



Consumer Federation of America

Testimony of

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before the

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**SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER
PROTECTION**

“Child Product Safety: Do Current Standards Provide Enough Protection”

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Chairman Stearns, Ranking Member Schakowsky and members of the Subcommittee, I am Rachel Weintraub, Assistant General Counsel for Consumer Federation of America (CFA). CFA is a non-profit association of approximately 300 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education.

CFA appreciates the opportunity to testify here today on the issue of Child Product Safety, specifically whether current standards provide enough protection. Our short answer is, “no,” that the current safety standards which tend to be voluntary are inadequate and that a number of mandatory safety standards are needed to truly protect children from unsafe products. In addition, there are other changes to CPSC’s statutes and funding level that must be made to adequately protect consumers from unsafe products.

First, a bit of background is necessary. The Consumer Product Safety Commission (CPSC), the federal agency with jurisdiction over consumer products 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 depend upon to protect 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. 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 past fiscal year.

While every year an estimated 23,900 American consumers die, and an additional 32.7 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.

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 one of the most important things that can be done to protect consumers, including children, from unsafe products is to assure that CPSC has a sufficient funding. CPSC's current budget, staff, and equipment are stretched to the point of breaking. CPSC salaries and rent currently consume 85% of the agency's appropriation. An additional 11% 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 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.

CPSC's funding directly affects its ability to regulate effectively. 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 complaint 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.

In addition to increasing CPSC's budget, CPSC could do more to protect children and 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. 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.

Unfortunately, while the Senate approved CPSC's reauthorization including increasing the cap on civil penalties from \$1.65 million to \$20 million about a year ago, the House of Representatives has failed to act, thus continuing the status quo which fails to create a meaningful deterrent for violation of product safety laws.

Second, CFA urges Congress to eliminate section 6(b) of the Consumer Product Safety Act. 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 company 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.

There are a number of issues currently before the agency which illustrate the dire need for mandatory safety standards. In each of the following instances there are voluntary safety standards that are failing to adequately protect children from unsafe products.

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. Due to this failure, CFA filed a petition with CPSC in June 2001 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, 2003 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. We continue to be dissatisfied with CPSC's inaction on this issue.

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% return rate. In FY 1997, the most recent year for which data is available, the return rate fell slightly to 16%.
- 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 arguments 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 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% vs. 13.8% in 1993- a statistically significant 56% 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% vs. 3% before the rule was implemented.

NHTSA's experience with registration cards over the last decade provides an important model for CPSC to emulate. NHTSA's 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. Currently, all that is clear is that CPSC has not done enough to improve the way in which consumers are notified of recalls.

Baby Bath Seats

Unfortunately, the almost 20 year saga of baby bath seats points out the necessity for a mandatory law banning these deadly products. As of October 2003, Since 1981, when baby bath seats came on to the market, approximately 106 children have drowned to death and 163 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. However, 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 held a meeting in July of 2003 on CPSC staff's recommendations for a notice of proposed rulemaking. On October 16, 2003, the Commission voted to issue a notice of proposed rulemaking (NPR) proposing mandatory standards for bath seats. On December 29, 2003, the Commission published a notice of the NPR and solicited comments from the public that were to be received by March 15, 2004. Unbelievably, nothing more has happened at CPSC regarding baby bath seats. It has been almost 7 months. CPSC should not wait for more deaths and injuries to occur before they take action on this hazardous product. A ban of

baby bath seats in necessary, as is a recall of all bath seats currently on the market. A mandatory standard is needed to fundamentally alter the way these products are designed.

All- Terrain Vehicles

CFA has long been concerned about all-terrain vehicle (ATV) safety. ATVs have been “regulated” by voluntary standards since the 1980s. Unfortunately our concern with this voluntary approach 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. According to the most recent data, released by CPSC almost a year ago: serious injuries requiring emergency room treatment increased from 110,100 in 2001 to 113,900 in 2002; the estimated number of ATV-related fatalities increased 11 percent from 569 in 2000 to 634 in 2001; children under 16 suffered 37,100 injuries in 2002 up from 34,300 in 2001. This age group received more serious injuries than any other; between 1985 and 2002, children under 16 accounted for 37 percent of all injuries and 33 percent of all deaths. The CPSC continues to make clear that the increase in injuries is not explained by rising ATV sales.

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 in August 2002, to ban the sale of adult size ATVs for the use of children under 16. CPSC must act soon to ensure that these trends are reversed. Unfortunately, after three field hearings held about a year ago, CPSC has not done anything to reverse the trend of increasing deaths and injuries caused by ATVs. 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.

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 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, we suggest that a number of changes be made to CPSC’s authorizing statute, and we urge Congress to work with CPSC to institute a number of mandatory safety standards including those related to recall effectiveness, baby bath seats and ATVs. Mandatory safety standards are necessary where the current voluntary approach to safety has failed to curb deaths and injuries.

Thank you.