yet, for too many years, we have had to defer any research program for lack of funding. One project for consideration is to conduct long-term testing and evaluation of the performance of circuit breakers and panel boards to determine whether the safety standards for these products should be upgraded. This research could provide important safety benefits because residential electrical distribution systems (including circuit breakers, panel boards and wiring) were implicated in an estimated 39,000 fires resulting in 280 deaths and $680 million in property damage in 1998, the last year for which this data is available.

Conclusion

In closing, while I believe that consumers must take responsibility for their own safety, there clearly is a role for the CPSC to assure that products are designed safely and recalled where there is a problem. Consumer responsibility is something that all three Commissioners feel strongly about. I think that consumers should be informed about the products they purchase and take reasonable care in using them. Mr. Chairman, I believe that our government is attempting to move into a new era of accountability. It is my hope that this will be an era where well-reasoned, and I emphasize the word reasoned, government action will be the rule, and not the exception.

I also think that reasoned Commission action reflects a pragmatic approach to resolving safety problems and recognizes that regulation is only one of many options that can be employed to address safety issues. We will work actively to achieve safety goals, and I expect, as is often the case, industry will respond reasonably. But, if safety is not the goal of a certain industry or manufacturer, the Commission stands ready to protect the consumer expeditiously and without compromise.

Given CPSC's important role, it is clearly reasonable to assert that funding flexibility is critical if the Commission is to adequately address the risk of injury and death from future major unexpected safety hazards that are beyond the current funding capability of the agency. As Congress envisioned 30 years ago, the Commission should have the capability to handle increasingly technologically complex products as well as the capability to uncover high injury risks and defective products using today's sophisticated data sources. To successfully continue the mission of the agency, the Commission must have the resources and the flexibility to respond quickly and effectively to critical situations where the lives and health of the American public are at risk.

I would like to thank the Subcommittee for allowing me to address my concerns at this hearing and I look forward to working with the Members of the Committee and its staff in this reauthorization process.

Thank you.

Senator FITZGERALD. Thank you, Mr. Moore.

Commissioner Gall?

STATEMENT OF HON. MARY SHEILA GALL, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Commissioner GALL. Thank you, Mr. Chairman. Good afternoon. I will make my statement short and sweet, just like me.

[Laughter.]

Commissioner GALL. I believe that the Commission and industry and consumers have worked well under our current statutory framework, and I have no recommendations to make for substantial amendments.

I do want to make a quick note of a critical investment that we cannot, at this time, incorporate into our authorization levels that we are discussing here today, and that is about our laboratory that

is located in Gaithersburg. It is eight acres, five buildings that were constructed in the 1950s as part of a Nike missile base for the military to track Nike missiles. We need to relocate some of the facilities there, and we need to do some new construction as an overall redevelopment activity for our laboratory. This has been approved by the National Capital Planning Commission, and we are in the process right now of working with GSA to develop the costs and the design. So we will have a better understanding of how much that will cost us in late fall.

I would make note, though, that we will require a multi-year investment of at least several million dollars in order to pay for the redevelopment of the lab. And the lab, of course, is at the very heart of our operations at the Commission, and so this is very important.

In closing, I just want to say thank you for holding this hearing today, and I hope that all of us will focus on what a great value CPSC is to the American public.

Thank you, sir.

[The prepared statement of Commissioner Gall follows:]

PREPARED STATEMENT OF HON. MARY SHEILA GALL, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Thank you for the opportunity to come before you today. The Subcommittee has doubtless noted that the Commission has proposed no amendments to its statutes beyond a technical one to conform the statute to the existing organizational structure. During the thirty years of the Commission's existence, the statutes administered by the Commission have evolved and have been subject to amendments, interpretations, and administration through regulations. The Commission, industry, and consumers have worked well under this statutory framework, as evidenced by the continuing improvement in the Nation's product safety. I do not believe there is a need for substantive revisions of the Commission's authorizing legislation.

Proposed Authorization Levels

While acknowledging that the Commission has been successful in improving product safety, I do want to note that the proposed authorization levels we have submitted for the next five years leave some critical investments of the Commission unfunded. We have routinely asked for this funding, but in this difficult budget climate, our requests have not been granted.

Laboratory

The $0.5 million we have proposed for laboratory modernization expenditures will establish an annual replacement cycle for laboratory equipment. More, however, is needed to modernize the laboratory. CPSC's laboratory provides critical support to compliance investigations and safety standards activities. The laboratory structures were originally designed for military use in the 1950s. While the Commission and GSA have made modest investments and slight modifications to the existing structures over the years, the laboratory is in need of redevelopment. By relocating and consolidating specialized laboratory and office sites, we could make much better use of the limited available space. The National Capital Planning Commission recently approved our redevelopment plan for the laboratory, which would include renovation of existing facilities, construction of new testing space, and outfitting the laboratory facilities. The renovation and modernization of the laboratory would lead to efficiency and productivity gains. An estimated $750,000 to $1 million would be needed to begin implementing a redevelopment plan for the laboratory. Final implementation of the plan would require a multi-year investment of at least several million dollars. We are working with GSA to develop these costs; these figures should be available this fall.

Information Technology

As you are aware, as a Federal agency the CPSC must meet a number of Information Technology (IT) requirements established under Federal mandates. These include the Clinger-Cohen Act of 1996, the Government Information Security Reform Act (GISRA), the Government Paperwork Elimination Act (GPEA), and the Telecom-

muting Act. The agency's proposed funding level of $1 million for IT investments funds the four-year modernization cycle of agency computers, software, and network components as mandated by the Clinger-Cohen Act. The proposed funding level of $0.5 million for database integration and programming would provide the funds necessary to integrate the five agency databases. Currently, if a field investigator needs to do a search of a chainsaw, the investigator must search separately through each of the agency databases. The integration of databases, on the other hand, will allow this investigator to do a single search for the desired information. Furthermore, integrated databases will reduce redundancy in data collection and data entry. Integration of CPSC's databases is consistent with, and supports, enhanced access for remote users in our telework program and quick and easy access by citizens to CPSC services as recommended in the President's Management Agenda.

While our proposed funding levels provide the funds for an information technology capital investment fund and integration of agency databases, other requirements mandated by the Clinger-Cohen Act and GISRA are not fully funded. In 2002, we began to address weaknesses found in our first GISRA audit by applying one-time, unanticipated operating savings. We currently have no funds allocated to continue IT security enhancements. Furthermore, we cannot move ahead to fully implement other Federal mandates such as the Government Paperwork Elimination Act and Teleworking Act without addressing IT security.

Efficiency

The Commission is adept at channeling its limited resources to the areas in which it will see the most benefit. For example, in order to enhance the type of training the agency offers to its employees, the Commission has leveraged on other existing training programs, Federal and otherwise. In addition, the Commission has undertaken partnerships with industry and consumer groups in order to conduct various projects or relay consumer product safety information to the public. For example, last year the Commission worked with the Juvenile Product Manufacturers Association in a campaign to educate the public about the hidden hazards of placing infants on adult-sized beds. The Commission is working in conjunction with Customs to enable CPSC field personnel to monitor imported consumer products with the aid of Customs databases.

Conclusion

By any measure, the Commission saves the Nation many times its annual budget each year and is a great value to the American people. We are adept in using in our limited resources wisely, as well as in working within the construct of our statutes to protect the public from hazardous consumer products. I believe that the Commission represents a health and safety bargain for the American people, and ask that you reauthorize the agency today so that it may continue its good work in the future.

Senator FITZGERALD. Well, Commissioner Gall and Chairman Stratton, and Commissioner Moore, thank you all very much.

I do have a few questions, and I want to start by following up on some testimony that Commissioner Moore gave. Commissioner Moore recommended that the cap on civil penalties, that I gather is now in your authorizing statute—is that cap in the authorizing statute? You recommend, Mr. Moore, that that cap be eliminated altogether.

Commissioner MOORE. Yes.

Senator FITZGERALD. I am wondering if you can give me examples of cases where you think the cap made you assess a fine that was too small. Could——

Commissioner MOORE. Well, I cannot give you a specific example. However, the specific reason why I think the cap ought to be removed is that the cap can serve as a hindrance to enforcement in the sense that if an entity that is violating some of our rules is not aware of any particular cap, we are then in a better position, I think, to get submission and to get behavior control, in not only that one particular situation, but across the board, because they have no idea of what the assessment might be against them.

Senator FITZGERALD. They will fear you more.

[Laughter.]

Commissioner MOORE. That is right.

Senator FITZGERALD. OK.

Have you ever reached the cap in any cases? Do you know of any?

Commissioner GALL. No, we have not reached it yet.

Senator FITZGERALD. You have never reached it? In no——

Commissioner GALL. No.

Senator FITZGERALD.—in no case have you reached the cap.

Commissioner GALL. No.

Senator FITZGERALD. Now, Chairman Stratton and Commissioner Gall, do you wish to weigh in on this issue of whether the cap should be eliminated or raised?

Chairman STRATTON. Ladies first, Mr. Chairman.

[Laughter.]

Commissioner GALL. Well, that is one point for consideration. We have yet to reach our current cap. And——

Senator FITZGERALD. What is the biggest fine——

Commissioner GALL.—it is 1.1——

Senator FITZGERALD.—you have ever assessed?

Commissioner GALL.—million. Fisher-Price was $1.35 million for Power Wheels—I believe it was for Power Wheels, right?—for Power Wheels, which were these nifty little motorized vehicles for children, toy rides for children.

We assessed a civil penalty of $1 million, I think, against General Electric for dishwashers that tended to catch fire. And we have yet to reach the cap itself, which is one concern.

A second concern is that if we remove the caps, then we would need sufficient resources to take on any battles that we have, which would result in greater effort on the other party's part because the amount would be so much higher.

Senator FITZGERALD. Have you had fines that you have assessed challenged in court?

Commissioner GALL. I believe we have had some fines challenged, but not in court. I mean, we have come to settlement agreements.

Senator FITZGERALD. Internally.

Commissioner GALL. We came to one recently where we were looking for a penalty of six—no, seven figures, and we settled for $750,000.

Senator FITZGERALD. OK. And you used in-house lawyers, I would imagine, to handle those cases, right?

Commissioner GALL. Yes, that is correct. Yes.

Senator FITZGERALD. Do you use outside counsel at all?

Commissioner GALL. Well, we work with the Department of Justice, of course. When we——

Senator FITZGERALD. They represent you.

Commissioner GALL.—bring the cases. But we negotiate our settlements.

Senator FITZGERALD. So when you say you would need more resources if you had the ability to levy bigger fines, for what would those additional resources be used? Not for legal fees, because you

use either inside lawyers, in-house counsel, or the Justice Department.

Commissioner GALL. Yes. Well, I think we would have to, for one thing, spend a lot more time than we do now. We would have to spend a lot more staff time in addressing those issues.

I would expect that we would have—if we are looking at fines that are much, much higher than the current cap, that we would get more of an argument from the other side. So it certainly would be a greater investment of time and resources, additional investigation, and so on, to document, and then perhaps more cases might actually go to court.

Senator FITZGERALD. For some of these companies, Mr. Moore, would you not think that just the adverse publicity that the firm faces after word leaks out that you are acting against their corporation for a defective product even be more of a penalty than the monetary fines we assess?

Commissioner MOORE. Certainly that is a penalty, but I still think the leverage, potential leverage, of an unlimited potential for fining is meaningful. I think that leverage would be meaningful.

Senator FITZGERALD. Well, it would give the Commission more power. There is no doubt about that.

[Laughter.]

Senator FITZGERALD. Well, this is an issue that may come up. I know that Senator Hollings may offer an amendment to either increase your fine limit—I think his amendment is to increase it from the $1.65 million to $20 million. But another alternative would be to remove the limit altogether. Does anyone know how long that limit has been in place? Does that go back to your original authorization, in the 1970s?

Chairman STRATTON. I do not know.

Commissioner GALL. Well, it is adjusted. It is adjusted through periodically——

Chairman STRATTON. It began at $500,000, and it has been ratcheted up starting in 1990, I forget what the number was, but they put an inflation kicker on it, so it kicks up every 5 years. It has gone up to $1.65 million.

Mr. Chairman, could I weigh in on——

Senator FITZGERALD. Yes.

Chairman STRATTON.—on the cost issue here without talking about the caps?

It is a huge resource to engage in this kind of litigation. Most of the work gets done before the case goes to the Justice Department. That is where you try to settle the case and build your case and settle it. Our lawyers, even after it goes to Justice, are intimately involved in this kind of litigation and other kinds of litigation.

If the caps were increased to $20 million, or if they were unlimited, you are putting us in a whole 'nother ball game. And I suspect when you want us to come back next year, you will want us to have utilized those caps and to have put the whole penalty paradigm in another dimension at the CPSC. Right now, there is a dimension where everybody kind of knows what the penalties are. If we move it up to $20 million, it is going to be a lot more.

Right now, our lawyers make decisions about when to schedule cases—and it's not always based on when the judge is available or

in the earliest time available. We often do it based upon what fiscal year we are in, because of how much money we have, and to make sure we have enough money to attend the trial.

In the Wal-Mart case that we just mentioned, where we settled for $750,000 after sending it to Justice and going through litigation—this was a settled case, not a pre-case settlement—Wal-Mart hired eight lawyers in that particular case to litigate against us. I suspect if we were going for $20 million, they would hire just that many more. And I have been a litigator for 26 years now, on and off, through the attorney general's office, complex litigation, and in private practice. It is a very expensive process, and I just want it to be clear to the Committee that if we do go in, take it up to the next step, and we become a litigation agency involved in litigating millions or tens of millions of dollars, that we are going to have to have more lawyers. We have got—I do not know how many lawyers we have now—less than 30 in the whole place, and I think that includes me and Commissioner Moore, and most of them are not involved in litigation.

So I just want to bring that to your attention as we move through this, that you are moving us into a new area, which—and, you know, I have done this for 26 years, so I am happy to lead that effort, but you have got to have the soldiers if you are going to go into battle.

Senator FITZGERALD. Now, you bring up lawyers. Many of those lawyers that those companies that are resisting you hire, they are former staff attorneys at the CPSC, too, are they not?

Chairman STRATTON. I do not know if I would say "many," not in this particular case, but we certainly do see some staffers that worked at the CPSC litigating.

Senator FITZGERALD. Now, does that not bring up another issue called the "revolving door" issue about staffers who leave the Commission and immediately go to work for a law firm representing the other side, and also the issue of whether your authorizing statute should put into place some restrictions, maybe a cooling-off period for a year or so, or more, before staff attorneys and others can go work against the Consumer Product Safety Commission?

Chairman STRATTON. Mr. Chairman, I did not expect this question, so I apologize that I do not have the exact answer, but my belief is that they are covered, currently, under—not our act, but under the general—whatever other ethics acts we have in government. I think they have to wait a year before they can litigate directly against us. And there is some 2-year period, as well.

Senator FITZGERALD. Does anybody know the answer to that question? Any staff person?

Chairman STRATTON. Here is our General Counsel, Mr. Chairman.

Mr. DUROSS. Mr. Chairman, my name is Bill Duross. Bill Duross, D-u-r-o-s-s. I am the General Counsel. Under the Government ethics regs, there are restrictions, Mr. Chairman, for any matter that they personally—the lawyer has personally handled—dating for a year or up to 2 years, depending on whether it was a matter that they substantially handled, for any particular matter in the agency.

Senator FITZGERALD. What if they did not personally work on the matter while they were in the agency?

Mr. DUROSS. Well, that is the ethical question, what is the definition of a particular matter, and how much involvement a particular lawyer may have with that particular question. But if it is a litigation matter, which is what you are discussing with the Chairman right now, then any involvement in litigation would trigger those restrictions if the lawyer worked on the litigation personally and substantially, or had it pending under his or her supervision within one year before departing from CPSC.

Senator FITZGERALD. OK. But somebody who was not involved in the matter while at the CPSC can immediately go to work for an outside law firm that would be fighting against the CPSC with no cooling-off period. Is that the same for all Government agencies?

Mr. DUROSS. Yes, Mr. Chairman. If you are not involved in a particular matter, rather a matter of general applicability, you do not have any restriction in dealing with that.

Senator FITZGERALD. OK.

Chairman STRATTON. I would just say, Mr. Chairman, in defense of lawyers, if you——

[Laughter.]

Chairman STRATTON.—and I know that is a precarious slippery slope—but if you are going to make that rule for lawyers, you ought to make it for everybody else, because we have people leaving our agency at all times, going out into the private sector and then doing work that falls into——

Senator FITZGERALD. And then coming back and lobbying you.

Chairman STRATTON. We do not get seriously lobbied at the Consumer Product Safety Commission. If we are lobbied, we have to notice a hearing and make it an open hearing, if we are lobbied on any substantive issue before the Commission. So it is not——

Senator FITZGERALD. Is that your internal rules, or is that in the statute?

Chairman STRATTON. I am sure it is a reg. I do not believe it is in the statute.

Senator FITZGERALD. So XYZ Company that you are considering levying fine against. They cannot come in and lobby you, take you out to dinner before you have the vote on that.

Chairman STRATTON. No.

Senator FITZGERALD. OK.

Chairman STRATTON. Absolutely not.

Senator FITZGERALD. OK.

Chairman STRATTON. And even if they did, nobody on this Commission would do that, Mr. Chairman, I can assure you.

Senator FITZGERALD. Oh, I am sure they would not.

Chairman STRATTON. Let me say, since I have been at the CPSC, I have met with scores of stakeholders on courtesy meetings. When I do a courtesy meeting with somebody, or when the Commissioners do, we formally notice it to the public. Every meeting I have had with anybody has been formally noticed.

Now, if we are going to discuss anything substantive, we not only formally notice it, but we open the meeting up to anybody that wants to come. I have had one of those requests and one of those meetings out of literally probably a hundred meetings in the last year, and nobody takes us out to dinner, and nobody takes us out to lunch.

[Laughter.]

Senator FITZGERALD. OK.

Chairman STRATTON. And let me assure you—and my wife has been speaking with me about all these lunches I have been having——

[Laughter.]

Chairman STRATTON.—since I have been here. It is not like the legislature in New Mexico.

[Laughter.]

Senator FITZGERALD. Going back to the original question of the fines, the cap on the fines, Mr. Moore, would you not think that just the ordinary tort liability that companies face if they introduce a defective or dangerous product into the stream of commerce is really the deterrent effect against negligent design or manufacture of a product that could harm a consumer—and that that is a far more significant deterrent than your fines, unless your fines were extraordinarily large?

Commissioner MOORE. That certainly is an element, but, in working to remove defective products from the market, we like to have companies respond positively and as quickly as possible, rather than to delay responses to us. And, that often happens. They delay, delay as long as they possibly can, in responding to the agency.

I am saying that, with the higher potential fines out there, that they are going to be more concerned with the potential damage to their operation and to their companies, and that they are more likely to get in line more quickly to try to get these things resolved. That is the way I see it.

Commissioner GALL. If I could just add one thing, it seems to me that one of the important factors in all of this is perhaps not so much the dollar amount of the fine as the certainty that the fine will come and the publicity that attends that. When the Consumer Product Safety Commission makes an announcement about something along these lines in a fine against a company, that is covered around the country, and companies are very sensitive to having a Federal Government agency make note of some safety defects. And I think that has an impact.

Senator FITZGERALD. Well, as I said before, I would think just the adverse publicity, alone——

Commissioner GALL. Yes.

Senator FITZGERALD.—and the damage to sales figures and so forth would be an awfully big deterrent.

Off the top of your head, do any of you know whether the fines you levy are ordinarily covered by the manufacturer's product liability insurance, or are those typically not insurable—are there policies that——

Commissioner MOORE. I have no idea.

Chairman STRATTON. Our director of compliance tells us he believes not, that they would not be covered by——

Senator FITZGERALD. Probably most——

Chairman STRATTON.—product liability insurance.

Senator FITZGERALD.—policies would not cover such regulatory fines.

Chairman STRATTON. Right.

Senator FITZGERALD. I believe, in your written statement, Chairman Stratton, you mention briefly the ongoing safety problem that exists with regard to children operating all-terrain vehicles. Would you explain, in more detail, how serious the problem really is, in your view, and any possible solutions that may exist?

Chairman STRATTON. Mr. Chairman, I will be happy to do that. And once again, the Commissioners who are sitting here with me have been through these ATV matters for quite awhile, and so they may have something they want to add.

About three or four years ago, it became clear that ATV injuries were rising on a much steeper curve each year than they had been in the past. If you look at the curve, back in the 1980s there was a steep curve of injuries, primarily due to three-wheel ATVs. Those were banned by the Commission back in the 1980s. Actually, there was a consent decree on that. And you saw the injury rate drop.

And it dropped, and it kind of stayed down and kind of just leveled off. And then, in 1997 and 1998, it increased. And it increased to about 111,700 emergency-room visits a year.

Senator FITZGERALD. Say that number again.

Chairman STRATTON. 111,700 emergency-room visits per year.

Senator FITZGERALD. 111,000 emergency-room visits a year?

Chairman STRATTON. That was for 2001. So——

Senator FITZGERALD. For 2001. But just from injury on ATVs.

Chairman STRATTON. Correct, Mr. Chairman.

So I know that seems like a large number to some people, and that is what we do at the Commission. So we decided we had better take a look at it. The Consumer Federation filed a petition, part of which is still pending, which asks us to ban sales of adult ATVs to children. And my view, not speaking for the other Commissioners, was, even if we do that, that we are probably still going to have a problem. And it was then the considered opinion of the Commission to go out and look into this.

We had a brief study that was done in cooperation with industry, which has come back and given us some partial answers on why this is occurring; such as, it appears that it happens more often with people who have less experience on ATVs. It certainly happens with the higher-per-capita of younger people who are on ATVs. But it did not give us the whole story, and the increased number of ATVs did not give us the whole story.

So we decided we should look into it, and we got together and decided the first thing we ought to do is have a hearing. And since we do not see many ATVs driving around the District of Columbia, we thought we might take it out on the road. It has been a long time since the Commission had taken a hearing on the road. So we went to Morgantown, West Virginia, just the week before last.

Commissioner GALL. June 5.

Chairman STRATTON. June 5—and had our first hearing, at which we had 35 people testify, from all over the country, mainly in that region, up that way.

So what I would hope to do is to conclude this study and come up with some ideas about how to reduce those numbers. I think the overwhelming theme of the West Virginia hearing, without prejudging this issue—and I do not want to prejudge it here, because I have not heard enough about it—is that a lot of this activity is

behavioral. And as the Chairman knows, we do not regulate behavior; we regulate dangerous, hazardous products.

So what I would hope to do, by the time we conclude this, is to understand what is causing the increase, with some good, hard data, so we know for sure what is causing the increase, and then the Commission can do what it does, in regard to the issue, what it should do, and the other jurisdictions, who have jurisdiction, can do the same, whether it is the State of West Virginia, whether it is local Governments, or anybody else.

So that is the game plan. But to come here today and tell you why it is so high, I do not think we can do it. That is why we are out there digging, trying to figure it out.

Senator FITZGERALD. Would either Ms. Gall or Mr. Moore care to respond on the ATVs?

Commissioner MOORE. I think the Chairman has done an excellent job. I wanted to clarify a point, though, in terms of the numbers. That number was over a 4-year period increase, from 1997 to 2001, from 54,700 to 111,700, which was 104 percent increase in that brief period of time.

Senator FITZGERALD. Could it be because you are monitoring emergency-room visits better? Has anything——

Commissioner MOORE. I do not think so.

Senator FITZGERALD.—changed? No?

Commissioner MOORE. That has not changed.

Senator FITZGERALD. OK.

Commissioner MOORE. That has not changed.

Commissioner GALL. That——

Chairman STRATTON. Everybody—I am sorry.

Commissioner GALL. Go ahead.

Chairman STRATTON. I am sorry. I was just going to say, there is no particular disagreement on the numbers. Everybody pretty much agrees those are the numbers. The issue is, "What do we do about it," basically.

Senator FITZGERALD. How many ATVs are in existence? Do you have any idea?

Chairman STRATTON. Tons.

Commissioner MOORE. The numbers rose 40 percent—from 4 million to 5.6 million, I believe, in that period, in that four-year period. That is the data that I have here. Yes. The number of ATVs rose 40 percent from—over that 4-year period, from 4.0 million to 5.6 million.

Chairman STRATTON. That is right.

Senator FITZGERALD. OK.

Commissioner GALL. We did take a look at the injury data over that five-year period that the other Commissioners have talked about, we looked at the number of riders, the number of hours that ATVs are ridden, and you cannot account for the dramatic increase of 105 percent in injuries over that period of time, when you look at those factors, there is something else at work here.

One of the reasons we went to West Virginia was because they have such a high rate of injuries and death with ATVs. We have noted that when states have State laws that require helmets, require off-road riding rather than on-road riding, and some other

laws that pertain to ATV safety, their numbers are lower than states that do not have these kinds of safety initiatives.

When we did the Consent Agreement and post-consent agreement action plans, dealers agreed not to sell engines larger than 90 cc's for use by people under 16. But the problem is, a lot of families can only afford to buy one ATV. They want an adult size, for whatever reason. It is difficult to tell a 14-year-old who has been driving a tractor for several years that now he cannot get on an adult-size ATV.

We have education programs to help train people how to ride ATVs safely. Another factor that we are looking at is that the engine size of ATVs has increased dramatically in the past few years, and we wonder if the power of those engines may have some implications for safety, as well.

So there are a number of issues that we are looking at. But I certainly agree with the Chairman. As someone at our hearing said, "The key to safety with ATVs is the person who holds the keys." And so behavior is a very important component of this issue.

Senator FITZGERALD. Mr. Chairman, for many years, product flammability issues have been among the most frequently raised when discussing CPSC activities. Appearing on the second panel today is a representative of the State Fire Marshals. Last November, I, along with Senator McCain, Senator Hollings, and Senator Dorgan, sent you a letter asking that you make fire-safety issues one of the Commission's top priorities.

Would you explain what activities the CPSC is engaged in currently to reduce fire-safety concerns regarding candles, upholstered furniture, and mattresses? Which of these products is the CPSC most concerned about with respect to flammability?

Chairman STRATTON. Mr. Chairman, I will answer the last question first, and that answers all of them; and I will go through them briefly, and then I will ask the other Commissioners to chime in, because burn injuries are one of the very top priorities at the CPSC.

The first thing that I noted as I was getting your letters and other letters, even during confirmation, and in questions during my confirmation process, was, where was our burn data? And I would talk to the Shriners and the State Fire Marshals, and we could not agree on whether—it is not a matter of disagreement; it was the fact that we did not have enough data. And that is why I, frankly, am so proud of our Commission and the Shriners and the American Burn Association and the National State Fire Marshals Association for coming together and putting this together.

Now, this is going to begin on the 1st of July, when we start collecting this new data on children 14 and under. And so, within a year, we should, hopefully, have better data upon which to act when it comes to this type of burn injury.

Let me talk about, now, briefly, about each of the issues that you raised.

First is upholstered furniture. That petition has been pending since—I do not know if it is 1993 or 1994. And I know—I think I committed to you, during confirmation, that I would come in and get that cleaned up. And we now have a proposal from the American Furniture Manufacturers Association, which is a substantial

movement on their part, toward a mandatory regulation. And I expect that, by the end of the month, we will have another proposal from the textile manufacturers, the American Textile Manufacturers. And I hope—I have no idea what it is going to be, and I am not sure it is going to happen, because these are not the kind of things that you learn about ahead of time, but I suspect it will be substantial movement, as well.

Senator FITZGERALD. From the textile manufacturers? Is that regarding sleepwear for children or——

Chairman STRATTON. I am talking about upholstered furniture right now.

Senator FITZGERALD. Upholstered furniture——

Chairman STRATTON. This would be——

Senator FITZGERALD.—OK.

Chairman STRATTON.—the fabrics. This would be the fabrics, that we are talking about on the furniture.

And our staff is poised to give us the report, with all of our options on this matter, no later—keeping my fingers crossed—July 9. And the reason they need to do that is because I am addressing the Annual Convention of the National State Fire Marshals' Association on July 10——

[Laughter.]

Chairman STRATTON.—and they are going to expect me to have that, and if I do not have that, I may not be coming back.

[Laughter.]

Chairman STRATTON. But we will know, by that date, what our options are. I then suspect we will be setting a hearing up as quickly as we can. I do not think—we might do it in August, but I understand things do not happen in this town in August, so we probably will not get it done that quickly. But I would not be surprised if we had a hearing on this in September, at which all the stakeholders will be allowed to testify, and then we will be ready and poised to vote on this particular regulation. And I do not know which way it is going to go, and I do not know what is going to happen. But I do know this. There has been substantial movement on behalf of a lot of the stakeholders in the case. So that is what I can tell you today on upholstered furniture.

On mattresses and what the industry calls "bed clothing"—covers, sheets, blankets, comforters, those kind of things—we are also in a rulemaking process. That is going a little bit slower. We have an advanced notice of proposed rulemaking out on that. Right now, our staff is in the process of working with NIST to develop the appropriate methodology for testing mattresses and bed clothing.

I should first tell you that we do have a petition on mattresses. We do not have a petition on bed clothing. But I suspect that our staff is going to recommend that we take that issue up and that we look at both of those—whether we pass a regulation or not, that we take them both into account and look at them.

Now, this is not going to happen as quickly as the upholstered-furniture reg, I do not believe. I think it may be sometime next year that we finally get a report out of our staff and based on the NIST methodology that they have come up with. But as soon as we get that, the Commission will be ready to move immediately to resolve the mattress flammability issue.

Candles. We have just finished promulgating a regulation banning lead in candle wicks, a mandatory regulation, which is done. That happened in the last month or so. So we have gotten that behind us now.

As far as other candle safety is concerned, that is currently in the voluntary regulation process. It is being negotiated with the voluntary standards group with the industry, with the fire marshals and others. I understand that they published a provisional voluntary performance standard that is out there right now. It is provisional. It has not been finalized. But they are moving toward a finalized voluntary standard in that area, and that is going to include things like the end of the useful life of the candle, the flame height, and secondary ignition problems.

So we do not technically have a regulatory proceeding going right now. That is in the voluntary standard proceeding.

So I think I covered the three topics, and if the other Commissioners have anything to add, I will be happy to have them do that.

Commissioner GALL. No, I have nothing to add.

Commissioner MOORE. No, that is fine.

Senator FITZGERALD. Well, thank you very much. That pretty much concludes my questions of the Commissioners. And I want to thank you for coming before us. We have another panel we want to get to. I want to thank you all for your hard work on the Commission, and we will look forward to working with you as we try to move a reauthorization bill forward. So thank you all very much for coming.

Chairman STRATTON. Thank you, Mr. Chairman.

Senator FITZGERALD. And with that, I would like to invite the second panel to make their way up to the witness table.

Appearing on the second panel, we have R. David Pittle, Senior Vice President, Technical Operations, of the Consumer Union; Ms. Rachel Weintraub, Assistant General Counsel, Consumer Federation of America; Mr. Alan Korn, Director of Public Policy, National SAFE Kids; Mr. Stephen Gold, Vice President of the National Association of Manufacturers; Mr. Gary Klein, Senior Vice President, Government Legal and Regulatory Affairs, from the Toy Industry Association; and Mr. Robert Polk, Chairman, Consumer Product Fire Safety Taskforce, National Association of State Fire Marshals.

I want to thank all of you for appearing before the Committee today and weighing in with your thoughts on the reauthorization of the CPSC.

As I asked the Commissioners, I would appreciate it if you could all be kind enough to summarize your remarks orally for us, as opposed to reading your written statements. I would prefer to just take your written statements and have them made part of the permanent record, and we would ask that you limit your testimony to no more than 5 minutes, as there are six of you. We want to give all of you a chance to be heard.

So, Dr. Pittle, if we could start with you, and we will move left to the right; so Mr. Polk, you will have a long wait, down at the other end. Dr. Pittle?

STATEMENT OF R. DAVID PITTLE, PH.D., SENIOR VICE PRESIDENT, TECHNICAL POLICY, CONSUMERS UNION

Dr. PITTLE. Thank you. I expected to be last, so I have to redo this.

Thank you for the opportunity to be here today. I speak to you today as one of the original five Commissioners of the Consumer Product Safety Commission, also as the former technical director of Consumers Union, the Nation's largest consumer product testing organization, and currently as CU's Senior Vice President for technical policy. Serving in these three capacities, I have experienced both the public's critical need for the unique services of CPSC and the many difficult technical and legal hurdles that the agency must overcome in order to deliver on its mandate.

Based on more than 30 years of working on product safety and reducing unreasonable risk to consumers, I have concluded that the agency should be reauthorized, but by asking two questions first. Are the agency's mission and authority, as stated in its enabling legislation and subsequent amendments, appropriate to fill the public's need for safer products? And if not, how should they be changed?

During my tenure at CPSC, four different Presidents, from two parties, resided in the White House, and numerous Senators chaired the CPSC's oversight committees. Many things changed since then, but many things have stayed the same. For example, the basic mission of the agency has remained the same.

Every Congress that has reauthorized CPSC during the last 30 years has reaffirmed its clear and unmistakable purpose, to reduce or eliminate unreasonable risks of death and injury to consumers. There is no equivocation. The pain and suffering from accidents involving chain-saw kickback, flammable children's pajamas, or explosions caused by leaking gas valves, or unstable ATVs is devastating.

To make the agency more effective—that is, to save more lives and to reduce more injuries—there are several areas of CPSC's basic legislation that we believe warrant change. These include Section 6, Section 15, Section 37, and restoring the authority over fixed-site amusement park rides. And this has all been submitted in our full testimony. And in an era marked by scarce resources, it is incumbent on us to remove all the obstacles that hamper the agency from being more effective.

I would like to turn to Section 15. And fortunately for me, I was taking notes, so I do not have to go to my own prepared text. I would just like to mention a few things from the last discussion.

First of all, Section 15 is not designed to make companies fearful of CPSC. Its purpose is to get companies to report hazards before people are injured or killed by those hazards. And so the purpose of a fine is to make there be a cost to the manufacturer who purposefully misbehaved by not reporting that information to the agency. And this is not a new requirement. That requirement has been on the book and known to corporations for the last 30 years. So when a manufacturer has had recall after recall, and they do not notify the agency promptly enough, it is not as if they did not understand what their responsibility was. They made a calculated business decision not to inform the agency.

So we favor removing the caps altogether. We think that when you have a cap that says $1.65 million, it does not mean much to a company like General Electric, whose got revenues of $137 billion a year. This is just a decimal point that gets lost at the edge of the page.

And so companies like Graco and Cosco, Fisher Price, General Electric, West Bend, Honeywell, Wal-Mart, these companies all know what their responsibilities are. And for them to pay a $2- or $300,000 fine is simply silly. The only way that this will get their attention, if they are not responsible to do it in the affirmative, is to remove the cap so that there is always a question in their mind, "How big will this fine be?" They might pay more attention to it.

So it seems clear to us that these current caps have the effect of imposing a $2 ticket for parking down in downtown New York City. It just does not mean anything, and people will not pay attention to the requirements. So we would be very supportive of removing those caps. Really, the whole thing is about preventing injuries, not about making money. But, darn it, when a manufacturer does not report, they are putting their customers at risk.

I would like to turn now to the last section, which is Section 6. Opponents of Government regulations insist that the Government's role should be to provide information to the public and let consumers make their own choices. Well, unfortunately, this is very difficult to do with CPSC. This agency stands alone among the Federal health and safety agencies in being unable, as a practical matter, to provide important safety data to the public. The reason is that Section 6(b) of the Consumer Product Safety Act presents a major obstacle to the timely release of product safety information that is in the agency's possession. It does so by barring the release of this information unless and until the agency has sent a copy of the information to the manufacturer, allowed the manufacturer 30 days to comment on the information, reviewed their comments regarding the accuracy and the fairness of releasing it, and then, finally, determining whether or not it is important to release it.

We think it is bad policy for Congress to require a Government agency to censor health and safety information to the consumers. If the CPSC has acquired information that raises questions about a product, CU thinks the public should have access to the data and decide for themselves. CPSC official, Mark Schoem, was quoted in Consumer Reports 1994, saying, "The effect of Section 6 is to make the release of some information almost impossible." Objections by any manufacturer can lead to a long struggle. Even newspaper clippings on a particular product cannot be released by CPSC without prior review by the manufacturer.

So, in concluding my remarks, there are several other things—in particular, ATVs—that we think that the Congress has a role to play, and we hope you will.

Thank you.

[The prepared statement of Dr. Pittle follows:]

PREPARED STATEMENT OF R. DAVID PITTLE, PH.D., SENIOR VICE PRESIDENT, TECHNICAL POLICY, CONSUMERS UNION

Mr. Chairman and distinguished members of Committee:

It is a pleasure for me to address this subcommittee regarding the reauthorization of the Consumer Product Safety Commission (CPSC). I am joined today by Sally Greenberg, CU's Senior Product Safety Counsel.

I speak to you today as one of the original five commissioners of CPSC (1973–82); as the former Technical Director of Consumers Union, the Nation's largest consumer product testing organization; and currently CU's Senior Vice President for Technical Policy. Serving in these three capacities, I have experienced both the public's critical need for the unique services that CPSC provides and the many difficult technical and legal hurdles that the agency must overcome in order to deliver on its mandate.

As a member of the original Commission, I spent nine years weighing the complex factors involved in establishing product safety standards and bans, recalls of substantial hazards, policies to encourage voluntary action by industry, comprehensive compliance programs and campaigns to inform and educate the consumer. Based on 30 years of working on product safety and reducing unreasonable risks to consumers, I have concluded that an agency like CPSC should be reauthorized by asking these two fundamental questions:

> Are CPSC's mission and authority, as stated in its enabling legislation and subsequent amendments, appropriate to fulfill the public's need for safer products and if not, how should they be changed?

In my view, the answers to these questions comprise the basic ingredients that together determine how successful CPSC will be in saving lives and reducing injuries.

During my tenure at CPSC, four different Presidents resided in the White House, and numerous senators chaired the CPSC's oversight subcommittee. Many things changed—but many things stayed the same. For example, the basic mission of the agency has remained the same. Every Congress that has reauthorized CPSC during the past 30 years has reaffirmed its clear and unmistakable purpose: reduce or eliminate unreasonable risks of injury and death to consumers. There is no equivocation—and rightly so, in my opinion. The pain and suffering from accidents involving chainsaw kickback, toxic formaldehyde vapors, flammable children's pajamas, explosions caused by leaking gas valves, unsafe infant safety gates, unstable ATV's and so on is devastating. And I believe consumer safety is so important that it should transcend partisan politics. The pain and suffering is the same—regardless of who is in the White House or who sits on the Commission.

The National Commission on Product Safety issued its final, bipartisan report to the President and Congress in June 1970. That report set the stage for the establishment of CPSC to promote safer products in the marketplace and regulate those companies manufacturing those products. The agency today estimates that deaths, injuries and property damage from consumer products cost the Nation more than $700 billion annually. CPSC also estimates that its work to ensure the safety of consumer products—from toys, cribs, power tools, and home heating equipment to dangerous household chemicals—has contributed to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 year. Clearly protecting the public from unreasonable risks of serious injury or death from the more than 15,000 products under the CPSC's jurisdiction makes good sense in both human and economic terms.

To make the agency more effective—i.e., save more lives and reduce more injuries—there are several areas of CPSC's basic legislation that we believe warrant change, including section 6, section 15, section 37, and fixed-site amusement park rides. In an era marked by scarce resources, it is incumbent on us all to remove obstacles, especially low-cost obstacles that hamper the agency from being more effective.

Amusement Rides (Fixed-site)

Mr. Chairman, in 1981, Congress, as part of an overall political compromise, removed the Commission's authority over fixed-site amusement rides. To say the least, the decision was entirely political and not based on the merits. Unfortunately, this political deal has not worked to the advantage of the millions of consumers who annually go to enjoy amusement rides. Numerous deaths and injuries have occurred—and continue to occur—on these rides. And the states, upon which the Congress depended to step into the regulatory void, simply have not done so in an effective or timely manner.

We believe this loophole in Federal law with regard to amusement park safety is nonsensical and dangerous for consumers. As I said, fixed-site amusement parks are host to literally millions of patrons each year. When an accident occurs on such rides, the law actually prevents the CPSC from even looking into the incident to find out what happened. While some states will conduct an investigation, many conduct little or no regulatory oversight at all over amusement parks in their own states. We think it makes far more sense for the Federal safety officials to play both an oversight and information clearinghouse role for safety information about the amusement park rides, especially since a number of the same rides exist in different parks in different parts of the country. Further, no state has the jurisdiction or resources to be able to share safety information with all of the other states.

Consumer Reports surveyed consumers about their experiences at amusement parks for the first time this past spring. We also discussed the safety record of these parks and noted that while the safety risks appeared small, they are nonetheless very real.

In 2001, 6,700 people were treated in emergency rooms for injuries at fixed-site amusement parks. At least 55 people have died on amusement park rides in the last 15 years. In August 1999, four deaths occurred on roller coasters in one week, including a 12-year-old boy and an 8-year-old girl. Since then, there have been six more fatalities on amusement park rides. This past spring an 11 year-old-girl died at a Six Flags Park in Illinois.

We don't understand the logic of carving an exception out for fixed-site amusement park rides. We ask simply that CPSC be authorized once again to investigate the injuries and deaths, determine the causes, and work to reduce or fix the hazards.

I'd like to direct the Committee's attention to the fact sheet and overview of legislation introduced by Congressman Edward Markey of Massachusetts to correct this problem. Congressman Markey has also gathered statistics on the increase of injuries in fixed-site amusement parks and enumeration of injuries in parks across the country.

Section 15—Remove the cap on fines that can be levied for failing to report dangerous or defective products under Section 15(b)

The Consumer Product Safety Act's Section 15 (b) requires that manufacturers, distributors and retailers report to CPSC when they have reason to believe a product 1) isn't in compliance with safety standards, 2) contains a defect that could be create a substantial product hazard, or 3) creates an unreasonable risk of serious injury or death.

The history of manufacturers failing to report in a timely manner under this section is all too well known—and is especially worrisome for children's products that have caused injury or death. Included among companies failing to report are Wal-Mart and GE, two of the wealthiest corporations in America. We believe the cap on the fines CPSC can levy for non-reporting diminishes the power of the reporting statute. That cap is $7,000 per each violation with a total of $1,650,000 for any related series of violations—pathetically small amounts that are hardly felt by large corporations.

Below are details of fines CPSC has imposed for failure to report under 15(b).

- In 1991, Graco, a children's products manufacturer, paid a $100,000 civil penalty for failing to report stroller injuries to CPSC in a timely fashion. In 1989, the *Philadelphia Inquirer* estimated Graco's revenues at $150 million.
- In April of 2001, Cosco/Safety 1st agreed to pay CPSC a total of $1.75 million in civil penalties—the largest fine CPSC has ever levied—for failing over a four year period to report to CPSC defects in cribs, strollers and a toy walker that caused the deaths of two babies and countless other injuries. Both companies had previously been fined for failing to report under 15(b). In 1996 Cosco paid a $725,000 civil penalty and in 1998 Safety 1st paid a $175,000 penalty. Both companies have also had an inexcusable number of recalls of products used by children. By the time this fine was levied in 2001, Cosco had had 12 recalls of children's products and Safety 1st had five recalls. Dorel Industries, which owns Cosco and Safety 1st, reported $421 million in sales from juvenile products in 2002. Does a $1.75 million fine deter a firm of this size from failing to report?
- In June of 2001, CPSC fined Fisher-Price $1.1 million for failing to report injuries from a dangerous and defective toy. The company had not reported 116 fires from the Power Wheels toy. Fisher Price, a wholly owned subsidiary of Mattel, boasts sales of $1.2 billion in its most recent annual report and notes that its sales are up 8 percent worldwide.

- In November 2001, CPSC fined Icon Health and Fitness $500,000 for failure to report serious safety hazards with home exercise equipment.
- In August of 2002, General Electric (GE) paid the CPSC a $1 million penalty for failing to report defects in dishwashers that it first became aware of 10 years earlier. GE is one of the largest companies in the history of the United States, with 2002 revenues of $131.7 billion.
- In March 2001, West Bend Co. paid CPSC a $225,000 fine for failing to report fire hazards caused by a defect in its water distillers it had learned about three years earlier.
- In 2002, the CPSC won a case in court imposing a $300,000 fine on a juice extractor company that had failed to inform CPSC about injuries 22 customers had complained of when using their juicers.
- In 2002, Honeywell paid $800,000 for failing to report under 15(b). In 2003 to date, Weed Wizard has paid 885,000, while Wal-Mart has paid $750,000.

Are these fines acting as an adequate incentive for companies to report product safety hazards? The record suggests they are not. We believe these companies are well aware of the CPSA's reporting requirements—these requirements have been on the books for 30 years. It seems clear that the caps on these fines limit them to the deterrence equivalent of a $2 parking ticket in downtown New York City.

Recommendation: CU recommends lifting the cap on penalties for failure to report for several reasons:

(a) Caps mean the companies can figure in the cost of paying penalties at or below the cap as a cost of doing business

(b) A cap usually means that CPSC is always negotiating down from that amount; the CPSC has never fined a company to the limits of the current cap

(c) Other Federal safety agencies aren't hindered in their enforcement powers by caps on penalties. The FDA last week announced that it had won a court case that imposed a $92.4 million against Guidant Corporation for the company's failure to notify the agency of defects in its artery device. There was no artificial cap hindering the FDA's enforcement.

(d) The number of companies paying fines for failure to report demonstrates the need for higher penalties. Of course, we all would like to think that these companies would report because it is the right thing to do, but we know from the CPSC's experience that far too often this is not the case. We must put the sting back into the failure to report a dangerous or defective product under 15(b) by lifting the caps on the fines.

Section 37

Section 37 was added to the CPSA in the 1990 and intended to strengthen CPSC's ability to learn about relevant product hazards. Section 37 says that if a consumer product is the subject of at least three civil actions filed in Federal or state court for death or grievous bodily injury resulting in a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer must report that fact to the CPSC.

Section 37 was supposed to serve as an "early warning" system to CPSC to ensure that it hadn't missed important product hazard information. The problem with Section 37, however, is that its wording renders it largely ineffective. Under Section 37 CPSC receives information about lawsuits when the three cases involving the same product are settled, which is simply too late in the process to provide the requisite early warning. If the statute required reports to CPSC once three cases involving serious injury or death were *filed* as opposed to *settled,* the early warning intent of this statute would be greatly enhanced.

Jeffrey Bromme, at the time serving as CPSC General Counsel and writing in the December 27, 1999 BNA Product Safety and Liability Reporter, reaffirmed this flaw in the law. Bromme cited "two chief reasons that Section 37 has contributed little to consumer safety. First, reports received by the Commission generally come too late to serve as any kind of 'early warning system. Second, the Commission is receiving fewer reports." Bromme concluded: the original 1990 proposal to require reports of litigation *when filed*—and not when settled—would likely have served as a far more effective "early warning system," if such a system were truly what Congress intended.

Further, if a product defect exists, reports under 15(b) are required long before any litigation is settled, hence, a Section 37 report seldom provides the first warning. Secondly, according to Bromme, from January 1991 to January to 1992, there were 190 reports under Section 37. That number dwindled throughout the 1990s in

October 1999, there were only 19 reports, from November 2001 through December 2002 there were 41 reports and for the first six months of this current two year period, there have been only 2 reports. Bromme speculated that this dwindling number might be stem from companies having found a way to delay the third settlement on the same product until the next reporting period, thereby avoiding the reporting requirement. In any case, it is abundantly clear that even with the best of congressional intent, Section 37 as currently written is largely a failure.

After a decade of experience, we believe that it is time to amend Section 37 to conform to how it was originally drafted.

Recommendation: Amend Section 37 to require manufacturers to report to CPSC when three or more lawsuits are *filed* (not settled) about the same product that allege that serious bodily injury or death has been caused by that product and that product falls under CPSC's jurisdiction.

Section 6

Mr. Chairman, one of the criticisms of health and safety agencies is that they regulate rather than inform. Opponents of CPSC regulations insist that government's role should be to provide information to the public and let consumers make their own safety choices.

Unfortunately, this would be difficult to implement at the CPSC. The agency stands alone among the Federal health and safety agencies in being unable, as a practical matter, to provide important safety data to the public. The reason is that section 6(b) of the Consumer Product Safety Act presents a major obstacle to the timely release of product-specific safety information in the agency's possession. It does so by barring the release of this information unless and until the agency has sent a copy of it to the named manufacturer, allowed the manufacturer 30 days to comment on the information, reviewed the manufacturer's comments regarding the accuracy of the information and the fairness of releasing it, and determined that disclosure of the information would effectuate the purposes of the Act. Exceptions to these restrictions are extremely limited.[1]

The resource drain on the Commission staff for these procedures is enormous and unfair. Even if section 6(b) constituted good public policy—which it does not—it consumes so many staff hours and causes so many delays in the release of information, one cannot avoid the conclusion that it causes more problems than it solves. The CPSC is one of the smallest health and safety agencies. Yet, it alone must follow these burdensome procedures, and consumer safety is the loser.

Moreover, industry knows about and constantly exploits CPSC's resource problems. Most manufacturers are well aware that a strong letter to the agency threatening litigation over the release of the information will chill the agency's ability to release information about them. They know that the most common reaction will be to accommodate a manufacturer's objections, even if the objections do not have substantial merit, simply to avoid a lawsuit.

But, my opposition to section 6(b) goes deeper than agency resource problems. I think it is bad policy for congress to require a government agency to "censor" health and safety information. If the CPSC has acquired data that raises questions about a product, CU thinks that the public should have access to the data and decide for themselves.

In this regard, I find completely unconvincing the argument by some manufacturers that merely by virtue of being the repository of information, the CPSC will inevitably be viewed by the public as having placed its imprimatur on it. A carefully worded disclaimer would easily handle this problem. Indeed, I don't hold a library responsible for the content of the books on its shelves, nor would the public conclude that the accuracy of every consumer complaint in CPSC files is endorsed by the agency.

As stated earlier, CPSC is the only Federal health and safety agency that operates with these substantial restrictions on information disclosure.[2] We believe that Section 6 hampers the agency's ability to let the public know breaking information about safety matters, as NHTSA did during the Ford/Firestone tragedies, for example, in statements like "we are looking at reports about the Ford Explorer's safety record" or the "Firestone tire's tendency to lose its tread at high speeds."

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[1] Section 6(b)(1) requires that the CPSC must, at least 30 days prior to "public disclosure" of information, notify each manufacturer or private labeler identified in the documents of the forthcoming release and give them an opportunity to submit comments, and take reasonable steps to ensure accuracy.

[2] In 1983 the Commission was directed by Congress to compare these restrictions to those of ten other health and safety organizations. None operated with restrictions other than the normal restrictions on trade secrets and confidential business information.

CPSC official Marc Schoem told *Consumer Reports* in 1994 that the "effect" of Section 6 "is to make the release of some information almost impossible. Objections by any manufacturer can lead to a long struggle." Even newspaper clippings on a particular product cannot be released by the CPSC without prior review.

Executive Order Already Protects Trade Secrets and Confidential Commercial Information

Section 6 is unnecessary and redundant, and is in direct conflict with the public health and safety goals CPSC was set up to promote. It is premised on protecting the trade secrets and legitimately confidential information of manufacturers. Executive Order No. 12600,[3] signed by President Ronald Reagan in 1987, already provides such protections and Federal agencies use this Order for the very same purposes that Section 6 was set up to accomplish, except that Section 6 goes far beyond the requirements set out in President Reagan's Executive Order.

6(b)(5) for example, doesn't permit CPSC to disclose information on whether a product may present a "substantial product hazard" unless the Commission has filed a formal complain against the company, settled the case or the company agrees to disclosure. Under FOIA, however, such information would have to be disclosed unless the information qualified for protection under one of FOIA's exemption, *i.e.,* that it is a trade secret or confidential commercial information. Thus, 6(b)(5) prevents the press and watchdog groups like CU from determining whether manufacturers are complying with their duty to report substantial product hazards.[4]

The Supreme Court's holding in *GTE Sylvania* v. *Consumer Prod. Safety Comm'n,* 447 U.S. 102 (1980), expanded the restrictions on CPSC's ability to release of information to the public to include FOIA requests as well as affirmative disclosures by the CPSC.

Robert Adler, law professor at the University of North Carolina and former CPSC attorney-adviser to two CPSC commissioners, reviewed the Commission's record of releasing information during the 7 years before the Supreme Court's decision in *GTE Sylvania.* He found the CPSC released information in about 50,000 cases when it received FOIA requests. When pressed to cite abuses in releasing information, the industry cited only six limited and debatable set of examples, several of which Adler found to be inaccurate or unfair. Further, of the six examples cited by industry representatives, five related to CPSC-initiated information releases which would remain covered by 6(b) even under reform measures offered by members of Congress. Finally, in releasing information that it has in its files, the government's job is not to determine which information is accurate and which is not. That is the public's responsibility—and its right.

As a final point, I must say that I find it disturbing that those who argue most vehemently for giving the public adequate information and letting them make safety decisions tend to be those most opposed to doing so in the case of section 6(b)

Recommendation: Repeal Section 6(b) of the CPSA. It inhibits public access to important information about product safety. Indeed, as presently constituted, it is the exact opposite of promoting the consumer's right to know about safety information, possibly life saving information, in the files of CPSC.

Ongoing CPSC Safety Concerns

1. The Safety of "Durable" Childrens Products

According to the July 5, 2002 *CPSC Nursery Product-Related Injuries and Deaths to Children under age 5* Annual Memorandum, an estimated 69,500 children under age five were treated in hospital emergency rooms for injuries associated with nursery products. An average of 65 children, according to this CPSC report, have died annually in such incidents from 1997–1999.

We believe the number of injuries and deaths from using such products is far too high-indeed, it is unconscionable—and we urge this Subcommittee to focus a series of hearings on:

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[3] The Executive Order requires the head of each Executive department and agency to establish procedures to notify submitters of records containing confidential commercial information, if the agency determines that it may be required to disclose the records. The agency is to afford the submitter a reasonable period of time to object to the disclosure and to state all grounds for objection, and the agency is bound to give careful consideration to all specified grounds for nondisclosure prior to making a determination on the issue. 52 Red. Reg. 23781 (June 25, 1987),

[4] Congress added amendments to 6(b) in 1981 largely at the urging of the Chamber of Commerce, which argued that companies would be more likely to report product hazards under 15(b) if the public did not have access to such information. To the contrary, after passage of the restrictions, the number of "15(b) reports" dropped significantly.

- The extent to which safety is incorporated in the design and manufacture in the design and manufacture of baby products;
- Pre-market testing of baby products by manufacturers;
- Voluntary safety standards set by private standards-setting organizations for baby products;
- Barriers to public access to information about injuries to children using baby products;
- Frequent recall of baby products intended for use by children;
- Secrecy in settling lawsuits when children have been injured or killed when using a baby product.

We urge the Subcommittee to focus on products like strollers, high chairs, or portable cribs, products that one would find in a nursery, which we call "durable" children's products.

Why do we urge this action on the Subcommittee?

The top 5 manufacturers of durable childrens' products have had an alarming number of recalls over the past decade.

From March 1993 to February 2003, we have listed the five top companies and their respective recalls:

Dorel Juvenile Group—20 products recalled (includes Cosco 12, Safety First 8)

Graco—11 products recalled

Century—11 products recalled

Kolcraft—9 products recalled

Evenflo—9 products recalled

It is unreasonable and unconscionable for any company, especially those making products for use by children, to have more than one or two recalls over a decade. Proper safety-oriented design, rigorous pre-marketing testing, and strong industry-wide voluntary safety standards should prevent the recurring problem of having to recall product after product. And yet recalls clearly are not uncommon for the top five durable child product manufacturers.

Add this lax record of putting products into the stream of commerce that must be recalled later to the fact that only 10–30 percent of product recalls are effective—i.e., the product is successfully repaired, replaced, refunded and/or destroyed—and you have a recipe for extreme danger, and that danger is to children, our most vulnerable consumers.

Consumers Union has met with parents whose children have died using products that were recalled but the parents or the day care center were unaware of that recall. While we are critical of how often new products are getting into the marketplace without proper testing, we are also critical of CPSC's ineffective process of recalling those products from consumers.

The Commission held a hearing on May 15, 2003, that focused on methods for increasing recall effectiveness, bringing many top public relations and marketing experts to the table. These experts discussed many creative methods for increasing recall effectiveness and consumer response, however, most of them require manufacturers of products and the agency to spend money and resources. We commend the Commission for bringing together so much experience and talent, but we are concerned that it may lack the will to require manufacturers to put into place effective recall strategies that may cost money.

Perhaps our concern is prompted by the Commission's rejecting by a 2–1 vote, shortly before the May 15 hearing, a petition calling for baby products to be accompanied by Product Registration Cards that would allow parents the opportunity to fill the cards out with simple contact information and thereby allow manufacturers to contact them in the event of a recall. The industry argued that the cost of such cards was not worth the benefit they might provide. We disagree. We had urged the Commission to tailor a rule that required companies to provide registration cards for higher cost "durable" baby products, indicating that these cards would be used only for safety recalls and not for marketing, allowing consumers to provide multiple contact information, and have the postage paid. We believe we would see greater registration percentages and the possibility of saving young lives.

Recommendation: This committee should hold hearings on the manufacture of child products, as discussed above. CU supports two legislative proposals related to durable children's products and recommends that this Subcommittee hold hearings on both:

(a) Legislation offered by Senator Mary Landrieu Product Safety Notification and Recall Effectiveness Act of 2003, S. 584, would require registration cards

to accompany products intended for use by children. These cards would clearly state they are only for the purpose of contacting the consumer in the event of a recall and would ask not for marketing information, as so many cards currently, but for simply contact information. There is a precedent for this. The National Highway Traffic Safety Administration began requiring such cards with the sale of each child restraint in 1993 and the numbers of consumers registering went from 3 percent to 27 percent in 10 years.

(b) Legislation introduced in the last Congress by U.S. Representative Jan Schakowsky of Illinois entitled "The Infant and Toddler Durable Product Safety Act," HR 3283, would require pre-market testing of all durable children's products by an independent entity. This legislation was initiated by a leading child safety advocacy organization, Kids in Danger, based in Illinois, whose founders' son was killed in a recalled portable crib.

We also recommend that CPSC report annually to this Committee on effectiveness of recalls for the preceding calendar year. Most consumers are unaware that success rates for recalls are so low; we believe making the information public would spur manufacturers to improve their safety records.

2. All Terrain Vehicles

Between 1993 and 2001, the number of injuries caused by ATV-related accidents more than doubled, with 111,700 ATV accidents occurring in 2001. The number of injuries suffered by children under sixteen increased 94 percent to 34,800 in 2001.

Pursuant to a petition filed by the Consumer Federation of America, CU supports calling for CPSC to ban the sale of ATVs to children under the age of 16 (and other safety measures). The CPSC held an all day hearing on ATV fatalities and injuries on June 5 of this year in West Virginia. That state has the 6th highest number of injuries, while efforts to pass a state law regulating ATVs have met with defeat on several occasions.

We commend the Commission for providing an open forum at that hearing for some 36 individuals, including ATV enthusiasts, state legislators, industry representatives, consumer advocates, pediatricians, neurosurgeons, and ATV dealers to share their ideas for addressing the problem. One message that came out of the meeting is that in states with laws regulating ATVs, the number of deaths and injuries are lower than in states with no such regulations. The challenge is how to encourage states to pass such laws. We think Congress has an invaluable part to play in making this happen.

Recommendation: This Subcommittee should work with the Commission to schedule hearings on ATV safety, perhaps on a smaller scale but similar to the kind of hearing the CPSC held in West Virginia. Congress should then provide financial incentives to states to adopt ATV safety laws. (The American Academy of Pediatrics Model Statute is an excellent and comprehensive approach to ATV regulation, providing for training and licensure of ATV riders and requiring safety gear like helmets and proper clothing).

There is precedent for this approach. In 2000, Congress passed and President Clinton signed a law requiring that states enact a 0.08 percent BAC (blood alcohol content level) law by October 1, 2003 or lose a portion of highway funding. Federal law currently offers financial incentives to the states to adopt a 0.08 percent permissible blood alcohol level for drivers and has been successful in persuading states to adopt this provision. Prior to this law, 18 states and the District of Columbia had passed 0.08 percent BAC laws. In the two years since, the total number of states with 0.08 percent BAC laws has increased to 33 and the District of Columbia.

3. Baby Bath Seats

CU feels strongly that this baby product should have been banned long ago and indeed, we supported the Consumer Federation of America's 2000 petition to ban these seats. Baby bath seats have been involved in 96 baby drowning deaths since January 1983, according to CPSC's May 2003 Staff Memorandum. The tragedy, we believe, is that the Commission voted to proceed with a mandatory rule on these seats in August 2001, but to this day still has not acted to ban or improve their design. In the interim, an additional 10 babies have died in this nearly two year period.

We know that the staff has recommended a mandatory performance standard for baby bath seats. While we maintain an open mind about the recommended changes, we are skeptical: these devices, despite the warning stickers on them, still give parents a false sense of security that when they place their child in these seats, it is safe to leave them in the bathtub alone. Clearly, the bath seats being sold and used today are not safe, and we are simply not sure that any design change will remedy these inherent problems.

4. Furniture Flammability and other fire hazards

The Commission has failed, in our view, to address in a comprehensive way the issue of fire safety over the past several decades. The U.S. has one of the highest fire death rates in the industrialized world. Each year, fire kills more Americans than all natural disasters combined.

More than 730 people on average die each year in fires where cigarettes, matches, lighters and candles ignite upholstered furniture or mattresses and bedding. These ignitions are the number one cause of fire deaths. Since 1980, when the CPSC began gathering data on fire deaths, more than 20,000 people have died and countless more have been injured, in fires involving smoldering and open flame ignitions of upholstered furniture, mattresses, and bedding. The government has been making and considering mattress and furniture flammability standards since before the CPSC was established over 30 years ago.

We recommend that CPSC develop fire safety standards in the following areas: fire safe cigarettes,[5] fire safe candles,[6] residential bedding systems (mattresses, foundations, accessories, etc) and upholstered furniture. The Commission would not be starting from scratch. Much research has been done over many years in each of these areas. The comprehensive fire safety program, as recommended by the National Association of State Fire Marshals, is a good starting point.

What has been is lacking is strong and decisive leadership on the part of the CPSC in moving forward with standards. Perhaps the agency needs greater resources to adequately address fire hazards. We encourage Congress to provide those resources.

Few issues have received more research or debate at the Commission than developing a fire safe standard for upholstered furniture. We understand that developing such a standard is a highly complex issue and one that requires careful consideration, but it has been nine years since (petition granted in 1994) the Commission granted the National Association of State Fire Marshals Petition to do so and the research seems to be never ending.

The news last week regarding the terrible a fire at a Seton Hall University dormitory that killed three students and injured more than 50 others highlights the problem. Yes, this fire was started by students deliberately setting a poster on fire, but as the *New York Times* noted, "The poster . . . was lying on a couch made of highly flammable foam that caught fire and filled the dormitory with smoke. . ."[7] The foam inside most upholstered furniture is highly flammable, a fact few consumers comprehend. California is the only state with an upholstered furniture safety standard and the deaths and injuries in that state from upholstered furniture fires are far fewer than in the rest of the country.

Recommendation: The Commission should move forward with a comprehensive plan to set fire safety standards for candles, cigarettes, upholstered furniture, and mattresses and bedding.

Conclusion

The product safety agenda has much unfinished business. Too many consumers, especially children, are still injured and killed through no fault of their own, and the sad part is that much of this grief can be prevented. Consumers need and depend on the vigorous, ongoing work of CPSC. We believe the recommendations we make here, if adopted, would make the agency far more effective in reducing or eliminating unreasonable risks from consumer products. We urge you to provide this Federal safety agency the necessary financial resources and exercise the strongest possible oversight to make CPSC function as Congress intended.

Thank you.

Senator FITZGERALD. Thank you, Dr. Pittle.

Ms. Weintraub?

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[5] Cigarette fires are the leading cause of fire deaths in the United States, resulting in 800 deaths, including 100 children, in 1998. New York State has a fire safe cigarette standard based on the National Institute of Standards and Technology (NIST) testing methodology for cigarettes. This is one example that the Commission could consider in developing a national standard for fire safe cigarettes.

[6] Candle fires resulted in 170 deaths and 1,200 injuries in 1998, representing a 750 increase in deaths from 1980 to 1998.

[7] *New York Times,* June 13, 2003, p. A28.

STATEMENT OF RACHEL WEINTRAUB, ASSISTANT GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA

Ms. WEINTRAUB. Mr. Chairman, I am Rachel Weintraub, Assistant General Counsel with Consumer Federation of America.

CFA is a nonprofit association of approximately 300 pro-consumer groups, with a combined membership of 50 million people. CFA appreciates the opportunity to testify today on the reauthorization of the U.S. Consumer Product Safety Commission. We are pleased to offer our strongest support for the reauthorization of this final consumer safety agency.

We are asking Congress to do eight things to help strengthen CPSC and protect consumers from unsafe products.

First, the Consumer Product Safety Commission plays an extremely critical role in protecting American consumers from product hazards. Yet with jurisdiction of 15,000 different products, this small agency has a monstrous task. This challenge is heightened by the fact that, over the last two decades, CPSC has suffered deep cuts to its budget and to its staff. Because of these constraints, CPSC cannot maintain its current level of safety programs, nor can it invest in its infrastructure to improve its work for the future. It is for this reason that CFA believes that the most important thing that this Subcommittee can do is to assure that sufficient reauthorization funding levels are approved.

We believe that the current amount of funding sought should be expanded by at least a modest 10 percent. This would allow for much-needed improvements. For example, in spite of the critical role of CPSC's laboratory, no major improvements have been made in the past 25 years. If CPSC were granted the funds to modernize the laboratory, the agency would gain significantly through increased productivity and efficiency.

Second, CFA suggests that Congress eliminate the cap of $1.65 million on the amount of civil penalties that CPSC can assess. Eliminating the cap will encourage manufacturers to recall products faster, will act as a deterrence to noncompliance with CPSC's regulations, and will strengthen CPSC's bargaining power when negotiating with companies.

Third, CFA urges Congress to restore CPSC's authority over fixed-site amusement parks. 55 fatalities have occurred on amusement parks in the last 15 years, and serious injuries have soared 96 percent in the last 5 years. Federal oversight is crucial, due to the vast variation in State laws and the complete absence of regulation in some states. CPSC should be authorized more money to take on this expanded role.

Fourth, CFA urges Congress to eliminate Section 6(b) of the Consumer Product Safety Act. This provision, which no other health and safety regulatory agency must adhere to, requires that CPSC must check with the relevant company before it can give out certain information to the public. This has the effect of delaying or denying access of important information to consumers.

Fifth, we urge Congress to require businesses selling toys on the Internet to provide, on their website, the same cautionary labeling that is required on toy packaging. Online retailers should be required to post the cautionary warnings on their websites so that

consumers can be aware of the potential safety issues before purchasing the product.

Our sixth request for Congress relates to recall effectiveness. CFA filed a petition with CPSC in June 2001 requesting that CPSC initiate rulemaking to require all child product manufacturers to provide a product registration card with every product. Unfortunately, by a vote of two to one, CPSC denied our petition. CFA maintains that product registration cards are necessary because our current system of recall notification is failing. Recall rates are very low, and many CPSC recalls involve products for children. Recalls of children's products often occur because of choking, strangulation, suffocation, burns, or serious fall hazards. We urge Congress to require CPSC to submit a report, within 1 year, on the steps it will take to increase recall return rates, including an evaluation of product registration cards.

Seventh, CFA has long been concerned that the all- terrain-vehicle industry's self-regulating approach to safety is failing. Unfortunately, our concern has been increasing as injuries and deaths on the ATVs, especially injuries and deaths to kids, have been on the rise. Between 1993 and 2001, the number of injuries caused by ATVs more than doubled. And in 2000, alone, as was previously stated, 111,700 people were injured seriously enough by ATVs to require emergency-room treatment. Tragically, data show that between 1982 and 2001, children under 16 make up 38 percent of the total number of fatalities and 37 percent of total number of injuries.

CFA urges CPSC, through a petition we filed last August, to ban the sale of adult-size ATVs for use by children under 16. We ask Congress to monitor this issue closely and to hold oversight hearings on ATV safety to determine the role Congress should play in this public-health crisis.

Finally, CFA supports CPSC action to ban baby bath seats. Since 1981, approximately 96 children have drowned to death, and 153 were injured seriously, while using baby bath seats. Caregivers who use bath seats are more likely to take riskier behaviors because they incorrectly believe that the device provides an added measure of safety. Furthermore, mechanical problems with baby bath seats make it more likely that a child will drown if unattended.

CFA petitioned CPSC to ban baby bath seats in July of 2000, and the agency recently announced a meeting for the end of July on CPSC staff's recommendations. Congress should carefully track CPSC's progress on this issue.

In conclusion, CFA supports the multi-year reauthorization of CPSC and urges an increase of at least 10 percent so that all consumers, especially our Nation's children, will have a strong CPSC to protect them from unsafe products.

Thank you.

[The prepared statement of Ms. Weintraub follows:]

PREPARED STATEMENT OF RACHEL WEINTRAUB, ASSISTANT GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA

Mr. Chairman and members of the Subcommittee, I am Rachel Weintraub, Assistant General Counsel for Consumer Federation of America (CFA). CFA is a non-prof-

it 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.

CFA appreciates the opportunity to testify here today on the reauthorization of the U.S. Consumer Product Safety Commission. We are pleased to offer our very strongest support for the reauthorization of this vital consumer safety agency.

The Consumer Product Safety Commission (CPSC) plays an extremely critical role in protecting American consumers from product hazards found in the home, in schools and during recreation. We know from past experience, from survey data, and from consumers, who contact us on a daily basis, that safety is an issue that consumers care deeply about and that CPSC is an agency that consumers support and recognize as protecting them and their families.

Yet, with jurisdiction of 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. Today, CPSC's budget is $56.7 million with 471 full-time employees.

To put these staffing levels and budget appropriations in perspective, it is necessary to consider the history and authority of this consumer agency. Established by Congress in 1972, CPSC is charged with protecting the public from hazards associated with over 15,000 different consumer products. Its statutes give the Commission the authority to set safety standards, require labeling, order recalls, ban products, collect death and injury data, and inform the public about consumer product safety.

In 1974, when CPSC was created, the agency was appropriated $34.7 million and 786 FTEs. Now 28 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 471 for the coming fiscal year.

While every year an estimated 23,000 American consumers die, and an additional 31 million suffer injuries related to consumer products under the jurisdiction of the CPSC, this agency, with its reduced staff and inadequate funds, is limited in what it can do to protect consumers. Because of these constraints, CPSC cannot maintain its current level of safety programs, nor can it invest in its infrastructure to improve its work in the future.

In addition to giving CPSC the tools it needs to comply with its mandate, an increase in authorized funding will help to reduce the enormous costs to society caused by unsafe products, estimated at $500 billion annually.

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 the most important thing that this Subcommittee can do in reauthorizing the CPSC is to assure that sufficient reauthorization funding levels are approved. We believe that the amounts sought by CPSC have been overly conservative and should be expanded by at least 10 percent.

In a time when limiting Federal agency budgets may be necessary, it is important to understand the context in which CFA and others (including the agency itself) seek sufficient authorization levels for CPSC. CPSC's current budget, staff, and equipment are stretched to the point of breaking. CPSC salaries and rent currently consume 85 percent of the agency's appropriation. An additional 11 percent of the agency's budget pays for other functions (such as supplies, communications and utility charges, operation and maintenance of facilities and equipment) that merely allow CPSC to keep its doors open for business each day.

Much of CPSC's equipment, particularly at the laboratory is old and outdated. CPSC's testing laboratory serves a crucial role in CPSC's compliance investigations and safety standards activities. In spite of the laboratory's critical importance, no major improvements have been made in the past 25 years. Rather, CPSC and GSA have made only slight modifications to its infrastructure, which was originally designed for military use not laboratory use. Currently, CPSC staff working at the lab are working under merely adequate conditions. If the laboratory were to be modernized, CPSC would gain significantly through increased productivity and efficiency.

As often as it can, CPSC operates in a very cost efficient manner. Most of the recalls brought about by the agency are the result of voluntary agreements reached between CPSC and manufacturers and/or distributors. However, in every recall matter it considers, the Commission must be prepared with research evidence to convince the company of the need for action. In cases where the agency must file a com-

plaint and litigate the matter, the agency may require even more extensive testing and research data for use as evidence at trial. This testing and research, whether leading to a recall or trial, may need to be contracted out and is very costly. This contingency is one with enormous ramifications. In effect, not having sufficient resources puts CPSC in a terrible position as an enforcement agency. It can't put its money where its mouth is—so to speak—because it can't be sure it will have the money needed to follow through.

This concern is further exacerbated as new products and new technologies come on to the market. 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. For CPSC to live up to its safety mandate, it must be able to keep pace with the ever-changing development of technology.

Because of CPSC's limited resources, some might argue that the private sector should do more to pick up the slack in protecting the public from consumer product hazards. While on the surface this might appear an appealing partial solution, CFA believes that it is an unworthy answer for two reasons. First, the private sector can never take the place of a regulatory agency that has the force of law as its underpinning. Congress, with widespread bipartisan support, created CPSC because a corporation's goals of increasing profits and making safe products sometimes collide, and there is a need for government to provide consumers with a safety net when this occurs. CPSC's ability to set product standards, ban products, collect data and force recalls are functions, which must necessarily remain with government. Second, private non-profits have limited resources and budgets to fund educational and informational programs.

However, like many organizations, CFA works on several fronts to increase public awareness on safety issues. For example, Safechild.net, a project of CFA's sister organization, the CFA Foundation, is a website designed to be the most comprehensive child safety website on the Internet. Our website features special sections for parents, professionals who work with children, and child advocates. In order to aid parents seeking more information about recalls and child safety, SafeChild.net makes available a free, non-commercial and confidential e-mail notification service detailing major child-safety product recalls and related child-safety tips. This is so necessary because CPSC's recall notification system is not effective. Most consumers do not respond to recalls because they don't hear about them. This is not surprising, given that CPSC's primary method of telling consumers that a product they own has been recalled is through a press release. SafeChild.net has logged more than 18 million hits since its launch on June 21, 2001. While CPSC has managed to leverage its resources in working with private sector partners, its leadership position as our Nation's consumer safety agency should not be further compromised.

While CFA fully supports the reauthorization of CPSC, CFA believes that CPSC could be an even more effective agency if a number of changes were made to the statutes over which CPSC has jurisdiction.

First, 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 $1.65 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 manufactures 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. For example, consider a situation that came to light just last week concerning a company regulated by another health and safety agency, the Food and Drug Administration (FDA). The recent guilty plea to 10 felonies by Guidant, a division of one of the country's largest makers of medical devices, and its admission that it lied to the FDA and hid thousands of serious health problems, including 12 deaths, caused by one of its products, shows how important the role of civil penalties play in not only preventing but punishing manufacturers for wrong doing. According to a June 13, 2003 *New York Times* article, the case against Guidant resulted in $92.4 million in criminal and civil penalties, the largest ever imposed against a maker of medical devices for failing to report problems to the government. Unfortunately, CPSC has companies under its jurisdiction that have made products that have caused many deaths and injuries. For example, CPSC fined Cosco, a Canadian company, which is the largest children's

product manufacturer and distributor in the United States, $725,000 in September 1996 for failing to report 96 known toddler bed and guardrail entrapments and one death associated with its toddler beds. In 2001 CPSC again fined Cosco and Safety 1st a record fine of $1.75 million after failing to report two deaths and 303 injuries to CPSC. However, these companies never admitted wrongdoing and obviously the penalty did not deter non-compliance with the reporting requirements.

Second, CFA urges Congress to restore CPSC's authority over fixed-site amusement parks. Fifty-five fatalities have occurred on amusement park rides in the last fifteen years. According to the CPSC, serious injuries on theme park rides have soared 96 percent in the last 5 years. 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 rides that are moved from site to site. However, with this additional authority, CPSC should be authorized more money to take on this important role.

Third, CFA urges Congress to eliminate section 6(b) of the CPSA. This section of the Act prohibits CPSC, at the insistence of industry, to withhold safety information from the public. This provision, which no other health and safety regulatory agency must adhere to, requires that CPSC, before it can give out certain information to the public, must check with the relevant industry before disclosing information. If the industry denies access to the information, CPSC must evaluate their response and may just drop the issue and deny access of the information to consumers. This has the effect of delaying or denying access of important information to consumers.

Fourth, we urge 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 3 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 the cautionary warnings on their website so that consumers could be aware of the potential safety issues before actually purchasing the product.

In addition there are a number of issues currently before the agency in which we have a deep concern.

Recall Effectiveness

CFA filed a petition with CPSC in June 2000 requesting that CPSC 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, require recall remedies to be indefinite and require manufacturer identification and contact information on each product. CPSC agreed to consider only the issue of product registration cards, a requirement that the National Highway Transportation Safety Administration (NHTSA) currently has for child car seats. Unfortunately, on March 7 by a vote of 2 to 1, CPSC denied our petition. We were very disappointed with this decision and continue to believe that product registration cards are an essential component of any effort to improve recall effectiveness.

Our current system of recall notification is failing. By relying 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.

Requiring companies that manufacture, distribute, import or sell products intended for children to take additional measures to assure the effectiveness of recalls is necessary for the following reasons:

(1) First, return rates for CPSC-recalled products are extremely low. In Fiscal Year 1996, CPSC recalls experienced an 18 percent return rate. In Fiscal Year 1997, the most recent year for which data is available, the return rate fell slightly to 16 percent.

(2) Second, many CPSC recalls involve products for children. In Fiscal Year 2002, CPSC instituted recall actions involving 84 toy and children's products, involving more than 11 million product units.

(3) Third, children are a vulnerable population who deserve additional protections.

(4) Fourth, the risks of death or serious injury associated with children's product recalls are substantial. These recalls often occur because of choking, strangulation, suffocation, burns or serious fall hazards. All of these too often result in the death of a child or serious injury. Children have no capacity to prevent any of these hazards.

The effective recall of hazardous products is an important purpose of the Consumer Product Safety Commission and should be the priority of any company that puts a consumer product into the market place. While CPSC denied the petition based primarily upon industry's assessment that these cards would be too expensive and may not work, we continue to believe that the costs involved are reasonable considering the benefit of the lives that may be saved. In addition, efforts by NHTSA to require registration cards for child car seats have been successful. Because child restraints are used in automobiles, NHTSA has jurisdiction over this product and has required that manufacturers provide cards to consumers. In a new 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) Increased registration rates increased recall compliance rates: the repair rate on recalled seats is now 21.5 percent vs. 13.8 percent in 1993—a statistically significant 56 percent increase.

(2) The indirect cost to consumers of the mandatory standard is 43 cents for each car seat sold.

(3) Return rates for registration cards are now at 27 percent vs. 3 percent 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 recent 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. We urge CPSC to consider product registration cards as an important part of their current "broader look" at recall effectiveness. In addition, we urge Congress to require CPSC to submit a report within 1 year, on the steps it will take to increase recall return rates including an evaluation of product registration cards as one alternative.

All-Terrain Vehicles

CFA has long been concerned about all-terrain vehicle (ATV) safety. Unfortunately our concern has been increasing as injuries and death on ATVs—especially injuries and deaths to kids—have been on the rise. CPSC data consistently shows that ATV-related injuries and deaths are increasing: between 1982 and 2001, at least 4,541 adults and children were killed in ATV accidents; between 1993 and 2001, the number of injuries caused by ATVs more than doubled; in 2001 alone, 111,700 people were injured seriously enough by ATVs to require emergency room treatment; and between 1993 and 2001, the number of injuries involving four-wheel ATVs increased by 211 percent to nearly 100,000.

Tragically, the CPSC data show that children under 16 are at high risk. Between 1982 and 2001, 1,714 children under the age of 16 were killed in ATV incidents, representing 38 percent of the total number of fatalities. Of those ATV deaths involving children, 799 were to children 11 or younger. Between 1993 and 2001, ATV-related injuries suffered by children under 16 increased 94 percent to 34,800.

The history of ATVs in the United States proves that the current approach—the industry's self-regulating approach—to safety is not working. Self-regulation by the ATV industry has led to larger and faster ATVs and more children being killed and injured. CPSC's own data illustrates that CPSC and the states must act to end this hidden epidemic by moving aggressively to protect young children from the dangers posed by adult-size ATVs. In particular we have urged CPSC through a petition we filed this past August, to ban the sale of adult size ATVs for the use of children under 16. We hope that the agency will act soon to ensure that these trends are reversed. We urge Congress to monitor this issue closely and to hold oversight hearings on ATV safety to determine the role Congress should play in this public health crisis.

Baby Bath Seats

Since 1981, when baby bath seats came onto the market, approximately 96 children have drowned to death and 153 were injured while using the product. One study of caregivers who use bath seats found that: they are likely to fill the bathtub with more water, increasing the chance of drowning, and they are more likely to

willfully leave a child in the bathtub alone when a bath seat is in use believing that the device provides an added measure of safety. Furthermore, there are mechanical problems with baby bath seats that make it more likely that a child will drown if a caregiver leaves the child unattended. There are no mandatory safety standards for these products. CFA petitioned CPSC to ban baby bath seats in July, 2000. CPSC ruled in favor of an Advanced Notice of Proposed Rulemaking in 2001 and just recently announced a meeting for the end of July on CPSC staff's recommendations for a notice of proposed rulemaking. Ten of the deaths occurred since the Commission voted to initiate an ANPR in May of 2001. CPSC should not wait for more deaths and injuries to occur before they take action on this hazardous product. Congress should carefully track CPSC's progress on this issue.

In conclusion, this Subcommittee must step in and exercise its duty to 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 supports the multi-year reauthorization of CPSC and urges more funds to be appropriated to the agency so that more people will have the benefit of CPSC's efforts to protect consumers from unsafe products. Thank you.

Senator FITZGERALD. Thank you, Ms. Weintraub.

Mr. Korn, thank you for being here. And thank you for your help last year on child booster-seat laws that we passed. I appreciate your help in the past.

Mr. Korn?

STATEMENT OF ALAN KORN, J.D., DIRECTOR, PUBLIC POLICY AND GENERAL COUNSEL, NATIONAL SAFE KIDS CAMPAIGN

Mr. KORN. Thank you, Mr. Chairman. You just read the first paragraph. We know, by working with you and your staff on the TREAD Act and the booster-seat component bills of that, that our children will be well-served by your stewardship here.

I will, in uncharacteristic fashion, kind of lift my head up from my written comments and just summarize some of the things. We did turn in very detailed written comments, which I know will be in the record. Any specific questions beyond that can be answered in those.

Suffice it to say, our organization is wildly supportive of the Consumer Product Safety Commission. It does a super job, with very little. Nonetheless, the reauthorization process gives us an opportunity, and the CPSC and other groups, to comment on ways it could be better and improve. Since it has not been done in 8 years or 10 years, it does give us an opportunity to get a few things in front of the Committee of jurisdiction and oversight.

The first is one topic that has not been raised yet, so I would like to spend a little bit more time on that one. SAFE Kids believes that allowing an unfettered election of remedy, under Section 15, does not necessarily serve the public interest. And here is what I mean by that. Once the Commission determines that a product distributed in commerce presents a substantial product hazard and requires some kind of remedial action, Section 15 allows the CPSC to order the manufacturer to do one of three things: repair the product, replace the product, or refund the purchase price, less a reasonable allowance for use. However, there is an election on there. It allows the manufacturer to choose amongst those three remedies. And we believe that discretionary election may not always serve the public interest.

For instance, if the CPSC is recalling a $75 toaster that poses an electrocution hazard or a burn hazard, the manufacturer, once

ordered to remedy, may elect to refund, minus a reasonable allowance for use. A toaster or an electric appliance that has been on the market for 10 years may have a value of $10. This refund, we believe, may not be a motivating enough factor to encourage the consumer to actually remove that product out of their household.

Instead, we would like to have a check on that election where the Consumer Product Safety Commission can, if it serves the public interest, choose another remedy. In that particular case, it could be repair or actually removal of the product from the marketplace, or a refund price that is a little bit higher for economic motivation.

We are not asking or suggesting that the election be eliminated; only that there be a check on the election and that the CPSC staff, and the compliance staff, in particular, have the ability to check the election process of a manufacturer. That is Section 15(d) of the enabling statute.

Second, we have talked quite a bit about the cap. SAFE Kids is not necessarily supporting an elimination of the cap, but we do think it is time for an increase of the cap. In many cases, the 1.65 million—in fact, in probably all too many cases—the $1.65 million cap may not be enough of an economic deterrent to prevent a company from engaging in an unlawful act.

Here is a quick example. If a company has $50 million worth of product in the marketplace, it may be willing to incur that civil penalty instead of reporting a defect in the product or an injury in the product to the CPSC, as is required under 15(d), in order to avoid the recall—in other words, pulling $50 million worth of product off the marketplace. The cap makes the economic decision, "Well, we will just incur that civil cap," instead of doing something that might better serve the public interest, and, in our view, children, getting a burn hazard or an electrocution hazard out of the home.

We do note that, you know, there is different companies of different sizes, so we are suggesting that if you were to choose, in the Committee's wisdom, to, at the very least, increase the cap, that the cap could be tied to the size of the companies—meaning, the greater the company, the bigger the gross revenue for the company, the higher the cap; the smaller the company, the lower the cap—or maybe some kind of a cap that is tied to the egregiousness of the act.

Section 19 lists lots of prohibited acts. Some are very egregious and really do affect the consumer health and safety of children—the group that we represent here today—and some are less—all are important, but some are less important; that is not the best word, but less egregious—and maybe a smaller cap could be tied with those.

I do want to make a quick comment on the denial of the petition that the CPSC had recently on the CFA and the American Academy of Pediatric's petition on registration cards. The CFA and other groups petitioned that all children's products have registration cards attached to them so that if there is a recall, they can better notify the consumer of that recall. We believe that there is—and they denied that petition—we believe there is somewhere in between a complete denial and the requirement of registration cards on all consumer products.

And in our testimony, we talk about two different types of products. Briefly, we kind of—we make up our own phrase, "consumer products that are intimately interwoven with a child's life"—a crib, a changing table, a baby walker, an exercise play station—those that, either by design or by practice, allow a child to be left unattended, and, finally, maybe products that serve a safety purpose, like child safety seats, at NHTSA, carbon monoxide detectors, smoke alarms, baby gates. We think it is important to get those products off the market very fast if there is a problem. Registration cards may help in that process.

And finally, I just want to add support for the Committee. We were very happy to see the numbers, the authorization numbers, through 2007. Obviously, they could use a whole lot more, but we think that demonstrates the confidence in this Committee in this agency. And SAFE Kids will try to educate the appropriators to do the same.

[The prepared statement of Mr. Korn follows:]

PREPARED STATEMENT OF ALAN KORN, J.D., DIRECTOR OF PUBLIC POLICY AND GENERAL COUNSEL, NATIONAL SAFE KIDS CAMPAIGN

My name is Alan Korn and I am the Director of Public Policy and General Counsel for the National SAFE KIDS Campaign. It is my pleasure to testify before the Subcommittee today. Mr. Chairman, thank you for inviting me to address the important role of the U.S. Consumer Product Safety Commission (CPSC). As the mission of the National SAFE KIDS Campaign (hereinafter "SAFE KIDS") is to prevent childhood unintentional injury, collaborators like the CPSC are vital to our efforts. SAFE KIDS believes that a strong and effective CPSC is critical to keeping Americans, especially children, safe from injury and death due to dangerous consumer products. We also believe, however, that the CPSC can fulfill its responsibilities without becoming overly invasive. The Commission cannot, and should not, attempt to protect all consumers from every possible risk. Consumers, and parents in particular, have a role in their own and their children's safety. Consumers should be informed about the products they purchase and use, follow instructions, and take care in using them.

Nonetheless, the pending reauthorization process affords the Senate Commerce, Science, and Transportation Subcommittee on Consumer Affairs and Product Safety, the CPSC, and organizations like SAFE KIDS an important opportunity to examine the agency's effectiveness and ways that its capabilities can be enhanced to better protect children. SAFE KIDS hopes that the Subcommittee will consider the following comments as it reviews legislation to reauthorize the CPSC. There may be room for enhancement or update.

I. Background: Childhood Injury and the National SAFE KIDS Campaign

As you may know, unintentional injuries are the leading cause of death and disability to persons ages 1 to 35. Each year, for all ages, there are 23,900 deaths and 32.7 million injuries related to consumer products. The deaths, injuries, and property damage associated with consumer products cost our Nation approximately $700 billion annually.

Unfortunately, injuries to children make up too large a portion of these numbers. Each year, more than 5,600 children die and nearly 12 million (one child in five) are hurt seriously enough to require medical care due to unintentional injury. More than 16 percent of all hospitalizations for unintentional injury among children result in permanent disability. Many of these injuries are preventable and some of these preventable injuries are associated with hazardous or dangerous products.

The National SAFE KIDS Campaign is the first and only national nonprofit organization dedicated solely to the prevention of unintentional childhood injury—the number one killer of children ages 14 and under. Launched in 1987, SAFE KIDS' current nationwide grassroots network of over 600 state and local coalitions and chapters have provided hands-on assistance to families to help prevent these needless tragedies from occurring in the first place. The on-going work of SAFE KIDS coalitions, and partners like the CPSC, has helped lead to the decline of the unintentional injury death rate from 1987 to 2000—a 39 percent decline for children ages 14 and under.

II. Specific Comments: CPSC's Core Functions, Capabilities, Strengths, and Needed Improvements

As the CPSC monitors the safety of over 15,000 types of consumer products, SAFE KIDS knows that it is charged with an enormous responsibility to keep families safe from injury and death. SAFE KIDS recognizes that the CPSC over the last few years has been extremely effective given its small budget and large statutory mandate. Overall, SAFE KIDS believes that the CPSC serves its core functions very well, and has many capabilities and strengths that help protect the public. However, there are some areas that can be improved upon with additional resources.

A. Unique Data Collection Capability

The CPSC's data collection is unique among all Federal agencies and is one of its most important functions. A key component is its National Electronic Injury Surveillance System (NEISS), a national probability sample of hospitals in the U.S. and its territories. Using NEISS, injury data from hospital emergency rooms is collected and analyzed to identify patterns of occurrence and risk groups for specific injuries. This valuable information forms the basis for preventive measures and educational programs. The agency should continue this important function. SAFE KIDS applauds the evolution of NEISS throughout the years, such as increasing the number of hospitals used in the sample and the expansion of the system to capture data on all injuries, including those not associated with consumer products.

SAFE KIDS applauds the Commission's new initiative to better monitor children's burn injuries.

CPSC is working with the American Burn Association and Shriners Hospitals to set up a reporting system encompassing all burn centers in this country. Each burn center will file a report to the CPSC containing information on every clothing-related burn injury to a child under the age of 15. In turn, CPSC analysts will use that data to assess hazards related to the flammability of all children's clothing, including sleepwear. As a result, the data will enable the CPSC to have a comprehensive picture of the most serious clothing-related burns to children and will substantially improve their basis for making decisions on appropriate injury reduction strategies. This information will also help SAFE KIDS target our programming, so that it is more effective and more valuable to families.

In addition, the CPSC "Safety Hotline" provides a vital link between the government and America's consumers to report a product complaint or report a product-related injury. Despite its small budget, the CPSC maintains this toll-free hotline that permits consumers 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) obtain information on what to look for when buying a consumer product; and (6) receive information on how to safely use a consumer product. State and local SAFE KIDS coalitions, and other grassroots organizations, have used the hotline to both report potentially dangerous products and to collect information on unsafe products. 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.

Information gathered from the NEISS system, the "Safety Hotline", and other sources, such as death certificates and special investigations, guide the Commission in setting priorities for identifying potentially hazardous products that may warrant future investigation or action. This data provides the CPSC with critical basic information that may eventually lead to a product modification or the development of voluntary or mandatory safety standards. Additionally, the information is used by outside organizations, like SAFE KIDS, to aid in the development of injury prevention initiatives.

B. Adequate Testing Labs

A few years ago, several members of the Campaign 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 poor quality of the lab's conditions. The CPSC, while 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 authorize and appropriate the funds necessary to upgrade the facility. If the CPSC staff can access a well-equipped lab, this most certainly will translate into better and safer consumer products.

C. Effective Market Oversight

The CPSC has the mandate to ensure that companies that produce or sell consumer products comply with the laws, regulations, and standards that protect consumers and children from hazardous products. The CPSC's ability to recall dangerous or defective products allows the agency to remove products that could injure or kill children if left on the market. It is important to note that 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 have included baby rattles, pacifiers, cribs, toys bearing lead paint, flammable clothing, and bike helmets. Although it is a process than can be improved, America's children live in a safer environment because of the CPSC's market oversight efforts.

D. Effective Public Education

The CPSC uses a wide range of tools to spread 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.

Grassroots-based organizations, such as SAFE KIDS, are especially effective in spreading safety information to underserved and hard-to-reach populations. In other administrations, the CPSC seemed to be reluctant to engage groups like ours in its effort to spread safety messages. SAFE KIDS is pleased that the new agency administration has regularly engaged our organization and our coalition network. The new Chairman and his staff have made concerted efforts to actively seek our input on different topics. It has been a pleasure working with the new administration. We encourage this cooperative relationship to continue with our organization and with other groups. These partnerships will help to ensure that educational campaigns more effectively reach their target population.

E. Encouragement of Market Solutions

The CPSC should continue to emphasize market-oriented solutions to product safety hazards. In the past, the Commission has convened meetings with industry and consumer groups to address hazards associated with a variety of children's products, including multi-use helmets, baseball safety equipment, movable soccer goals, and bleachers. These meetings allow for industry, government, and consumer groups to exchange ideas in a productive environment that lead to widely accepted solutions to product hazards—without unnecessary regulation or legislation. The new CPSC administration is continuing, and has expanded, this effective approach by initiating a series of recall effectiveness roundtables. We applaud the Chairman's initiative to reach out to a wide range of groups of different interests and viewpoints.

F. The Commission Should Consider Select Use of Product Registration Cards to Improve Recall Effectiveness

The CPSC recently denied a petition that requested the agency to require registration cards "for all products intended for children." This general definition applied to a wide universe of products ranging from toys to art supplies to clothing to children's books to cribs. This requirement, in our view, would have not only been overly burdensome on manufacturers, but also could have decreased the value of registration cards as they are used in the marketplace today. The CPSC was technically justified when it denied the petition. SAFE KIDS believes, however, that there may be a need for an expanded role and use of product registration cards. SAFE KIDS suggests at least two types of products that may benefit from a registration card requirement:

• *Items Intimately Interwoven in a Child's Daily Life*

SAFE KIDS believes that registration cards may be of value when accompanied with 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 Commission 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. Registration cards would assist in that process.

• *Products with a Safety Purpose*

Mandatory registration cards may have some value when attached to products that are designed to fulfill a safety purpose, such as baby monitors, bike helmets, 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 Commission determines that one of these products is not adequately fulfilling that safety purpose, it is critically important to remove that product from the marketplace 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.

III. Suggested Congressional Considerations

The CPSC must be active guardians of consumer safety. We cannot wait for deaths and injuries to happen before we act. We must spend our time, effort, and resources now in order to prevent the incidents from ever occurring. Accordingly, SAFE KIDS offers the following points for Congress to consider.

A. Overall Budget Increase

The CPSC 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. SAFE KIDS believes that the Commission does the best it can with a $60 million annual budget—clearly not enough money given the CPSC's breadth and depth of products under its jurisdiction. SAFE KIDS urges the Subcommittee to authorize additional funding, so that the agency can better fulfill its broad mission (*i.e.,* better marketplace policing, more effective consumer education, improved testing of products).

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

During this reauthorization process, 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 $1.65 million. In some cases, and in particular when larger companies are involved, the $1.65 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, an increase in the cap could also be raised for only the most serious violations of Section 19.

D. Fixed Site Amusement Park Rides Should be Considered a "Consumer Product"

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 of 2003 (H.R. 2207), 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;
- When safety repairs are ordered by one state, they are not required in any other state.

The Markey bill 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 in its wisdom 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. SAFE KIDS recognizes that if CPSC jurisdiction were expanded to include these facilities, the Commission would need a substantial increase in funding to ensure its proper implementation.

E. Congress Should Monitor CPSC Activities Regarding All-Terrain Vehicles

Pending before the Commission is a petition filed by the Consumer Federation of America, the American Academy of Pediatrics, and the American College of Emergency Physicians, which requests, among other things, a ban of adult all-terrain vehicles (ATVs) for use by children under the age of 16. SAFE KIDS supports most of the petition.

SAFE KIDS has long believed that adult ATVs should not be operated by children ages 15 and under. ATVs are often beyond the developmental capability of children to control. This concept, coupled with the increased number of associated injuries and fatalities, show that there are inherent dangers to children driving adult ATVs. Between 1982 and 2001, 1,714 children under age 16—including 799 under the age of 12—were killed in ATV incidents. Furthermore, between 1993 and 2001, the number of ATV-related injuries by children under age 16 increased 94 percent to 34,800. Recent CPSC data revealed that while only 14 percent of all ATV riders were children under the age of 16, these children disproportionately suffered approximately 37 percent of all injuries and 38 percent of total fatalities between 1985 and 2001.

In our view, banning adult ATVs for children would not remove the products from the marketplace, but simply preclude ATV manufacturers and dealers from marketing or knowingly selling their adult products to children. Additionally, ATV salespeople would be required to warn potential purchasers about the dangers of the product and ask parents if the adult ATV was being bought for a child under the age of 16. These measures, if properly enforced, would pass on vital safety information to parents as well as help to prevent child ATV-related incidents from occurring in the first place.

At this juncture, SAFE KIDS believes that there is no need for congressional intervention. The CPSC is taking the petition seriously and in our view, is properly researching all the potential public health/policy solutions. However, we urge the Subcommittee to follow the CPSC's activities to ensure that whatever plan is implemented by the agency is one that serves the public interest.

IV. Conclusion

The CPSC has used its relatively small budget and staff to accomplish an incredibly important task—keeping children safe from defective and hazardous products. As the CPSC is now under new leadership, SAFE KIDS expects that the current administration will continue this strong track record. As product-related injuries still exist and can be prevented, the CPSC is needed now more than ever to protect consumers, families, and children. I would be happy to answer any questions.

Senator FITZGERALD. Mr. Korn, thank you very much.

Mr. Gold?

STATEMENT OF STEPHEN GOLD, VICE PRESIDENT, NATIONAL ASSOCIATION MANUFACTURERS CPSC COALITION

Mr. GOLD. Mr. Chairman, I am Stephen Gold.

I am a Vice President at the National Association of Manufacturers, and I am also Executive Director of the NAM Council of Manufacturing Associations. And one of the hats I wear at NAM is to administer the NAM's CPSC coalition, which is a coalition of approximately 65 manufacturing companies and associations, all who are responsible or involved in consumer products. The coalition has actually been around for about two decades, and its function is to basically serve as a forum to work on the common issues and the concerns regarding the CPSC and the legislation—the statute.

In reauthorizing the Commission, first and foremost, we do urge the Committee to do no harm. A recent study by the NAM which we just released last week, shows that a vibrant manufacturing sector is critical to our Nation's long-term prosperity. This study also pointed out the very serious economic challenges that manufacturers are presently facing, including challenges that have led to a loss of 2.3 million manufacturing jobs over the last 3 years.

Global competition, particularly in the consumer product industry, is more intense than ever; and in such an economic environment, manufacturers should not be disadvantaged by an unnecessarily intrusive and inefficient regulatory regime.

So, first—and to that extent, first, we would recommend the Committee and the Commission provide better guidance in the implementation of the Section 15 Substantial Product Hazard Reporting Provisions. Manufacturers with defective products that constitute substantial product hazards are obliged to report to the Commission, and, if needed, to take corrective action, including recalls.

But the law and the implementing regulations are vague, and they are ambiguous. It is difficult for manufacturers, especially small businesses, to determine when reporting and corrective action is actually necessary. Likewise, it is difficult for them to comprehend how the Commission justifies its penalties for failing to report in a timely fashion.

We believe that the lack of bright-line guidance for failing to—on reporting and on the penalty computation leads to resolutions that could be very arbitrary. So the Commission is already authorized, by the way, to develop more effective guidelines in this area,

and we encourage this. You do not even have to bother with redoing the statute for that—revising the statute.

The coalition also opposes—and this was something new to us since we actually filed our testimony—the coalition opposes the lifting of the maximum level for penalty caps to an impractical and unrealistic level. First, we do not know of any evidence that the cap is limiting the Commission's enforcement activities. Small businesses are sufficiently discouraged by the 1.5 million, or as it continues to rise, cap; while the larger businesses are sufficiently discouraged by other reasons.

You mentioned tort liability. It was mentioned by the Commissioners. Publicity will always deter businesses, in general, especially the larger businesses, which have greater publicity.

In addition, we believe that raising the penalty cap to a much higher level will generate more litigation. That is, a corporation will choose to fight the penalty, or even a recall, if you are looking at an unreasonably high cap that the Commission decides to levy—I mean, the penalty the Commission decides to levy.

Finally, I mentioned before, ambiguities in the statute, in Section 15, will exacerbate the unfairness of increased penalty caps. Not only does the statute not distinguish between late-filing a report and actually violating a safety standard, the criterion for a presumption of knowledge under Section 20 is a very loose standard and subject to abuse.

Thank you, Mr. Chairman, for providing the NAM and its CPSC coalition the opportunity to testify. We look forward to working with you and the Commission.

[The prepared statement of Mr. Gold follows:]

PREPARED STATEMENT OF STEPHEN GOLD, VICE PRESIDENT, NATIONAL ASSOCIATION MANUFACTURERS CPSC COALITION

Mr. Chairman and members of the Committee, I'm Stephen Gold, Vice President at the National Association of Manufacturers and executive director of the Council of Manufacturing Associations. One of my roles at the NAM is to administer the NAM CPSC Coalition. Thank you for providing our CPSC Coalition an opportunity to testify on the reauthorization of the Consumer Product Safety Commission.

Our Coalition represents approximately 65 consumer product manufacturers and manufacturing associations. It has functioned for two decades as a forum to address common issues and concerns about the operation of the Commission and about manufacturers' requirements under the Consumer Product Safety Act and related acts. The mission of the Coalition is to ensure that the shared goal of consumer product safety is achieved in a just and balanced manner. To that extent, our Coalition very much supports the important and vital mission of the Commission.

Today's U.S. economy is the most consumer-driven in history, and more consumer products are manufactured and sold in the United States than ever before. With that in mind, industry standards organizations and internal safety requirements developed by manufacturers provide the margin of safety that allows American consumers to be comfortably secure in the use of their consumer products.

Still, there are 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 support the Commission's efforts, along with the Customs Service, to monitor imported products to ensure that they meet appropriate safety standards, an important step toward better enforcement regarding imports. In addition, our Coalition also believes that the Commission has a significant role in educating consumers about safe practices.

That said, our Coalition has made no secret of its discomfort with certain Commission practices, policies and procedures over the years. We have expressed concern in the past when cooperation with industry was minimized while a public-relations campaign to tarnish a company was launched in the media. We have objected

in the past to proposed mandates when education, research and innovative private initiatives were not first encouraged. We have pointed out when due process was given short shrift by the Commission.

Our Coalition applauds the current Chairman and his colleagues' interest in seeking the views, transparently and broadly, of all interested parties without predisposition on important matters. We appreciate the recent Commission hearings and workshops to improve recall efficiency, at which experts from a variety of disciplines were given the opportunity to share information. And we laud the Commission's growing emphasis on sound research and data, including its focus on more rigorous cost-benefit analyses.

With respect to reauthorization of the Commission, first and foremost we ask this Committee to "do no harm." A recent study commissioned by the NAM highlights not only how critical a healthy manufacturing sector is to our Nation's prosperity, but the exceedingly difficult economic times U.S. manufacturers presently face. Global competition, particularly in the consumer product industry, is more intense than ever. In such an economic environment, U.S. manufacturers should not be disadvantaged by an unnecessarily intrusive and inefficient domestic regulatory regime.

Along those lines, we believe that there are ways to make the Commission more effective and at the same time more efficient. As I noted, in these difficult economic times complexities and confusion in the regulatory process are an unnecessary burden on consumer product companies. 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.

First, we believe that the Commission could rejuvenate its consumer and educational function. In recent years, the Commission has devoted relatively little attention to educating consumers about the importance of safe practices and careful supervision of minors. We support dynamic new partnerships between industry and the Commission to promote safety and safe consumer practices. Consumer education does not substitute for the essential responsibility of manufacturers to provide safe products, but statistics show that a large percentage of accidents are due to improper or irresponsible consumer conducts or lack of supervision of minors. The Commission is fully authorized to embark on such programs, but encouragement from Congress would be appreciated.

Second, there is a need for better guidance from the Commission in the implementation of the Section 15 Substantial Product Hazard Reporting provisions. Manufacturers with defective products that constitute 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, 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 applaud the Commission's willingness to resolve corrective action issues and many penalty issues without resorting to litigation, as many other agencies are prone to do. That being said, we believe that the lack of a bright-line guidance on reporting and penalty computation may lead to resolutions that are arbitrary. The Commission already is authorized to develop more effective guidelines in this area, and we encourage this.

Finally, 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. 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.

Thank you, Mr. Chairman, for providing the NAM and its CPSC Coalition the opportunity to testify. The Commission is an important agency and we support its mission. It can and should, for the benefit of consumers, be administered more effectively than in the past, and we look forward to working with the current Chairman, the Commissioners and the Committee to this end.

Senator FITZGERALD. Mr. Gold, thank you.

Mr. Klein?

STATEMENT OF GARY S. KLEIN, SENIOR VICE PRESIDENT, GOVERNMENT, LEGAL AND REGULATORY AFFAIRS, TOY INDUSTRY ASSOCIATION, INC. (TIA)

Mr. KLEIN. Thank you, Mr. Chairman.

My name is Gary Klein, the Senior Vice President of the Toy Industry Association. And thank you for inviting me to be here today.

TIA is a not-for-profit trade association composed of more than 345 members, including members whose aggregate sales exceed $24 billion annually. The U.S. toy industry leads the world in innovative, cost-effective design and sale of toy products; and TIA members account 85 percent of domestic toy sales, and, globally, approximately 50 percent of all toys sold.

TIA emphasizes the importance of play in all children's lives. Not only is it fun and educational, but a necessary part of growing up. However, to ensure that all children have a positive play experience, TIA's primary concern is that toys are safe. And since the 1930s, TIA has established a tradition of working with others, including—and I go into acronym mode here—NSB, NSC, ANSI, ASTM, ISO, and SAFE Kids—to ensure the manufacture and distribution of safe toys.

This commitment continues today. And in 1999, TIA launched the first year-round industry consumer website to assist U.S. consumers with questions and concerns about toy safety. Comprehensive and accurate information is available any time of day through a specially designed area on the TIA website.

Under the auspices of the National Bureau of Safety, TIA led the development of the voluntary safety standard for all toys, in 1976; which, in 1986, was revised and designed under ATM. The current standard is published in CFR.

In addition, TIA works regularly with the CPSC to develop voluntary standards and to monitor any potential hazards associated with toys already on the market. The Commission's active participation in voluntary standards activities is instrumental in making the U.S. toy-industry products the safest and best in the world.

Testing is a vital component of achieving that result, and our members make more than 100 separate tests and design specifications included in the ASTM standard, and Federal regulations to reduce or eliminate hazards with the potential to cause injury under normal conditions of use or foreseeable use.

TIA and its members are vitally interested in developing reputations as safety-conscious companies; because, indeed, when you think of who the end user of toys are, there is no other industry that understands better the fragility of a brand and how the company and its reputation can be damaged by merely being tarnished with the label of having produced an unsafe toy.

What our testimony boils down to, Mr. Chairman, is that CPSC needs to reallocate resources based upon demonstrable data. In spite of progress that has dramatically improved the length and quality of kids' lives in the U.S. over the past century, today's children obviously still face significant risks. However, as the data in our testimony, on page 5, shows, toys do not figure prominently in that risk. The actual rate for toys would be about the same rate as suicide for children under ten, which is extremely rare.

Important work in creating tools to benchmark and catalog risk is being undertaken and should be supported by this Committee and the CPSC.

CPSC's own annual report indicates that of the 15 commonly used household products, toys had among the lowest number of incidents of injuries or deaths for children from birth to 15. Yet it is remarkable that media attention continues to focus on the small risks associated with toys, while some very big risks remain under-appreciated, under-reported, and unaddressed. In a world where perception is reality, where misinformation often drives perception, and where some advocacy groups find motives to highlight new, scary, and uncertain hazards, without providing context, it is no wonder policymakers and parents lack that context for understanding and managing children's risks.

Unfortunately, the net result is that we often collectively waste scarce financial resources on hypothetical hazards 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, that focuses on individual issues and agendas instead of children, themselves, and that promotes competition, rather than cooperation, for the resources to truly protect children.

We support the mission and goals of the CPSC, and we think there is room for improvement. We have made four suggestions that are in our testimony that I will leave for the Committee. We can talk about them later.

But we believe the Commission has made significant progress in the past year at creating a more transparent regulatory process. We welcome the opening of the Commission hearings to testimony from the public. We welcome efforts made to solicit expert advice on ways to enhance recall effectiveness and better communicate with the public, recognizing that not all recalls involve serious risk of injury or death, and the need to communicate to the public according to relative risk.

CPSC needs to be judged by how effectively it communicates relative risks to the public, not by a count of how many products subject to recall are actually returned. We welcome the seemingly common sense notion that scarce resources should be allocated according to demonstrable risk, based upon analysis of real-world data, an application of statutorily mandated cost-benefit analysis.

We support the Commission's request for resources to efficiently carry out its mission. We think they should be provided with resources to develop tools to assess real-world relative risks of injury from products, and should be encouraged to utilize existing resources more efficiently, in partnership with industry, consumer groups, academia, State and local health and safety officials. And we certainly support the funding they need to update their laboratories.

Thank you.

[The prepared statement of Mr. Klein follows:]

PREPARED STATEMENT OF GARY S. KLEIN, SENIOR VICE PRESIDENT, GOVERNMENT, LEGAL AND REGULATORY AFFAIRS, TOY INDUSTRY ASSOCIATION, INC. (TIA)

Mr. Chairman and members of the Committee, I'm Gary Klein, Senior Vice President, Government, Legal and Regulatory Affairs, for the Toy Industry Association, Inc. (TIA). Thank you for providing TIA an opportunity to testify on the reauthorization of the Consumer Product Safety Commission (CPSC).

TIA

The Toy Industry Association, Inc. is a not-for-profit trade association composed of more than three hundred forty-five (345) members, including manufacturers whose aggregate sales at the retail level exceed $24 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 percent of domestic toy sales and, global in character, approximately 50 percent of all toys sold worldwide.

TIA emphasizes the importance play has in all childrens' lives. Not only is it fun and educational, but a necessary part of growing up. 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 1930s, 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) and National SAFE KIDS Campaign, to advocate the need for product safety initiatives in both the U.S. and internationally.

This commitment to toy safety continues today, and in 1999, TIA launched the first, year-round, industry consumer website to assist U.S. consumers with questions and concerns about toy safety. 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 Voluntary ASTM Consumer Safety Specification on Toy Safety is the "Gold" Standard

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 F963–96a Consumer Safety Specification on Toy Safety,* published in January 1997. The standard is currently undergoing its five-year review and should be completed this year. All of the Federal toy safety regulations, which appear in the Code of Federal Regulations Title 16–Commercial Practices, are referenced in ASTM F963. ASTM is one of the largest voluntary standards development organizations in the world. The standards are an example of the various ways TIA incorporates and coordinates its safety activities with CPSC.

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 that also contains a preemption provision precluding states or localities from legislating in this area in a manner not identical to the Federal requirements. Regardless of labeling, however, there is simply no substitute, at any age, for appropriate adult supervision.

In addition, TIA works regularly with the CPSC to develop voluntary standards and to monitor any potential hazards associated with toys already on the market. CPSC staff often participate in the Association's safety seminars and other safety-related activities. The Commission's active participation in voluntary standards activities is instrumental in making U.S. toy industry products the safest and best in the world.

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 more than 100 separate tests and design specifications included in ASTM F963 and 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 design specifications include use-and-abuse tests, testing for accessible sharp points and edges, and measuring for small parts, wheel-pull resistance and projectiles. Tests include those for flammability, toxicity, electrical and thermal requirements, as well as acoustical requirements for toy caps. Several 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. TIA and its members are vitally interested in developing reputations as "safety conscious" companies.

CPSC Needs To Reallocate 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. 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)[1]

Motor vehicles	46	Guns	25
Drowning	20	Poisoning	2
Suffocation	17	Bicycles	2
Fire	16	Medical care	2

In addition, statistics that show other significant risks to young people include:[2]

- 16 percent of American children under the age of 18 live in families with incomes below the poverty level
- 4 percent live in households experiencing food insecurity with moderate to severe hunger
- 69 percent live in two-parent families, down from 77 percent in 1980
- Birth rate for females (age 15–17) around 26 per 1000
- Substance use rates are high

[1] 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.

[2] 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.

- 21 percent of 12th graders smoke daily
- 30 percent of 12th graders have at least 5 drinks in a row at least once in the previous 2 weeks
- 25 percent of 12th graders report illicit drug usage in past 30 days

- 14 percent of young adults age 18–24 have not completed high school
  - 8 percent 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! Important work in creating tools to benchmark and catalogue risk is being undertaken and should be supported by this Committee and CPSC.

Compare these 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, and it is remarkable 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 some self-proclaimed advocacy groups find motives to highlight new, scary and uncertain hazards without providing context, 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 on hypothetical hazards 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. This is true at all levels, and anecdotal evidence includes a scenario in which, despite years of safe use with no real, measurable effects on children, a commonly used chemical in plastic toys (PVC or polyvinyl chloride) became the focus of major new stories, needlessly frightening parents and politicians worldwide. The wealth of research conducted on behalf of national and international industry determined that vinyl toys were safe.[3]

CPSC's extensive NEISS injury data (National Electronic Injury Surveillance System) do not usually give the details of the circumstances in which the injury took place. Therefore, when examining the data it's not always possible to determine whether the particular toy-associated injury was the result of the accident (*e.g.,* a child tripping over toys left on the stairs), unintended misuse of the toy, or a fault in the toy's design, material content, construction or performance. Studies of NEISS data by the CPSC have shown that most toy-related injuries appeared to be minor, with hospitalization occurring less than half as frequently as the overall average for injuries. As illustrated by the CPSC data, the industry's commitment to designing and producing safe toys and emphasizing the importance of parental supervision and appropriate selection of playthings has made toys one of the safest products that can be brought into the home.

TIA Supports The Efforts Of The CPSC

For these reasons, we support the mission and goals of the CPSC. Of course there is room for improvement. However we believe that the Commission has made significant progress in the past year at creating a more transparent regulatory process. We welcome the opening of Commission hearings to testimony from the public. We welcome the efforts made to solicit expert advice on ways to enhance recall effectiveness and better communicate with the public, recognizing that not all recalls involve serious risks of injury or death and the need to communicate to the public differently according to relative risk. CPSC needs to be judged by how effectively it communicates relative risks to the public, not by a count of how many products subject to a recall are returned. The latter is a simpleminded approach, since it ignores the use, cost and distribution of different products. We welcome the seemingly common sense notion that scarce resources should be allocated according to demon-

[3] The American Council on Science and Health (ACSH), a panel headed by former Surgeon General Dr. C. Everett Koop stated that, "Consumers can be confident that vinyl toys. . .are safe." This same conclusion was reached this year by the Consumer Product Safety Commission after considering a report of the Chronic Hazard Advisory Panel (CHAP), a body of experts nominated by the American National Academy of Sciences.

strable risk based upon analysis of real world data and application of statutorily mandated cost benefit analysis (Section 9 of the CPSA/15 U.S.C. § 2003). We support the Commission's request for resources to efficiently carry out its mission. We think they should be provided with resources to develop tools to assess real world relative risks of injury from products and should be encouraged to utilize existing resources more efficiently in partnership with industry, consumer groups, academia and state and local health and safety officials. We also believe that CPSC needs funding to update its laboratories.

TIA Recommends CPSA Improvements To Make CPSC More Efficient

TIA recommends the following changes to enabling Statutes in order improve the function of the CPSC:

PSA Section 6 (f)

Add a new Section 6(f) as follows:

> *Any report furnished under subsection (b) of section 15 shall be inadmissible in any civil action in a State or Federal court or in any administrative proceeding.*

Rationale: Many firms claim that they are reluctant to report under Section 15(b) of the CPSA because of a concern about the possible use of such reports in court actions. This provision would provide an incentive to reporting by assuring that reports filed under Section 15(b) will not be admissible in any civil action or administrative proceeding (except one brought by the Commission against the manufacturer, distributor or retailer). The availability of the report to plaintiffs would continue to be subject to the normal rules of discovery in civil actions or proceedings, and, this provision is not intended to affect the admissibility of the facts set forth in Section 15 reports.

CPSA Section 20

Section 20 should be amended by eliminating the reference to 19(a)(4) and (11) from Section 20(a)(1) and by adding a requirement that a violation of Section 19(a)(4) and (11) shall constitute a separate violation with a maximum penalty to be set for such a violation. Additionally, 20(d)(2) should be omitted.

Section 20 (c) should have an additional sentence added after the second sentence, which states:

> *The Commission shall also consider whether a company voluntarily reported, is a first-time offender and whether the penalty sought would be detrimental to the viability of the business as a going concern, resulting in the loss of jobs.*

Rationale: The current statute is confusing. Penalties are keyed into individual products which are sold when they are not in conformity with an applicable consumer product safety standard under the Act or which have been declared a banned hazardous product by a rule under the Act or fail to meet required filings and performance requirements. A violation for a failure to file information required under Section 15(b), Section 37 or Section 102 should constitute a separate offense and is unrelated to the sale of individual products. Currently, CPSC assesses fines based upon sales of individual product units which are perceived to be subject to a report, whether or not the products are defective or violative of standards or rules under the Act. The violation involved is the failure to file a report and is unrelated to the sale of a product. Currently, the Commission staff does not adequately consider and make a distinction between companies filing voluntarily, first-time offenders, or its impact on the viability of the business and its potential to damage the company's reputation and cause the loss of jobs. The omission of the last sentence in 20(d)(2) would make it clear that actual knowledge would be required before imposition of onerous penalties. The current language is too vague.

CPSA Section 29 (f)

Add a new section 29(f) as follows:

> (1) For purposes of carrying out this Act, the Commission is authorized to undertake such product safety harmonization, conformity assessment, testing, research, monitoring, coordinating, and other activities as the Commission may deem appropriate, in cooperation with other United States or foreign agencies, governments, or public or private institutions;
>
> (2) In connection with the cooperative activities authorized by subsection (f)(1), the Commission, unless specifically prohibited by law, and as appropriate, may:
>
> > (A) make use of resources offered by foreign countries participating in improving consumer product safety;

(B) participate, and otherwise cooperate in, international activities which contribute to improving the safety of consumer products imported into the United States;

(C) exchange information on consumer product safety research, test methods development, death and injury data, product bans and recalls, proposed product safety standards, and remedial strategies to reduce deaths and injuries associated with consumer products; and

(D) work to harmonize foreign regulations to make them compatible with U.S. standards, provided that the Commission determines that such amendment is desirable to reduce or eliminate non-tariff trade barriers for U.S. companies posed by foreign safety standards.

(3) In issuing amendments to its regulations, the Commission shall follow the procedures set forth in this Act.

Rationale: The differences between Canadian and U.S. mandatory toy safety requirements illustrate the need to clarify CPSC's authority to harmonize international product safety regulations. Canada and the U.S. agree in large part on most toy safety requirements. However, there are specific cases in which differences in our respective regulations contribute to restraint of free trade. This situation is also evident with PVC toys. After exhaustive study by the Commission and a Panel of Advisors from the National Academy of Sciences, these products were determined to be safe. Despite this, certain countries have blocked sale of U.S. toys if they are made from PVC plastic, creating a non-tariff trade barrier based upon "junk science." More important, these differences create confusion in the toy industry and among product safety experts as to which set of criteria are most appropriate to ensure safer products for children. Such harmonization processes will be beneficial to other industries that face similar restriction on their products in foreign markets. By streamlining the processes necessary to harmonize product safety regulations, we can move more quickly toward establishing unified standards that facilitate global free trade and provide rational equal protection from unsafe products for all consumers.

Additional Clarification of Preemption Provision Should be Added to § 26(a) of the Consumer Product Safety Act, § 16(a) of the Flammable Fabrics Act, § 18(b)(1)(A) and § 8(b)(1)(B) of the Federal Hazardous Substances Act, § 7(a) of the Poison Prevention Packaging Act, as follows:[4]

This provision expressly preempts and supersedes any state or local law, rule, regulation, or standard, providing for registration, certification, payment of fees, or any pre-sale conditions or requirements relating to any rule, standard, regulation or requirements applicable to any risk of injury promulgated by the Consumer Product Safety Commission.

Rationale: From time to time, states have enacted registration, certification, fee requirements and other pre-sale requirements as a condition to the sale of federally compliant product in the state. These unduly burden and hamper the free flow of commerce and expose manufacturers to multiple state or locality registration, certification, pre-sale conditions and fee requirements, even though these products are fully in compliance with Federal standards, regulations or requirements. This burden would be eliminated by the enactment of this requirement. This change would not affect the ability of states to enforce existing CPSC regulations or third party tort actions. This is consistent with existing provisions in the Acts which require localities to use identical requirements.

Conclusion

TIA is a strong supporter of CPSC. We believe additional funding should be provided to develop effective models so that the data currently collected can be better analyzed in order to prioritize and catalog risk to the public using objective criteria. If the Agency requires funding to utilize outside expertise in order to create risk-benefit analysis models, it should be provided. Cost-benefit analysis should continue to be a crucial requirement prior to imposition of rules. This is especially important in a global economy and at a time when the U.S. is faced with increasing competition and a soft economic outlook. The integrity of due process requirements currently required under the enabling statutes should be strictly adhered to. Objective measures should be used to determine civil penalties and a distinction needs to be made between penalties imposed for the sale of violative product and reporting fail-

[4] This is similar to the chaos faced by the industry when states fail to defer to the coloration and marking of toy guns under 15 U.S.C. § 5001(g).

ures. Actual knowledge should be a prerequisite for the imposition of penalties. The Commission should be encouraged to explore creative ways to provide valuable information to consumers. They should be lauded for recent efforts in this regard. The flexibility and safeguards currently provided in the existing statutes should be maintained and the Agency should not be subject to micro-management. We look forward to continuing to work with the Agency to promote child health and safety.

Senator FITZGERALD. Thank you very much.

Mr. Polk?

STATEMENT OF ROBERT POLK, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE FIRE MARSHALS

Mr. POLK. Yes, thank you, Senator Fitzgerald.

My name is Robert Polk. I appear before you on behalf of the National Association of State Fire Marshals. As you know, our association represents the most senior fire official in the 50 states and the District of Columbia.

Our mission is simple. It is to protect life, property, and the environment from fire and other hazards. We receive virtually all of our resources from Federal and State Government agencies, and we thank you for this opportunity to testify today.

Senator Fitzgerald, I have a longer, more defined statement that I would ask be made part of the record. In my limited time, I would wish to make a few observations and recommendations for this Subcommittee as you consider the reauthorization of the Consumer Product Safety Commission.

The National Association of State Fire Marshals does not support wholesale changes to the various pieces of legislation that the Commission oversees. It is our view that the Consumer Product Safety Act, the Flammable Fabrics Act, and the other such laws, provide adequate statutory framework to protect the public and gives the Commission the powers that it needs.

It is clear, however, that the Commission has generally not kept pace with changes in the manufacturing, distribution, and retailing world. A perfect example of this is the 50-year-old wearing-apparel fire-safety standard that is so woefully inadequate that it has been reported that newspaper can pass the test. This lack of effective and current standards has implications for issues such as tort reform as it opens the apparel industry to a litany of lawsuits. The Commission has the power and, we believe, the information it needs to set a real standard.

Although some progress is being made—and the Commission's new Children's Fire Burn Injury Reporting System is evidence of this—it is clear much more needs to be done.

Beyond the basic statutory framework in which the Commission operates, there are improvements that the National Association of State Fire Marshals believes can and should be made to enhance safety.

First, trade groups and industry associations should be added to the list of groups obligated to report to the Commission should they come into possession of information that suggests a given product is unsafe. Many such groups conduct independent studies and research. It stands to reason that if members companies are required to report to the Commission, so, then, should those groups that represent their interests.

Second, in an ever-globalizing marketplace, we need to make sure that all the agencies of the Federal Government are working cooperatively to ensure that imported goods are safe for Americans. This will require greater interagency cooperation between the Commission and agencies involved in the making of trade policy, such as the U.S. Trade Representatives, State Department, and the Customs Service.

Third, the Commission should take a more active role in strengthening and defending voluntary standard development and compliance programs. How is it that we have roughly 20,000 fires per year from electrical appliances that are supposed to be in compliance with voluntary standards set by Underwriters Laboratory? These fires resulted in 100 deaths and nearly 800 injuries during 1998, which is the latest year for which we have data.

Let us also be aware that some industries prefer the mandatory approach. The American Furniture Manufacturers Association recently asked for a mandatory national fire safety standard for upholstered furniture in a letter to the Commission dated May 2, 2003.

Finally, the civil penalties prescribed in the Consumer Product Safety Act need to better reflect the era of large corporations. Take for example what has been discussed today, Wal-Mart, which was recently fined $750,000 by the Commission, as a retailer, for failing to report a safety problem. This amount is equivalent to approximately 1 hour's profit for Wal-Mart during the year 2002. One hour's profit. Large corporations have little incentive to work hard on ensuring safety when the repercussions are so minor. A more flexible penalty system, with higher maximum fines, would give the Commission greater leverage.

If Congress is serious about ensuring the safety of the products that we use every day, we must pursue innovative solutions for the 21st century problems we face. Enhanced interagency cooperation, revamped civil penalties, and ensuring the Commission has sufficient resources are essential steps that Congress must take.

I thank the Committee for holding this hearing and would be happy to take any questions. And on behalf of myself and all members of the National Association of State Fire Marshals, we would like to wish Chairman Stratton a safe and uneventful return from our upcoming conference.

[Laughter.]

[The prepared statement of Mr. Polk follows:]

PREPARED STATEMENT OF ROBERT POLK, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE FIRE MARSHALS

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

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

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

My personal view is that a passive Commission has opened the doors wide to the trial bar. Case in point: we have a 50-year-old wearing apparel fire safety standard that is so weak that newspaper is able to pass it. This standard has absolutely no value to fire safety, or to the textiles producers who are routinely sued for fires involving products that pass the Federal requirement. The Commission has the authority—and, we believe, the information it needs—to set a real standard. The Commission has potentially made a step forward in addressing this issue through its recent collaboration with State Fire Marshals, the American Burn Association and the Shriners on the new Children's Fire Burn Injury Reporting System, which will include analysis of garments worn by children who have been burned.

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

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

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

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

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

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

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

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

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

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

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

First, we would add industry associations to the list of organizations accountable for product safety. In many cases, industries work together to improve standards.

The International Sleep Products Association has done a wonderful job with new mattress fire safety requirements. But other associations work against public safety. The Consumer Electronics Association has attempted to discourage any consideration of standards that would prevent fires from external sources—for example, a candle tipping over onto a "boom box" in a child's room. In tests conducted and funded by electronics producers this past January at UL, the industry observed a computer keyboard ignited by a birthday candle.

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

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

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

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

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

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

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

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

Senator FITZGERALD. Well, thank you, all of you, for your testimony.

I think most of you brought up the issue of the civil money penalties, and there is a difference of opinion about whether the cap should be raised or increased.

Dr. Pittle, you were in favor of it. You mention that, in the case of large corporations, a $1.6 million fine is the equivalent of a $2 parking ticket in New York City, "Why not just go ahead and pay it?" Others of you thought it should be raised. Others of you thought it should not be raised.

With respect to those who favor raising it, like Dr. Pittle and Mr. Polk, do you not think the tort liability is a much more serious concern for the big companies, along with the adverse publicity?

Mr. POLK. Well, I would respond by saying that, in the case of Wal-Mart, they did not manufacture the product for which they were fined. They were fined for failing to report a product that they were retailing to the consumer. But, again, we support more flexibility in that system. Whether or not it should be lifted entirely or raised is a matter for the Commission and Congress to decide. But we feel, when you are able to negotiate a settlement, knowing, going in, what the maximum penalty can possibly be, it gives the corporations in America somewhat of a competitive advantage going into that negotiations process.

Senator FITZGERALD. Mr. Gold, do you want to respond to that?

Mr. GOLD. Yes. I have not heard or seen any evidence—and I will just say—and Commissioner Moore, kind of, could back me up on this—that the current penalty cap is not working.

I mean, again, what we are talking about is incentives here. There are a lot of different ways go create incentives or disincentives. There is no doubt in my mind that it could be that it is like a $2 parking ticket for a large company. But the publicity from a large company violating a safety standard or coming to—having problems with safety standards is going to be far, far greater. That could be millions and millions and millions of dollars.

The way the marketplace works, the fact is, with our customers, we need to have an honest relationship with them. They need to know they can trust us. It is not in our interest, in a business group's interest, to pretend that relationship does not exist.

Senator FITZGERALD. Dr. Pittle, is this true?

Dr. PITTLE. Yes. Well, in a perfect world, every manufacturer would read the Consumer Product Safety Act, look at Section 15(b), and affirmatively report whenever they find that one of their products could create a substantial hazard. Unfortunately, this is not a perfect world, and that is why there are penalties for people who do not act perfectly. And I do not think we can rely on the tort liability system to do that, because that is a post-injury mechanism, an important one.

Here, we are talking about—the name of the game is "injury prevention." We are trying to get the attention of manufacturers, distributors, and retailers to give an early warning that they see a problem. There is no penalty for having a problem. The penalty is for covering it up and letting the complaints and the injury data pile up in your records and not notifying the agency in a timely manner.

Some of the cases in which they have recently issued a fine involve companies that have had a dozen recalls prior to that, and it is not as though they do not know what they are doing. They know what they are doing. They are making a calculated business decision that $1.65 million, at max—"What's the big deal? I mean, we are a multimillion-dollar or billion-dollar corporation."

The attention-getting by taking the cap off is that this is not certain anymore. And it is the hope that manufacturers will give this a more serious attention. They have got to know that the agency welcomes them with open arms when they come in and say, "I think we have a problem." They do not penalize them for that. It is when they discover, through a death certificate or some kind of report, that they go back to the company and find out that fes-

tering into their files are hundreds of complaints and people saying, "I've been injured," or somebody has been killed. That is what they get fined for. That is calculated misbehavior. And I think that they ought to take the cap off and let them walk in there—and of course there is negotiation.

You asked before, "Did anybody ever go to the maximum?" The fact is, you always negotiate down from the maximum. That is just the way it is. There should not be a maximum. And then I think manufacturers would give it greater attention, the attention that it needs.

Senator FITZGERALD. Mr. Klein?

Mr. KLEIN. Thank you.

I know what Chairman Stratton said before about, you know, in a sense, making this a lawyer relief act. And I am a recovering lawyer in the 12-step program——

[Laughter.]

Mr. KLEIN.—so I do not put myself in that category. But part of the problem—well, first of all, we will get to the manufacturer's reputation. Again, with a toy company, as soon as somebody says a toy is unsafe, that company is in trouble. It either has to do something immediately to fix the product, it has to recall the product, it has to repair the product. And the reputation of that company is on the line.

But part of the problem is that Section 15 is vague, because it talks about what is reasonably foreseeable abuse of a product and what a reasonable person would know to be an abuse of a product. And if you do not fit into that description and you do not report, because you do not think that is reasonable abuse, then you could be subject to these caps.

Senator FITZGERALD. That is pretty much the same as a tort standards, is not it?

Mr. KLEIN. Well, but—well, you have a jury deciding what a reasonable man is in a tort standard. And a jury may have a totally different opinion than what the Commission might have. So that is the question. And then you do get into the area of how much is it going to be worth to a company to litigate and to try to deal with that reasonable foreseeability of abuse.

Senator FITZGERALD. Ms. Weintraub?

Ms. WEINTRAUB. Yes, Senator Fitzgerald. CPSC was created precisely because the tort system alone was insufficient to protect consumers from unsafe products. So the role of the agency——

Senator FITZGERALD. It was created a long time ago. We have a lot more trial lawyers today, though, than we did back in the 1970s, do we not? At least in my State of Illinois, I think we do.

Ms. WEINTRAUB. I do not know.

But, in addition to that fact, and the fact that, as Dr. Pittle said, the tort system does not work necessarily at preventing injuries before they happen, we know that publicity alone does not work, and we know that the current caps hinder the entire system, because there are repeat offenders. For example, CPSC levied a fine of $725,000 against Cosco, which is a children's products manufacturer, in 1996, for failing to report 96 known toddler bed and guardrail entrapments and one death associated with its toddler beds. So this was 96 known injuries, one known death.

Again, in 2001, CPSC again levied a fine against Cosco, along with another company, Safety First. And this was a record combined fine of $1.75 million after failing to report 2 deaths and 303 injuries from a number of products. So this shows that the system, with the caps in place, is not working, and it is really failing as acting as a deterrent.

Senator FITZGERALD. Mr. Gold, could you give us concrete examples of when vague implementing regulations of Section 15 substantial product hazard reporting provisions have caused confusion on the part of manufacturers in determining what their reporting and corrective duties are with respect to particular products?

Mr. GOLD. You know, what I can do—I mean, we have a coalition of 65 different manufacturers and associations. I would be glad to collect that. I know there are cases in which, for instance, the—well, what I—the best thing for me to do is to just tell you that I can go back to the coalition and collect it. I would be glad to, in the next 2 days, submit it to the Committee.

So, at this point, I simply know that we have had the—enough of our coalition members have told us, at the NAM, that this is a problem and they are having problems. And in fact, I could, perhaps, even point to the cases we are simply talking about, not necessarily the most extreme cases. But when you tell me somebody has filed a late—is given a penalty for a late filing, I might respond to—that could be a case in which—simply in which that company did not—misunderstood or did not have a clear understanding of what late was. So——

But I would gladly submit examples in the next 2 days, if you would like.

Senator FITZGERALD. Dr. Pittle?

Dr. PITTLE. Can I add—that is an interesting juxtaposition here. The cases we are talking about are when people have had hundreds of complaints over a period of years. It is not a matter that you are 2 days late or a month late in reporting. The agency is not unreasonable. What they do when they levy one of these penalties is that it is just simply an egregious misbehavior on not filling the responsibilities clearly spelled out in the law. I mean, for the last 30 years, the CPSC staff has traveled the world, all over this country, giving seminars to manufacturers, explaining to them what they mean by what is a substantial hazard and when is a time to report.

The agency staff has asked people to come in and say, "Come in and show us what the problem is. If there is no problem, you will walk out, and there is not even a file opened on you." They are bending over backward to reach out to manufacturers and say, "Tell us, before we wind up with a bunch of deaths or a bunch of injuries," because that is what Congress intended this act to do, is to head off and prevent things that are known to the manufacturers and not known to other consumers.

And so I think it is—it feels distorted to me to paint this as if everybody is kind of confused and nobody knows what to do. The agency staff has tried to make it very clear to businesses what their responsibilities are. They know what those responsibilities are. They may not have product liability lawyers working for them, but they have other lawyers telling them, "There's probably a way

to get around this if you do not quite report now. You can always decide that it is not quite clear." Well, the fact of the matter, it is clear, and you want to resolve these uncertainties in the favor of the consumers. I mean, if the people are really concerned about their customers, they will go to the agency and check it out. There is no penalty for checking it out. The penalty comes for letting it sit.

Senator FITZGERALD. Mr. Klein, I do not know if you have anything to add. You complained of vagueness in the standards, as well, in Section 15.

Mr. KLEIN. Well, you know, another part of the problem with the caps is, they make no distinction between what are, in fact, safety violations under Sections 19(a)(1) and (2) and minor technical reporting, and it is all part of the same bag. There is no distinction between major violations, those that actually are safety hazards that have resulted in serious bodily harm or grievous injury, and those that have merely been late filings. Not late filings that are 10 years late or 20 years late, but simply late.

And I think, as Mr. Gold said, I mean, he can provide some examples of those situations, and so I think that is what the Committee really needs to look at. And whether or not——

Manufacturers of products, I mean, their reputations, for the most part, are very important to them. And again, I think what you were suggesting before, between public opinion, tort liability, and a $1.65 million fine, all taken together, have a salutary effect on how a company is going to behave or that company will not be in business.

Senator FITZGERALD. Did you want to respond, Dr. Pittle?

Dr. PITTLE. I am sorry. Somehow there is always another side to these things. They do not levy fines for minor technical violations. They levy fines when someone has an egregious act that is right there before them—many, many complaints, deaths and serious injuries that have been known for a long time, sometimes 3 or 4 years, or longer.

So General Electric did not get fined because they were a day or a month late when they—about those dishwashers. They were 10 years late.

So there is a reason why this is there. This is the power that Congress gave, because this is a small agency with a very large job to do. So it has to reach out to the manufacturing industry to act in the affirmative to consider the customer's safety as important as it is the sale. And the only way they can do that is to get them to come in and talk about problems and give them a safe haven to talk about them. And if they sit on the information, that is when there is a fine.

So I have to go back to something else. The agency has published explanation, documents trying to educate the manufacturers affected, and they have gone to great lengths to make sure that people do know what their responsibilities are. But some of these manufacturers that we are talking about have had a dozen or more recalls. It is not as though this is a surprise to them. This is just, unfortunately, a way of doing business.

I wanted to just tell you one thing that we were hoping—and we have laid out in our testimony—just in the area of children's nurs-

ery products. Five of the largest companies—Doral, Graco, Century, Kolcraft, and Evenflo—have had 60 recalls in the last 10 years. And these are mature companies. This it not into a product line where they have never been before. This is their business. And to have 60 recalls tells me there is something not right here. There is something that is—I am just an old country engineer, and so I do not know about this lawyer stuff, but I have to think that there is not the right kind of prototype testing or the right kind of premarket testing. Something is wrong when manufacturers have this kind of recall history, because parents look to these names, and they go in and they buy a product for their kid. And these are involuntarily risk-takers. They cannot make a decision for themselves. They are going to rely on their parents. Their parents are relying on information, like the advertising, and the names they trust. 60 recalls—there is something wrong.

I would think that maybe this Committee could convene a hearing and ask the manufacturers, "What's going on? Why are you all not able to put a product out that does not wind up in a recall?" There is something wrong.

Mr. KLEIN. One quick thing, Mr. Chairman. Fisher-Price, that $1.65 million fine against Fisher-Price for those Power Wheels, it was a question of—nobody was ever hurt, no injury was ever reported with those. The question was, they failed to report because they considered what was happening with those to be unreasonable abuse. People were bypassing the fuse and putting pennies into the product, and it was causing combustion and, therefore, potential fire hazard. And they were hit with that fine. Again, it was a failure to report. But the question was, was it something that they could foresee? And the answer was, "Yes, you should have foreseen that people were going to put pennies instead of fuses."

So I do not know about the 10 years and the other examples; I am just giving you an example that was given before about Fisher-Price.

Dr. PITTLE. May I?

Senator FITZGERALD. Doctor?

Dr. PITTLE. There is another side to this. There are 116 fires. At least. If the fuses are going out and people are putting pennies in them, that is really dumb on the part of the consumer. And so we should say that is dumb on the part of the consumer. I do not give them any credit for that. But the manufacturer is seeing that there is something going on in their product in which the electrical system is causing the fuse to keep blowing. There is something that could create a fire. There could be something—I do not know—down at the end of the table—people should not be putting pennies in things, because houses burn down.

That was something that should have been reported to the Commission. They would not have gotten a bad mark or a press release or the evening news. They would have walked in and said, "We've got a problem here." And the staff would have worked with them. Those engineers spend time trying to help manufacturers develop a competent fix.

But to sit on a 116 fires, that was inappropriate. That is not getting to the will of Congress to say, "Let's get ahead of the curve. Let's not wait until there's a body count. Let's not wait until peo-

ple"—we can demonstrate that it was a hazard. Remember, the act says you are supposed to report if your product "could" create a substantial hazard, not that it already has demonstrated that it was. That is too many deaths and injuries to prove that.

Senator FITZGERALD. I want to move to a different topic now, and this is really going to be my last line of questioning. You have all been very good, and I appreciate your being here. But I did want to ask about the amusement park rides.

I gather the CPSC lost authority to regulate amusement park rides back in 1981, I think it was. Dr. Pittle, you mentioned it. I think, Ms. Weintraub, you mentioned it. Mr. Korn, I do not think you brought it up.

Mr. KORN. In the written statement.

Senator FITZGERALD. In your written statement? I do not know if Mr. Klein or Mr. Gold want to defend—you have no dog in this——

[Laughter.]

Senator FITZGERALD.—in this fight. Nobody is up here to—the Fire Commissioners do not have a dog in this fight either. Maybe we should have had somebody here from the amusement park industry, because I am sure they probably were instrumental in trying to get the CPSC out of their affairs.

Mr. GOLD. I would be glad to alert them, if you are looking for information. They are a member of our coalition, even though they are not manufacturers. So——

Senator FITZGERALD. Oh, they are a member of your coalition? OK. OK.

Mr. GOLD. So if you would like, we can say you are looking for information immediately——

Senator FITZGERALD. OK.

Mr. GOLD.—on that.

Senator FITZGERALD. OK.

Well, Dr. Pittle, is there evidence that the states——

Dr. PITTLE. Oh, yes.

Senator FITZGERALD.—do not have the ability to do this and have not been doing a good job?

Dr. PITTLE. I was Acting Chairman of CPSC at the time that this compromise took place—not with my input; it just was handed to us—and it was purely a political event that took place up here. It had nothing to do with the merits of whether we could effectively—or we were ineffective.

What the ultimate result is, is that these rides, which appear in different parks throughout the country, some of the same rides—there is no Federal presence, there is no way to collect the data. CPSC, because they have no authority, is obligated not to spend one penny on this, so they stand back and watch.

So if you find that someone dies in a roller-coaster accident or some kind of ride in one State, and the same ride appears someplace else, there is nobody to collect the information, share it with the other states——

Senator FITZGERALD. You used to collect the information, nationwide data? Did you do that at the CPSC?

Dr. PITTLE. I would have to check—that was back 20-some-odd years ago. I do not remember. Because it might have been in the

NEISS injury data system. I cannot say for sure. But I know that, since 1981, there is no single source of this information. And so——

Senator FITZGERALD. Have accident rates or injury rates gone up since then?

Dr. PITTLE. The injury rates have gone up. There is 55 deaths in the last—it is in our testimony—in the last so many years—the last 15 years.

The important thing is that some states are more aggressive and more assertive than others, and that there is no way to share among the states about what is going on. None of them have the authority, nor take the resources, to notify the other 49 states about what happened with their state.

We think that it makes no sense for a Federal—the only Federal presence in the marketplace today on these kinds of products, on these types of products, is CPSC, and it seems like they should have the authority, if nothing else, just to collect data and investigate the accidents.

Senator FITZGERALD. Alan Korn?

Mr. KORN. Yes, Senator, I—there is a carousel that sits right on the mall, and I have a three-year-old. I have taken my three-year-old three or four times, and I sit on the bench outside and watch my three-year-old go around on that carousel. And it strikes me—I am a District resident, and it strikes me that this carousel may not be the top priority of the District of Columbia. It could be. I do not know. Based on some of its other issues, I am tending to think not. So I think to myself as I sit there, I sure would like to have at least the CPSC to have some authority to look into this product in the fixed-site scenario, whether or not it is up at Hershey Park or Dollywood, down in Tennessee, to spot patterns as data collect, as Dr. Pittle has said.

The one thing I will say, though—and that seems very reasonable to me—if the Committee were to expand that jurisdiction—I have been told by staff, and, quite frankly, I agree 100 percent—that if you were to do it, it would require probably a lot, a boatload, of money for the CPSC to get an expertise on these types of fixed-site amusement parks. So——

Senator FITZGERALD. It is a lot of money. There is no doubt. That is why maybe, Dr. Pittle, you are only recommending that they have the ability to collect data and keep statistics.

Dr. PITTLE. If they have the authority to, for example, say to the fixed site—they do not travel; they are not on wheels; they are fixed—and so if they have the authority to require that each of them send in all the accident information, deaths and injuries, they have a central clearing house, they put that in NEISS. Now, there is something—it is amazing what information will do. I think that is probably another way of saying that is why 6(b)(2) ought to be abolished. Because when people have information, they can make intelligent and informed choices.

Mr. KORN. And spot trends and report——

Senator FITZGERALD. And spot trends?

Mr. GOLD. Let me just respond. If he is talking about getting rid of 6(b)(2), involving third-party allegations—I just want to note that third-party allegations can have inaccuracies, they can be unverified, it can be unfair information. All it says is that a com-

pany can look at this. And I think that companies have rights and duties, in some cases, to protect their reputation before information gets put out by a Federal agency.

Senator FITZGERALD. And from competitors, too, calling in, could it not?

Mr. GOLD. Well, there is another section for that. But, in this case, it is simply in terms of—I just do not think the hurdle is particularly high for a company to be able to simply look at the information that is being submitted by a third party, an allegation by a third party.

Mr. KLEIN. I just quickly want to agree with that, Senator. Remember, what is being reported is raw information. It is unconfirmed, uncorroborated. And in fact, like you said—under an FOIA request, which apparently is filed mostly by competitors and trial lawyers, what it can do to a company's reputation if this raw data, which has not been looked at by anyone, gets out to the public—again, just the inkling that something is unsafe, and the company's reputation can go down the hill.

Basically, what is in there—there is a 30-day period that allows companies or individuals to comment about the accuracy of the information before the Commission decides what to do with it. And we think that was wisely put in place by Congress, and we would also oppose removing 6(b).

Ms. WEINTRAUB. I would just like to clarify that no other health and safety agency has this type of prohibition. It is extreme, and it has a really—the effect of delaying or denying information. Some of the information would have—most, I am sure, actually—would not have an effect on competitive issues or issues that the company would not want someone to know when it comes to the intricacies of their product. Most of it is the type of information that any other agency would give over right away. But this creates a whole other level for the company, for the regulated company, to basically censor the information.

Dr. PITTLE. Could I answer that?

If you were to ask for information from NHTSA, you would get it, and these are complaints from consumers. And you know, people have their own opinions about what is wrong with their car. We do not live in a censored society, but CPSC does live in one. And it is—if you were to ask the members of the press, over there, about their ability to get product information, categorically or specific, that has anybody's name on it, they will tell you that it takes either forever or never, because of the process. It is not just 30 days to give the company the opportunity to comment on it. Then it comes back, and then there is a wrangling in how it is going to go out, and the threats of lawsuits and everything else, and it has come to a halt. It is very hard to get information.

CPSC is—I remember when I was being—during my confirmation hearings, virtually every Senator sat there and said, "You've got to make sure that you let the public know about hazards." We did not have the 6(b) restrictions then. "You have to make sure that the consumers get the information in a timely way so they can make informed decisions that may head off regulation."

It is now the reverse, and there is nothing—the marketplace is free of ideas that are not perfect when they go out there, and peo-

ple talk about it as everybody talks back and forth. Right now, that safety information about cribs and strollers and bicycles and everything else is kept locked up, even a newspaper article, which becomes ridiculous.

It really ought to be taken off. It is really painful for consumers.

Senator FITZGERALD. Mr. Gold—and this is the final question—do you want to say anything regarding ATVs? There have been a lot of statements made here today about this issue.

Mr. GOLD. No, actually, you know what? We do not do product-specific in the coalition. And the NAM, in fact, does not do industry-specific. I mean, what we do is, we try to cover the broad—what is of interest to all of our members. We would leave it to the individual industry representative to discuss that.

Senator FITZGERALD. OK. OK. I did want to leave that option out there. And if any of your members want you to submit a written statement, I encourage them to do so. I think, going back to Commissioner Stratton, who noted 111,000 accidents that have resulted in trips to the emergency rooms just in the last few years—that is starting to catch some attention.

All of you, thank you very much. You were all very good, and we appreciate your being here.

I am not going to take on the carnival industry myself. About a year ago at this time, Ken Lay, from Enron, sat where Alan Korn is sitting, and I compared him to a carnival barker, and I said, "But that might not be fair to carnival barkers, because a carnie will at least tell you up front that he is running a shell game."

[Laughter.]

Senator FITZGERALD. Well, I heard from carnival barkers all over the country——

[Laughter.]

Senator FITZGERALD.—and I did not know there were so many of them. And we immediately heard from them.

So thank you all very much. I appreciate your being here.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

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