

**Statement of  
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Submitted to the  
Subcommittee on Consumer Affairs, Insurance, and  
Automotive Safety  
Senate Committee on Commerce, Science, and  
Transportation**

**March 21, 2007**

**Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to provide testimony on 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 2003. Although these proceedings could be an exceedingly intensive undertaking for the CPSC, I welcome this reauthorization process because I believe it presents a unique and much needed opportunity to focus on the Commission's present and future agenda.**

**THE MISSION**

**In examining the legislative history of the statute creating the CPSC over 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 substantial 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 over 27,100 deaths and 33.1 million injuries each year associated with consumer products under CPSC's jurisdiction.

Today, our reliance on consumer products in our lives is tremendous and growing. We rely on manufactured electrical and mechanized 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, we are beginning to see that more and more of these products are being manufactured abroad.

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 more than 30 years ago. Simply stated, 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.

#### **CPSC'S BUDGET AND THE IMPACT OF STAFF REDUCTIONS**

For Fiscal Year (FY) 2008, the President's request for our agency is \$63,250,000 which is an increase of \$880,000 above our FY 2007 requested funding level and will support the agency at approximately 401 FTEs. If measured against our FY 2007 authorized FTE level, the request for FY 2008 represents a reduction of 19 FTEs. As in the previous two years, we estimate that we will again be able to achieve these reductions through attrition, but we have reached a point where we are very concerned about the long-term impact of these continuous staff reductions on our agency. There are indications that the cumulative three-year staff reduction of 15%, from 471 to 401, is going to make it difficult for us to maintain the broad range of skilled staff we need to address the full scope of the 15,000 products under our jurisdiction.

CPSC is a staff intensive organization with nearly 90% of its funding allocated to staff compensation and staff-related space rental costs. At the heart of CPSC's operation is its staff, without question, our greatest and most important asset. Over the last few years, because we have achieved our budget required staff reductions through non-targeted means such as attrition, early-outs and buy-outs, we have lost some very key staffers. For example, just to name a few, we have lost key experts in these areas:

- Poison Prevention,
- Chemical hazards as they relate to the Federal Hazardous Substances Act,
- Compliance of toys,
- Drowning prevention,
- Data collection and analysis,
- Emerging hazards,
- Fire-related hazards, and
- Legal knowledge of CPSC's regulatory process.

Over time we hope to be able to train replacements, but the experience in these areas that we have lost will take years to recover. Moreover, our ability to do succession planning is severely limited because of a lack of resources and our inability to have depth of personnel behind our key positions (no bench). In addition, dwindling resources and staff reductions have had some negative impact on our agency's ability to attract high level qualified candidates for our critical vacancies as well as our ability to retain some of our own top level employees.

There is no doubt that the President's funding proposal for FY 2008 presents challenges, particularly in light of the fact that this would be our third consecutive year of staff reductions. As I have indicated, since FY 2005, CPSC has been forced to reduce its funded FTE level by 15% from 471 to the FY 2008 proposed level of 401. This erosion of our most valuable asset comes despite the fact that we still have over 15,000 types of consumer products under our jurisdiction; creative new technologies constantly introduce potentially new product hazard issues (nanotechnology, internet sales); new consumer uses for products originally created for commercial use are being introduced (portable gas powered generators); imports are increasing, many from countries that may not have similar consumer product safety standards (ATVs, cigarette lighters); and, as I previously mentioned, despite the fact that we still face over 27,100 deaths and over 33.1 million injuries each year associated with consumer products under our jurisdiction.

Our Field Division, which was combined with the Office of Compliance in 2005, has probably been the most affected. Since September of 2003, we have lost 43 people in the Field, 30 of which have not been replaced. Another 15 people left Compliance, six of whom were not replaced. One of the important duties of our Field staff was to provide outreach to local communities. We had public affairs specialists throughout the country that would appear on local television and radio shows, getting the Commission's message out at the local level. They would network with local affiliates of national organizations, such as Safe Kids, and make presentations to many different types of community groups. This was in addition to doing work for our Hazard Identification Division and doing work for Compliance (including trying to monitor the growing influx of imports at our port cities). In other words, they use to serve all three main areas of Commission work. Now they are primarily an investigative arm of Compliance. Their ability to do outreach at the State and local level has been largely eliminated. We lost creative, aggressive public relations

specialists in the Field who had developed contacts over many years because they did not want to become mere investigators. I don't think we can be effective doing all of our outreach and education and information campaigns from headquarters, over the internet or through our Neighborhood Safety Network. But, the reality is that we can no longer afford to do all we use to do to serve the American public and this is an area that has suffered greatly.

## **ADDRESSING PRODUCT SAFETY HAZARDS THROUGH ENFORCEMENT**

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 2006 alone, the Commission completed 471 cooperative recalls (100% voluntary) involving nearly 124 million consumer product units that either violated mandatory standards or presented a substantial risk of injury to the public.

In addition, CPSC staff, working with the U.S. Customs and Border Protection (CBP), prevented about 2.9 million non-compliant cigarette lighters and fireworks from entering the U.S. and also prevented 434,000 units of toys and other children's products from entering the country. 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.

In the future, the problems associated with increasing numbers of possibly dangerous imported products will present the Commission with more and more of a challenge. Increasing numbers of U.S. companies are either importing finished products or component parts made in other countries or establishing their own production plants outside of the U.S. In most cases, domestic companies are not going to have the same degree of control over these products as they would have if their products were being made in this country. This inability to have constant hands-on supervision can result in products entering this country that do not meet U.S. safety standards.

When products are required to meet a federal mandatory standard, we can try to stop them at their port of entry before they get into the hands of consumers. CBP is very cooperative in helping us identify and sequester products that are potentially violative. However, both CBP and CPSC have limited manpower to inspect and test these products, relative to the tens of thousands of shipments that arrive daily at U.S. ports. Additionally, CBP has a much broader national security mandate that takes much of its resources.

We currently have five people cleared to use the CBP's computer system, the Automated Commercial System (ACS) database, and perhaps a total of 15 people to go to

various ports around the country to inspect shipments that have been identified as possibly not meeting our safety standards. These inspectors do this in addition to the many other responsibilities that they have. CPSC simply doesn't have the personnel to do more than a cursory look at imports coming into this country. As I have indicated, in the last several years we have lost 30 Field personnel, largely as a result of budget cuts, who we have not been able to replace. This has impacted our entire Field operation, including port inspections. The new CBP computer system will help, but nothing can substitute for actually examining a shipment. Thus, we are frequently left to deal with products after they are in the stream of commerce, through our recall mechanism, which can often come after the product has already injured consumers.

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. We also have some responsibility to take all reasonable steps to ensure the removal of those unsafe products from potential consumer use. 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.

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 \$1.825 million fine means very little to many of the corporations we regulate. Why do we need a cap at all? While Congress may want to take another look at the guidance given to us in the form of factors we shall consider when determining the amount of a civil penalty, we should not have any limit on the amount we can seek. 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.

## **CPSC'S IMPORTANT SAFETY WORK MUST CONTINUE**

By most current measures, CPSC still provides both tremendous service and tremendous value to the American people and we are very proud of our staff's accomplishments. Our agency is the major factor in the substantial decline in the rate of deaths and injuries related to consumer products since 1974. During that time, through our standards work, compliance efforts, industry partnerships, and consumer information, there has been a 45% reduction in residential fire deaths, a 74% reduction in consumer product-related electrocutions, a 47% reduction in consumer product-related carbon monoxide deaths, an 82% reduction in poisoning deaths of children younger than 5 years

of age, an 84% reduction in baby walker injuries and a 89% reduction in crib-related deaths.

Moreover, in FY 2006, we informed the public of hazardous products through 435 press releases, 12 video news releases and more than 1 million distributed publications while conducting about 500 television and radio interviews. CPSC also warned the public about product-related hazards through our hotline and consumer product safety information websites ([www.cpsc.gov](http://www.cpsc.gov), [www.recalls.gov](http://www.recalls.gov), [www.atvsafety.gov](http://www.atvsafety.gov)), which reached over 21 million consumers in 2006, and other outreach activities such as the Neighborhood Safety Network (NSN). The NSN outreach goal is to reach underserved consumers who may not routinely receive important safety information due to lack of access or exposure to the general means that we use to disseminate our safety messages and warnings.

Additionally, in FY 2006, the Office of Management and Budget (OMB) reviewed CPSC using their Program Assessment Rating Tool (PART) and assigned us a rating of “Effective.” This is the highest rating a program can achieve and signifies that, based upon OMB’s criteria; CPSC sets ambitious goals, achieves results, is well-managed and improves efficiency.

These numbers and activities by themselves demonstrate the indisputable consumer product safety role that the Commission continues to perform for the American consumer despite our shrinking resources. However, we have to be mindful of the fact that resource limitations and staff reductions have challenged and will impact our ability to fully respond to consumer product safety issues presented by the broad range of products under our jurisdiction. For example, with respect to FY 2008, although we will continue our work in reducing child drowning deaths at the annual project level, we will no longer address this area at the level of a strategic goal because resource limitations is a factor. At some point in the future, the Commission will make the ultimate determination but additional projects that could be delayed/deferred in the FY 2008 budget include:

- Bedclothes flammability,
- Development of projects dealing with emerging hazards such as consumer electronics,
- Support for voluntary standards and code revisions for fire sprinklers, lighting, ladders and ride-on mowers,
- Data analysis and technical review activities for smoke alarms, extension cords, temperature controls, glass top furniture, children’s scald burns, child gate latch durability, and toy impact resistance guidance.

**We at the Commission strongly feel that many, many deaths and injuries have been prevented as a result of the heightened attention given to safety issues by manufacturers and consumers due to CPSC's leadership. The product safety landscape is ever evolving because of more technologically complex products as well as a greater emphasis on imports. The results of our activities clearly illustrate the benefits of CPSC's federal presence in today's consumer product marketplace and therefore provide substantial justification for present and future consideration for keeping our safety programs intact.**

## **EMERGING TECHNOLOGIES**

**The American consumer wants everything electronic to be smaller, faster, longer-lasting and more powerful. Nowhere is this more evident than in energy storage devices for cell phones, laptops, PDAs and other portable electronic devices. One result of this trend is the lithium ion battery which first appeared commercially in 1991. Over time we have seen problems develop with the use of these batteries when, for example, they are put into too small a space or the device they are in is dropped. CPSC, in conjunction with several companies, recalled more than four million laptop batteries last year because of overheating which either did, or could, lead to a fire. The chemical configuration of the lithium ion battery is constantly evolving, with changes being made every few months. It is challenging for the battery manufacturers themselves to keep up with the developing technology, let alone the CPSC.**

**Another innovation finding its way into batteries and thousands of other products is nanotechnology. This is the ability to alter and create materials at the sub-atomic level. The physical properties of materials can change as they shrink to nanometer size. How to determine what human health and safety risks these changed materials may pose when used in consumer products will be a major challenge for our agency. I do not pretend to understand nanotechnology and our agency does not pretend to have a grasp on this complicated subject either. For fiscal year 2007, we were only able to devote \$20,000 in funds to do a literature review on nanotechnology. Other agencies are asking for, and getting, millions of dollars for research in this area. Given the many products already on the market using nanotechnology, from computer chips to Dockers© pants, I do not think it will be too long before the agency is asked to assess the risks of nanotechnology use in some consumer product under our jurisdiction. At this point in time we would be hard-pressed to make such an assessment. We simply do not have the resources to get up to speed in this area. We are forced to devote our limited resources to the hazards with which we have experience, such as fires, carbon monoxide poisoning and electrocutions.**

**Our main challenge, no matter whether it is keeping up with imports or understanding new technologies, is resources. When forced to make hard choices we have to opt for what it is possible for us to accomplish, given the personnel we have and the limited dollars we have to spend. We do not have the luxury of getting ahead of a problem, we have to wait until one develops and then try to solve it, usually after it has killed or injured consumers. This dilemma is causing many sleepless nights for some CPSC staffers. With the help of the administration and Congress, we have to get beyond our present**

posture of thinking of how we can do without and move to the position of thinking of what more we can do.

## **PRESENT AND FUTURE ACTIVITIES**

**I 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 develop international consumer product safety standards and enforcement compatibility so we can enhance international trade and export opportunities without lowering U.S. safety standards.**

**With approximately three-quarters of our recalls comprised of foreign manufactured products and over half of total recalled products originating in China, CPSC must establish a definitive strategy for increasing compliance of foreign manufactured products with U.S. safety standards. With that goal in mind, the Commission established the Office of International Programs and Intergovernmental Affairs. Through the efforts of this office, CPSC has signed 12 Memoranda of Understanding with its government counterparts abroad, including China. These agreements seek to establish closer working relationships between the signatories, as well as provide a formal mechanism for exchange of information. Interdisciplinary technical teams have also been established to determine in what areas Chinese manufacturers are more consistently non-compliant and to develop strategies for increasing compliance in those areas. In addition, other strategies for increasing the compliance of imported products with U.S. safety standards are being evaluated.**

## **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. 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 now 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.**

**As Congress envisioned more than 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.**