

104  
**CONSUMER PRODUCT SAFETY COMMISSION**

Y 4. C 73/7: S. HRG. 104-570

Consumer Product Safety Commission, ...

104-05-1003

**HEARING**

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN  
COMMERCE, AND TOURISM

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

APRIL 23, 1996

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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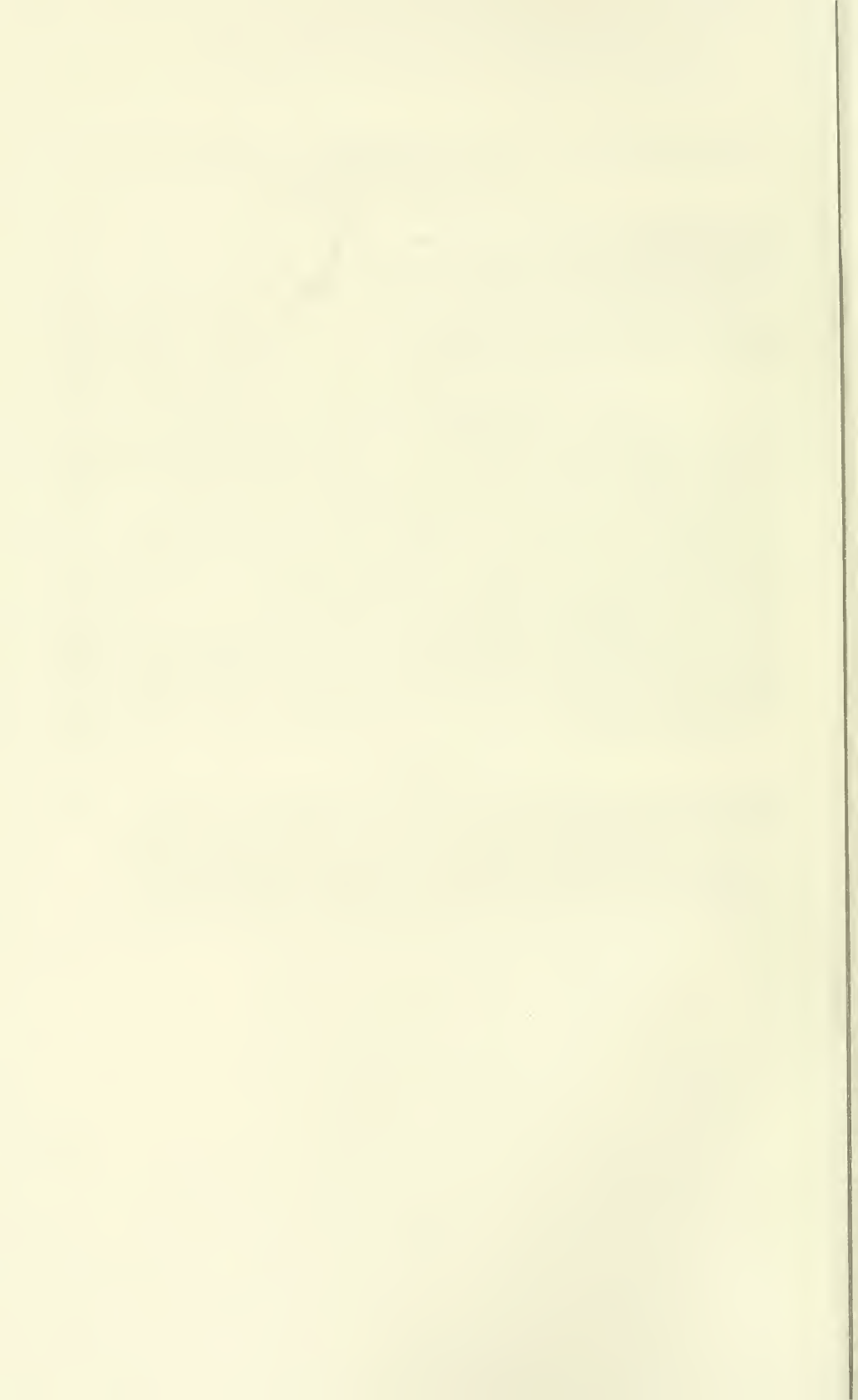
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[NOTE: Other material submitted for the record will be retained in committee file—C.P.S.C/CBS This Morning: Baby Safety Shower KLMVideo; U.S. Consumer Product Safety Commission, Saving Lives Through Smart Government, Success Stories, March 1996; A Conference, Bringing Standards Together: An International Framework, Washington, D.C., Tuesday, June 18, 1995, Sponsored by the U.S. Consumer Product Safety Commission.]	



# HEARING ON THE CONSUMER PRODUCT SAFETY COMMISSION

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TUESDAY, APRIL 23, 1996

U.S. SENATE,  
SUBCOMMITTEE ON CONSUMER AFFAIRS,  
FOREIGN COMMERCE, AND TOURISM,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SR-253 of the Russell Senate Office Building, Hon. Slade Gorton, chairman of the subcommittee, presiding.

Staff members assigned to this hearing: Lance D. Bultena staff counsel; and Moses Boyd, minority senior counsel.

## OPENING STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

Senator GORTON. The purpose of this hearing today is to prepare for efforts to reauthorize the Consumer Product Safety Commission. It was last authorized in 1990 simply for 1991 and 1992. The Consumer Product Safety Commission was created in 1972 as an independent regulatory agency charged with protecting the public from unreasonable risk of injury from consumer products. I look forward to learning more about the Commission's activities and priorities as it seeks to fulfill its important mission.

In this hearing, I also hope to explore some of the proposals for modifications to the statutes the CPSC administers. I know that the staff has proposed various statutory modifications that Chairman Brown believes will help the Commission better meet its statutory mandate. Certain industry groups have also proposed changes in the statutes. I look forward to learning more about these proposals and the concerns that underlie them.

And at this point I want to introduce Senator Bryan. He and I have worked together in this field fruitfully and productively for many years. We are good friends, and anything that happens here in the future is going to be a partnership effort, exactly as it has been in the past.

## STATEMENT OF HON. RICHARD H. BRYAN, U.S. SENATOR FROM NEVADA

Senator BRYAN. Thank you very much, Mr. Chairman, for those very kind remarks. As I have said, I do not know whether this helps or hurts you, but when you were Attorney General from Washington State I relied upon you for a number of the consumer initiatives that you initiated in that capacity, and may I say that

our relationship in previous Congresses with you as the ranking member was always a very positive one, and I look forward to continuing it with the chairman of the committee.

As the former chairman of the subcommittee, I am highly supportive of reauthorizing the Consumer Product Safety Commission. The CPSC's mission is to protect consumers from unreasonable risk of product hazards and dangers. Ensuring product safety is a serious matter. Each year approximately 29 million Americans are injured, more than 21,000 are killed as a result of dangerous products.

Consumer product hazards are the fourth leading cause of death nationwide, and responsible for more child fatalities than children's diseases. The estimated annual cost of product fatalities and injuries is \$200 billion. As you note, Mr. Chairman, when I assumed the chairmanship of the subcommittee some 7 years ago I made reauthorization of the Consumer Product Safety Commission one of my primary goals, and I would indicate here with the former chairman, Senator Hollings, yourself, and the former ranking member, Senator Danforth, together we worked in getting that legislation enacted. As you point out, that authorization has expired, and the Commission is now due for reauthorization.

As I indicated a moment ago, the CPSC plays a vital role in protecting Americans from unreasonable hazards associated with consumer products. Among its responsibilities is the protection of children. According to the latest data on children's injuries, 2700 children are killed each year and about 11 million are injured due to product hazards. Safety of children is of particular interest to me, and, Mr. Chairman I know of particular interest to you. You were the prime sponsor of the legislation with respect to toy safety, and I was pleased working with the then chairman of the committee, Senator Hollings, to support you in that effort, and I recall each year as the holiday season approached we used to do an annual press conference pointing out some of the problems that attended some of the products that were being offered. So I do indeed look forward to working with you and looking at the proposals that are being offered for our consideration.

In conclusion, Mr. Chairman, I commend you for calling this hearing and beginning the process of reauthorizing the Commission. You have an impressive slate of witnesses. I will be interested in hearing from the chairman, who I think has done an outstanding job, and from her colleagues who serve on the Commission, and on the second panel which will be discussing some various proposals that are being advanced.

I thank you, Mr. Chairman.

#### STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

Senator HOLLINGS. Thank you, Mr. Chairman. You and Senator Bryan have led the way. I remember way back with Senator Magnuson when we instituted the Consumer Product Safety Commission, and in the past couple of years, let us say, it has not necessarily been given its deserved attention in that the mood and atmosphere has been one to get rid of safety measures, including product liability.

I think that the trial lawyers on the one hand have done an outstanding job in getting safe products. However, we did not want it to just be the lawyers and damage suits that would bring about safety. With the 29 million injured and 21,000 killed each year, we needed a Consumer Product Safety Commission. We need it more now than ever, and that is one of the reasons I wanted to be here this morning and join in with Senator Gorton and Senator Bryan in this reauthorization. I am very, very hopeful, Mr. Chairman, with your leadership we can get it reauthorized this year.

Thank you.

Senator GORTON. And with that—oh, excuse me. The ranking member is here, Senator Exon.

#### STATEMENT OF HON. J. JAMES EXON, U.S. SENATOR FROM NEBRASKA

Senator EXON. Mr. Chairman, I do appreciate very much your interest in this matter and calling this hearing today on the Consumer Product Safety Commission. I am glad to see our witnesses here today, and I want to hear the story that the government Agency works, because this is one that in my opinion has worked very much. It works efficiently, and would serve the American taxpayer very, very well. At a time when America is concerned about rising health care costs and the state and Federal budgets associated with health care, this is taking a very reasonable approach, Mr. Chairman, and measures to avoid serious injury, illness, and death.

No other committee works as hard to keep Americans safe from accident and injury than the Senate Commerce Committee, whether it is through the transportation and safety laws, insurance oversight, or consumer protection. The Commerce Committee is at the center of this debate. As a small Agency, and it is a very small Agency, the Consumer Product Safety Commission plays a big role, in the opinion of this Senator, in fulfilling this committee's mission, and I applaud these oversight hearings.

Under the leadership of Chairman Brown, the Commission has assembled an impressive record of accomplishments. In protecting the public from clothing that can burn faster than paper or warning parents of unsafe toys, the Commission is in the business of saving lives, avoiding injury, and preventing tragedy. Perhaps most importantly, the Commission has built its impressive record of success largely through partnership and cooperation with the private sector rather than using the heavy hand of regulation. The Commission has boldly embraced the spirit of reinventing government's maxim that when possible negotiate rather than regulate.

[Prepared statement of Senator Exon follows:]

#### PREPARED STATEMENT OF SENATOR EXON

Mr. Chairman, I appreciate your interest in the Consumer Product Safety Commission. Today, we will hear a story of a government agency that works. It works efficiently and well serves the American tax payer.

At a time when America is concerned about rising health care costs and state and federal budgets associated with health care, it drives home the importance of safety—that is taking reasonable measures to avoid serious injury, illness or death.

No other Committee works as hard keeping Americans safe from accident and injury than the Senate Commerce Committee, whether it is through transportation



safety laws, insurance oversight or consumer protection, the Commerce Committee is at the center of the debate.

As a small agency, the Consumer Product Safety Commission plays a big role in fulfilling this Committee's mission and I applaud these oversight hearings.

Under the leadership of Chairman Brown, the Commission has assembled an impressive record of accomplishment. In protecting the public from clothing that can burn faster than paper, or warning parents of unsafe toys, the Commission is in the business of saving lives, avoiding injury and preventing tragedy.

Perhaps most importantly, the Commission has built its impressive record of success largely through partnership and cooperation with the private sector rather than using the heavy hand of regulation. The Commission has boldly embraced the spirit of reinventing government's maxim that when possible, negotiate rather than regulate.

Mr. Chairman, I congratulate the Commission and its Chairman Ann Brown for a job well done. I look forward to working with you to assure that this good record continues.

Mr. Chairman, I certainly congratulate you once again, and I congratulate the Commission and its Chairman, Ann Brown, for a job well done. I look forward to working with you, Mr. Chairman the other members of this subcommittee, the committee as a whole, and I certainly look forward to working with all of you on the commission to continue your excellent work.

Mr. Chairman, I thank you very much.

Senator GORTON. Thank you.

Now we are delighted to have the Chairman and the members of the Commission here, and we will hear from each of you in order, starting with you, Chairman Brown. Welcome.

#### STATEMENT OF ANN BROWN, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Ms. BROWN. Thank you so much, Mr. Chairman. Before I begin my remarks, thank you for the wonderful work that you have done. The Consumer Protection Safety Act, which includes the bicycle helmet law, choking labels and choking requirements for toys, and the reporting requirements have been implemented, and the regulations are working well, and we want to thank you and the rest of the Senators for your great work in that.

I also promised you at my original hearing that your committee would not have to micromanage the Consumer Product Safety Commission, and I think I have been true to my word. We have worked cooperatively and effectively with all people, industry, and consumers, and have not had to have you micromanage, which is not the role of this great Senate.

I am Ann Brown, as you know, and with me are Vice Chairman Mary Sheila Gall and Commissioner Thomas Moore and members of the Commission staff. I am pleased to have this opportunity to testify in support of the reauthorization of the Commission. Since this is my first appearance before this subcommittee and the Commission has not been reauthorized for more than 5 years, I want to begin with a summary of who we are and what we do very briefly.

The Commission was established in 1973 by President Nixon as a five, now three-member Agency with a mission to protect the public against unreasonable risk of injury and death from consumer products. We are a small Agency with a vital role to help safeguard your children and families in and around their homes. We operate efficiently on a small budget: \$40 million in fiscal year

1996, with less than 500 employees. We emphasize voluntary action, cooperation with industry, and partnership with the private sector and other government agencies.

We are a reinvented Agency that has become a model for good, effective government. We enforce five Federal statutes, the Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Hazardous Substance Act, and the Refrigerator Safety Act. All told, we have jurisdiction over 15,000 different kinds of consumer products which are found in and around the home.

Our operations are divided into three categories: hazard identification and reduction; compliance, and information and education. These three programs form a comprehensive and mutually reinforcing effort to protect and educate the public regarding consumer product safety. Past Agency work in just four areas, electrocution, children's poisonings, power mowers, and fire safety, contribute to saving the nation almost \$6 billion each year in health care costs, property damage, and other societal costs.

Our compliance work also has a positive impact on the national economy. These results show the CPSC is a cost-effective Agency which deserves your increased support.

Thus, the CPSC is different from other departments and agencies that come before you. We give no grants, we make no loans, we award no licenses. Our constituency is the American people, young and old, rich and poor, urban and rural dwellers, for they are the prime beneficiaries of our action. We are truly engaged in protecting the health and safety of our children and families in their homes.

As part of my testimony you have asked me to give my views on the role of the Commission in the 90's and the authorities necessary to carry out that mission. The need for the Commission is as strong today as it was in 1973. The truth is most people do not realize the terrible toll that dangerous and defective consumer products take on our nation annually. Unintentional injuries are the leading cause of death among persons under 45 years old, and the fourth leading cause of death in the nation. More children die from unintentional injuries than from any disease.

Each year, as you have heard, there are 21,000 deaths and 29 million injuries related to consumer products under Commission jurisdiction. The deaths, injuries, and property damage associated with consumer products cost the nation about \$200 billion annually.

Unfortunately, it is still true that the marketplace does not always inform consumers of the dangers in certain products, and that some products do have hidden hazards. Moreover, seemingly innocent and innocuous products can cause death and injuries to children and others.

I reject the view prevalent during the 1970's that a consumer protection agency must take an adversarial approach to business to achieve its goals. As I told you, Mr. Chairman 2 years ago at my confirmation hearings, I have adopted a balanced approach favoring voluntary compliance and standards whenever possible. Voluntary action is preferable to mandatory when it is implemented promptly and carried out effectively.

The CPSC is fulfilling its responsibility to protect the American people from unreasonable risk of death and injury from consumer products without becoming overly invasive. The Commission cannot and should not attempt to protect consumers from every possible risk of injury from consumer products. There are limits to what government can achieve.

As Chairman, I have made voluntary action a high priority. For example, window blind cord manufacturers voluntarily agreed to remove the loop in venetian blind cords so that no more children will strangle on these cords. Children's clothing manufacturers agreed voluntarily to eliminate the strings on the hoods of outer wear, that contribute to infant and toddler strangulation. Instead they will use velcro, buttons, or snaps.

I have convened meetings of industry and consumer groups to address several problem areas: multi-use helmets, baseball safety equipment, movable soccer goals, night-time bicycle safety, and falls from windows. All of this was accomplished without regulation.

We have compiled these success stories in one document, and I ask that they be included in the hearing record following my prepared statement.

Senator GORTON. Without objection.

Ms. BROWN. I am particularly proud of our baby safety initiative. Working with Gerber Products Company we developed a 12-point baby safety checklist and a how-to kit, so that anyone can conduct a baby safety shower anyplace in the nation. I want to show you the tape of the CBS Morning News segment which I did on baby safety shower with Congresswomen Susan Molinari and Blanche Lambert Lincoln last month. It is clear when you see the tape why the Congresswomen worked with us, and it is an excellent example of our public education program. If we could show the tape. [A videotape was shown.]

Ms. BROWN. Another important part of our work at the CPSC is partnership with other Federal agencies, state governments, and the private sector. For example, we work closely with Customs Service to monitor and screen out imports of unsafe consumer products. We have a state affiliate in almost every state that works closely with us in carrying out our toys testing, hazardous products screening, and other programs. We have formed a unique and valuable partnership with the National Association of Homebuilders, Fannie Mae, insurance companies, and the U.S. Fire Administration to rewire four older homes across the country to illustrate the fire danger of defective wiring and to demonstrate the modest cost of eliminating this hazard.

I believe in market-oriented solutions to product safety problems whenever possible. Last year, the Commission sponsored a Safety Sells conference, featuring chief executive officers of eight major companies who explained how they used product safety to achieve a competitive advantage in their market places. Last year we held an international product safety standards conference to promote harmonization of U.S. product safety standards with those of other nations. In June, we will host a small business conference in New York City to assist small firms to comply with our rules.



In keeping with my support of voluntary action, cooperation with industry, and partnership with other government agencies and the private sector, I believe the paradigm for the CPSC in the 1990's is the safety triangle, where business, consumers, and government each have an equal role to play. For business, the bottom line should include a margin of safety in all its products, because today safety does sell. It also avoids expensive private litigation and government action against unsafe products.

Correspondingly, for their own safety consumers should be informed about the products they purchase and take reasonable care in using them.

For its part, the Commission has adopted a balanced approach, carefully weighing costs, benefits, and other relevant factors. In fact, our statutes already require us to do much of what was proposed in the regulatory reform legislation. Moreover, the Commission cannot issue a mandatory standard if an existing voluntary standard is sufficient to reduce the risk of injury or death from a consumer product and industry products substantially conform to the standard.

In sum, we have adopted a flexible, common-sense approach to product safety. We concentrate on protecting homes and families, and on educating consumers to help them assure their own safety.

Finally, I want to address our authorization level. I am very concerned about the level of our funding. In the past 15 years our budget has been reduced 48 percent in inflation-adjusted 1981 dollars. In fiscal year 1997, if we receive the full amount requested, we will be operating with the same appropriation we received in real dollars in 1979. At the same time, our staff has been cut in half, from 987 FTE's in 1980 to 487 in fiscal year 1996. As a result of this downsizing the Commission is not able to address many of the product-related deaths and injuries in the nation. Thus, we are not protecting the public as well as we could.

Therefore, I am seeking a substantial increase in the Commission's authorization for the next 5 years, so that we can deal with the most dangerous and defective products. Of course, your first question will be how can I justify such an increase in these tight budget times? The short answer is CPSC is a great bargain for Congress and the American people. Every dollar invested in our programs is returned many times over in benefits to children and families.

Mr. Chairman, I hope you will support our reauthorization request. These funds are returned many times over to the American public, and I am pleased to respond to any questions that you may have.

[The prepared statement of Ms. Brown follows:]

TESTIMONY OF ANN BROWN  
CHAIRMAN  
U.S. CONSUMER PRODUCT SAFETY COMMISSION

SUBMITTED BEFORE THE SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN  
COMMERCE AND TOURISM

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

April 23, 1996

Mr. Chairman, and members of the Subcommittee, I am Ann Brown, Chairman of the Consumer Product Safety Commission (CPSC). With me today are Vice Chairman Mary Sheila Gall, Commissioner Thomas H. Moore and members of the Commission staff.

I am pleased to have this opportunity to testify in support of the reauthorization of the Commission.

CPSC - WHO WE ARE AND WHAT WE DO

Since this is my first appearance before this Subcommittee and the Commission has not been reauthorized for more than five years, I want to begin with a summary of who we are and what we do.

Briefly, the Commission was established in 1973, by President Nixon as a five, now three, member independent agency with a mission to protect the public against unreasonable risk of injury or death from consumer products. We enforce five federal statutes, the Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Hazardous

Substances Act and the Refrigerator Safety Act. All told, we have jurisdiction over 15,000 different kinds of consumer products which are found in and around the home.

The Commission's operations are divided into three categories -- hazard identification and reduction, compliance, and information and education.

The hazard identification and reduction program first gathers data needed to assess product hazards, and then applies proven methods for reducing or eliminating those hazards. The foundation of the Commission's information collection program is the National Electronic Injury Surveillance System (NEISS). The NEISS provides estimates of the frequency and severity of product-related injuries treated in hospital emergency rooms. NEISS will supply information on 330,000 cases from a sample of 100 hospitals in FY 1997. The CPSC also collects mortality data from about 8,700 death certificates covering certain accidental deaths in all 50 states. In addition, the Medical Examiner and Coroner Alert Project (MECAP) involves review and processing of approximately 2,400 reports from medical examiners and coroners throughout the country.

These programs provide a solid information base for our hazard reduction efforts. The Commission's actions are data

driven. The information about deaths and injuries provides the basis for our risk based hazard reduction programs.

The Commission has a wide range of regulatory and voluntary options available to reduce the hazards associated with consumer products. These include both mandatory and voluntary standards for product performance, product labeling, product bans, and development of consumer information and educational materials. Whenever possible, hazard reduction activities are carried out cooperatively with affected industries.

The Commission's compliance program has two primary goals: first, to obtain compliance with product safety regulations issued by the Commission; and second, to identify and remedy substantial safety hazards in unregulated products. The Commission maintains an active program to identify violative or defective products, to analyze the risk associated with those products, and, where appropriate, to obtain corrective action. In carrying out its compliance activities, the staff applies principles of risk-based decision making to assure that its actions are consistent with the level of hazard presented by the product. Corrective action is achieved by working cooperatively with industry and, as a last resort, through litigation.

The Commission's information and education program collects hazardous product data from the public through our toll-free

number Hotline, alerts the public to hazardous products through the media and affirmatively educates the public about product safety through projects like baby safety showers.

I am particularly proud of our Hotline. It provides CPSC with quick, two-way communication between the agency and the public. It is one of CPSC's most effective, visible efforts to provide high quality customer service. It has received national recognition for its excellent operation.

The Hotline answered about 400,000 calls in 1995 from consumers and industry. About 4,000 of these calls were firsthand reports of product-related deaths, injuries, or other problems. The toll-free service not only receives consumer complaints and provides reports about potentially hazardous products; it also offers information -- in English, Spanish and other languages -- on recalls, Commission activities, and product safety news.

These three programs form a comprehensive and mutually reenforcing effort to protect and educate the public regarding consumer product safety. Past agency work in just four areas (electrocution, children's poisonings, power mowers, and fire safety) contribute to saving the nation almost \$6 billion each year in health care costs, property damage, and other societal costs. The 1993 rule on child-resistant cigarette lighters is

expected to save over \$400 million in societal costs each year, including the prevention of up to 100 deaths each year. Our compliance work also has a positive impact on the national economy. These results show the CPSC is a cost effective agency which deserves your increased support.

Thus, Mr. Chairman and members of the Subcommittee, the CPSC is different from other departments and agencies that come before you. We give no grants, we make no loans, we award no licenses. Our constituency is the American people, young and old, rich and poor, urban and rural dwellers, for they are the prime beneficiaries of our actions. We are truly engaged in protecting the health and safety of our children and families in their homes.

#### CPSC MISSION IN THE 90'S

As a part of my testimony, you have asked me to give my views on the role of the Commission in the 90's and the authorities necessary to carry out that mission. When I came to the CPSC two years ago, I developed a mission statement for the agency.

\*The Consumer Product Safety Commission (CPSC) is a guardian of consumer health and safety against unreasonable risk of injury or death from consumer products.

CPSC is an organization that proactively reaches out to protect consumers through effective use of voluntary and mandatory safety standards, compliance and enforcement actions, and research and public education.

CPSC is a leader in the national drive to improve product safety. It maximizes its limited resources by operating efficiently and using risk-based decision making, with special sensitivity to the needs of hard to reach populations.

CPSC is in the forefront of government efforts to give the American people the highest quality service and to help them help themselves."

I believe this statement remains an excellent guide to the Commission's role in the 90's and beyond.

The need for the Commission is as strong today as it was in 1973. The truth is most people do not realize the terrible toll that dangerous and defective consumer products take on our nation annually. Unintentional injuries are the leading cause of death among persons under 45 years old and the fourth leading cause of death in the nation. More children die from unintentional injuries than from disease. Each year there are 21,000 deaths and 29 million injuries related to consumer products under Commission jurisdiction. The deaths, injuries, and property

damage associated with consumer products cost the nation about \$200 billion annually.

Consumer product injuries account for one out of every six hospital days in this country. So every dangerous product removed from the marketplace prevents an increase in the national health care bill.

Unfortunately, it is still true that the marketplace does not always inform consumers of the dangers in certain products and that some products do have hidden hazards. Moreover, seemingly innocent and innocuous products can cause death and injury to children and others.

Accordingly, government agencies at all levels, and their allies in the private sector, must be active guardians of consumer health and safety. We cannot wait for deaths and injuries to pile up before we act. We must reach out to prevent as many of these tragedies as we can.

To achieve this objective, the Commission must have a broad range of flexible authorities to enforce five statutes covering over 15,000 types of consumer products. Our current powers are well suited to carrying out this mission. They are broad in scope, but moderate in application. I have submitted some



proposals to your staff for amendments to our statutes, but overall, I believe our powers are well matched to our task.

#### CHAIRMAN STRESSES VOLUNTARY ACTION

I reject the view prevalent during the 1970's that a consumer protection agency must take an adversarial approach toward business to achieve its goals. As I told you, Mr. Chairman, two years ago at my confirmation hearing, "I will adopt a balanced approach, favoring voluntary compliance and standards whenever possible." Voluntary action is preferable to mandatory when it is implemented promptly and carried out effectively.

The CPSC is fulfilling its responsibility to protect the American people from unreasonable risk of death and injury from consumer products without becoming overly invasive. The Commission cannot -- and should not -- attempt to protect consumers from every possible risk of injury from consumer products. There are limits to what government can achieve.

As Chairman, I have made voluntary action a high priority. For example, window blind cord manufacturers voluntarily agreed to remove the loop in venetian blind cords so that no more children will strangle on these cords. And children's clothing manufacturers agreed voluntarily to eliminate strings on the hoods of outerwear that contribute to infant and toddler

strangulations. Instead they will use velcro, buttons or snaps. I have convened meetings of industry and consumer groups to address several problem areas: multi-use helmets, baseball safety equipment, moveable soccer goals, nighttime bicycle safety and window falls. The gas hot water heater industry is working voluntarily with our engineering staff to develop an effective voluntary standard to address the ignition of flammable vapors. All this was accomplished without regulation.

I have also stressed consumer education. I believe the Commission can promote public safety by educating consumers about potential dangers in and around the home. Consumers must share responsibility for their own safety. For example, last year we issued a press release, which received national attention, warning parents of the danger of placing a baby face down on too soft bedding. A study conducted by CPSC showed that avoiding this practice could prevent up to 1800 deaths a year from sudden infant death syndrome.

In February the Commission conducted hearings on the danger of carbon monoxide poisoning in the home. These hearings alerted the public to the potential threat from gas and oil furnaces and gas appliances. They also enabled us to collect valuable information from CO detector manufacturers, health care professionals and technical experts about the carbon monoxide hazard.

I am particularly proud of our baby safety shower initiative. Working in partnership with the Gerber Products Company we developed a 12 point baby safety check list and a how-to kit so that anyone can conduct a baby safety shower. I want to show you the tape of the CBS Morning News segment which I did on baby safety with Congresswomen Susan Molinari and Blanche Lambert Lincoln last month. It is an excellent example of our public education program.

I also want to share with you a letter from Mr. Al Piergallini, Chairman of Gerber, commending me for the baby safety shower program, and concluding, "CPSC is a model of what good government should be." His letter is attached at the end of my statement, along with others praising the Commission for its work.

I believe that by making the Commission's activities highly visible to the American people we can advance consumer product safety. For this reason I have appeared on the ABC program "Good Morning America" to notify the public of product recalls that we have negotiated with manufacturers, and I write a monthly column in Good Housekeeping magazine. We have also provided information which was included in the newspaper columns of "Heloise" and "Dear Abby." Another aspect of our consumer education program is our video news releases which provide the public with a wide variety of product safety information, including toy safety and

poison prevention. Thus, as you can see, consumer education is a vital part of our program at the CPSC.

Another important part of our work at the CPSC is partnership with other Federal agencies, state governments and the private sector. For example, we work closely with the Customs Service to monitor and screen out imports of unsafe consumer products. We have a state affiliate in almost every state that works closely with us in carrying out our toy testing, hazardous product screening and other programs. We have formed a unique and valuable partnership with the National Association of Home Builders, Fannie Mae, insurance companies, and the U.S. Fire Administration to rewire four older homes across the country to illustrate the fire danger of defective wiring, and to demonstrate the modest cost of eliminating this hazard.

#### TOWARD MARKET-ORIENTED SOLUTIONS

I believe in market-oriented solutions to product safety problems whenever possible. Last year the Commission sponsored a "safety sells" conference featuring chief executive officers of eight major companies who explained how they use product safety to achieve a competitive advantage in their markets.

CPSC is responding to the globalization of the consumer product marketplace. Last year we also held an international

product safety standards conference to promote harmonization of US product safety standards with those of other nations. And in June we will hold a small business conference in New York to assist small firms to learn how to comply with our rules.

At that conference I will announce the establishment of a small business ombudsman at the Commission. That person will not only assist small firms in their dealings with the Commission; he or she will also recommend ways Commission procedures and rules can be made more understandable to the small business community.

Beyond these actions, I inaugurated a Chairman's commendation to recognize companies and individuals that voluntarily introduce or promote safety advances that go beyond Commission requirements. I have awarded commendations to eight companies including Procter & Gamble, Whirlpool, Hasbro and Toys R Us.

#### THE PARADIGM FOR THE 90'S - THE SAFETY TRIANGLE

In keeping with my views on voluntary action, cooperation with industry and partnership with other government agencies and the private sector, I believe the paradigm for the CPSC in the 90's is the safety triangle, where business, consumers and government each have an equal role to play.

For business, the bottom line should include a margin of safety in all its products because today safety does sell. It also avoids expensive private litigation and government action against unsafe products.

Correspondingly, for their own safety, consumers should be informed about the products they purchase and take reasonable care in using them.

For its part, the Commission has adopted a balanced approach, carefully weighing costs, benefits and other relevant factors. In fact, our statutes already require us to do much of what was proposed in the regulatory reform legislation.

Before issuing most mandatory safety rules the Commission must perform risk assessment, cost-benefit analysis and determine that the proposed rule imposes the least burdensome requirement that would adequately reduce the particular risk of death or injury addressed by the rule. Moreover, the Commission cannot issue a mandatory standard if an existing voluntary standard is sufficient to reduce the risk of injury or death from a consumer product and industry products substantially conform to the standard.

In sum, we have adopted a flexible, common sense approach to product safety. We rely on voluntary action whenever possible

and use mandatory procedures only as a last resort. We concentrate on protecting homes and family and in educating consumers to help themselves to assure their own safety.

#### CPSC FUNDING

Finally, I want to address our authorization level. I am very concerned about our level of funding. In the past 15 years, our budget has been reduced 48 percent in inflation adjusted 1981 dollars. In FY 1997, if we receive the full amount requested, we will be operating with the same appropriation we received in 1979. At the same time our staff has been cut in half, from 987 FTEs in 1980 to 487 in FY 96.

As a result of this downsizing, the Commission is able to address fewer than 1 in 5 product related deaths in the nation. This means that many dangerous products are beyond our reach. Thus, we are not protecting the public as well as we could.

Therefore, as set forth in the following chart, I am seeking a substantial increase in the Commission's authorization for the next five years so we will be able to deal with more dangerous and defective products. Of course, your first question will be how I can justify such an increase in these tight budget times.

## RECOMMENDED AUTHORIZATION LEVELS

1998	\$47.9 M
1999	\$50.3 M
2000	\$52.7 M
2001	\$55.3 M
2002	\$57.9 M

The short answer is the CPSC is a great bargain for Congress and the American people. Every dollar invested in our programs is returned many times over in benefits to children and families. Let me give you just three examples:

- o As noted earlier, the CPSC safety standard that requires cigarette lighters to be child-resistant is expected to eliminate 100 deaths each year. This one standard alone saves the economy over \$400 million each year in reduced deaths, injuries and property damage. The development of this standard cost CPSC about \$2 million. Thus, the return on investment is 2000 percent based on just one year of societal cost savings.

- o CPSC Compliance activities result in several hundred recalls annually of hazardous products. Just three recalls, playpen/travel cribs, cradle swings, and infant cushions, were estimated to have prevented 28 deaths. The resultant annual



societal cost savings are about \$140 million. The agency spent about \$500,000 on these three efforts. Therefore, the return on investment is over 2800 percent.

o The CPSC voluntary standards activities involving chain saws reduced injuries by 22,000 a year. The resultant annual societal savings are about \$190 million in lower injuries and medical costs. The agency spent approximately \$4 million developing this standard. Accordingly, the return on investment is over 450 percent.

These examples, and others cited above, demonstrate how the CPSC played a major role in reducing product related deaths per 100,000 consumers by 10 percent during the decade 1982-1992, and is continuing to do so. This record of success justifies a greater investment in the work of the CPSC.

I want to explain to you how I would use these funds.

## DETAIL OF PROPOSED REAUTHORIZATION AMOUNTS

(DOLLARS IN THOUSANDS)

FISCAL YEAR	BASE 1/	GREATER	MAINTAIN	TOTAL
		SAFETY	INFRA-	
		EFFORT 2/	STRUCTURE 3/	
1997 Request	\$42,500	\$ 0	\$ 0	\$42,500
1998	44,200	2,500	1,200	47,900
1999	46,100	3,000	1,200	50,300
2000	48,000	3,500	1,200	52,700
2001	50,100	4,000	1,200	55,300
2002	52,200	4,500	1,200	57,900

1/ Base includes 3 percent annual payraise and 1 percent annual Civil Service Retirement System increase proposed in the President's 1997 request.

2/ Reflects \$2 million for operation of Compliance Special Investigative Unit and \$500,000 increase each year for additional hazard reduction initiatives.

3/ Reflects \$1 million for data collection/processing and \$200,000 for laboratory equipment replacements.

As I have said, the CPSC is data driven. Accordingly, the better our data collection and dissemination are, the more accurate our risk based decision making will be and the more consumer product safety we can deliver for every dollar invested. Therefore, I propose to add \$1 million a year for the next five years to improve our data base. These funds would be allocated

as follows: Programming services, \$3.4 million; Document imaging, \$1 million; and \$600,000 for various supporting services such as replacing aging computer equipment and purchasing software.

An important part of our data base is the information the staff derives from product testing in our Engineering and Health Sciences laboratories. Accurate and prompt test results enable our staff to make timely product hazard determinations and to develop life-saving product standards. At a time of rapid change in technology, I am requesting \$200,000 a year for the next five years for the replacement and purchase of new product testing equipment. Equipment purchases deferred in the past have hampered our ability to test products in the most advanced way.

Our data show that a high priority for greater funding in the next five years is fire related hazards. While we have made considerable progress in this area in recent years, as late as 1993, 470,000 residential fires resulted in over 3800 deaths.

Our work on mattresses, upholstered furniture, television sets and cigarette lighters is helping to reduce this toll. But we can do more. Research, consumer education, better early warning systems, more fire resistant products, and faster fire suppression equipment can all contribute to a further decrease in fire deaths. Accordingly, I would use a large part of the funds

requested for the proposed greater safety effort to reduce fires and their toll on American homes and families.

The remainder would be used as our data dictate to accomplish the most hazard reduction for every dollar invested. If this proposed increase is authorized and appropriated, I would inform you annually how these funds are being utilized.

The necessary follow-on to our hazard identification and reduction program is an effective compliance program. Appropriate enforcement of product safety standards and the removal of dangerous products from the market are necessary to protect the American people. These actions also help to assure that responsible companies are not disadvantaged in the market by firms that manufacture unsafe products. The market place should be a level playing field for all competitors.

I have created a Special Investigative Unit (SIU) within the Office of Compliance to identify and investigate high risk defective products. The SIU will also be responsible for initiating corrective actions on such products. The SIU is expanding our existing data sources by searching out new sources such as fire investigators, state court administrators, and insurance companies. As we obtain more data on defective products, it is essential that the Commission investigate, and where appropriate, obtain corrective action. If my request for

additional funds is granted, I would expand the SIU into a highly trained, quick moving task force of investigators, engineers, technicians and support personnel to attack dangerous products and get them off the market promptly.

The Compliance staff also needs an adequate investigative budget. In the past, long term, complex technical investigations have drained the Compliance budget, jeopardizing investigations and corrective actions involving oil filled space heaters and furnaces leaking carbon monoxide. The Compliance staff is engaged in two such long term investigations at the present time. So it is imperative that the Commission have adequate funds to carry out our investigative work.

Mr. Chairman and members of the Subcommittee, I hope you will support my authorization request. These amounts are necessary and reasonable. As I have shown, the cost-benefit ratio of every dollar invested in the CPSC makes it one of the best uses of the taxpayers' dollars. These funds are returned many times over in effective protection for the health and safety of children and families across the nation.



## National Safety Council

A nongovernmental, not-for-profit, international public service organization protecting life and promoting health

April 11, 1996

Reply to  
WASHINGTON D.C.  
OFFICE  
1015 19th Street N.W. Suite 401  
Washington, DC 20036-5101  
(703) 293-5275  
FAX (703) 293-0022

The Honorable Thomas J. Bliley, Jr.  
Chairman  
Committee on Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Bliley:

I am writing to you to express the support of the National Safety Council for reauthorization of the Consumer Product Safety Commission with full funding intact for five years.

Since assuming the presidency of the National Safety Council just over a year ago, I have had the pleasure of working closely with the Commission on a number of subjects of mutual interest, particularly in the area of child safety. The Commission has sought to work cooperatively with us and with our members to build a public-private partnership that will further the interests of safety.

I believe the Commission has an important role to play in enhancing consumer awareness and in helping to assure that the products we use in and around our homes are safe. The National Safety Council regularly uses the product alerts and educational materials published by the Commission and disseminates this information to our members.

I urge the Committee to authorize full funding of the Commission at the level of \$42.5 million for the first year. Thank you.

Sincerely,

Gerard F. Scannell  
President

CC The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce, U.S. House of Representatives



## National Safety Council

A nongovernmental, not-for-profit, international public service organization protecting life and promoting health

April 11, 1996

Reply to:  
WASHINGTON D.C.  
OFFICE  
1615 15th Street, N.W. Suite 401  
Washington, DC 20036-5105  
(202) 293-1219  
FAX (202) 293-0032

The Honorable Michael G. Oxley  
Chairman  
Subcommittee on Commerce, Trade and Hazardous Materials  
Committee on Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Oxley:

I am writing to you to express the support of the National Safety Council for reauthorization of the Consumer Product Safety Commission with full funding intact for five years.

Since assuming the presidency of the National Safety Council just over a year ago, I have had the pleasure of working closely with the Commission on a number of subjects of mutual interest, particularly in the area of child safety. The Commission has sought to work cooperatively with us and with our members to build a public-private partnership that will further the interests of safety.

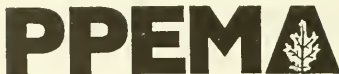
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I urge the Committee on Commerce to authorize full funding of the Commission at the level of \$42.5 million for the first year. Thank you.

Sincerely,

Gerard F. Scannell  
President

Portable Power Equipment Manufacturers Association



Sensible Products For A Better Outdoors

April 1, 1996

Honorable Thomas J. Bliley, Jr.  
Chairman  
Committee on Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I understand the Commerce Committee may consider legislation to reauthorize the Consumer Product Safety Commission during this Congress. On behalf of the Portable Power Equipment Manufacturers Association (PPEMA), I would like to express our support for reauthorization of the Commission and to urge that the Committee on Commerce preserve the Commission's continued involvement in the development of voluntary standards for consumer products.

PPEMA represents the manufacturers of portable power products using two-cycle engine technology. The portable power equipment industry sells roughly seven million products each year in the United States, ranging from chain saws to trimmer and brushcutters, blowers, hedge trimmers and cut off saws. PPEMA has worked successfully with the Consumer Product Safety Commission since the Commission's inception in 1972 to develop voluntary industry standards for portable power products. We believe this work has provided substantial benefits to both industry and consumers.

For many years, the Consumer Product Safety Commission has been an active member of the American National Standards Institute (ANSI) ASC B175 Committee, the national committee responsible for the development of voluntary safety standards for chain saws, monofilament trimmers, brushcutters and blowers. The CPSC has been joined by its sister government agencies, the Occupational Safety and Health Administration and the U.S. Forest Service, on the ANSI ASC B 175 Committee. PPEMA is the Secretariat for this committee.

It has long been PPEMA's policy to solicit the involvement of government agencies to assist in the development of voluntary standards for our products. It is our belief that active participation by these agencies significantly improves the quality and integrity of our voluntary standards programs. We further believe that involvement by government safety agencies addresses one of the major criticisms of the National Commission on Product Safety, e.g. that voluntary standards



Letter to the Honorable Thomas Bliley  
April 1, 1996  
Page Two

programs were industry dominated. The involvement of government safety agencies provides a critical ingredient for committee membership balance when voluntary standards are being developed. It also brings to the committee a unique perspective on the process and a valuable source of technical expertise.

The value of the successful collaborative relationship between PPEMA and the CPSC in the area of voluntary standards development is perhaps best exemplified by the development of the chain saw kickback standard. From 1977 to 1985, PPEMA and the CPSC conducted a joint research project to develop a voluntary standard for chain saw kickback. During the course of this project, Congress, in 1981, adopted an amendment setting new criteria for the Commission when opting for the use of a voluntary standard in lieu of a mandatory government standard. The 1981 amendment provided:

**The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.**

The new goals and objectives set by the amendment were very difficult to achieve, and both the CPSC and the industry devoted much of the next four years and several million dollars to completing the kickback project within the framework established by Congress.

When the new chain saw kickback standard was finally approved by the American National Standards Institute in 1985, CPSC staff testified that it provided a greater level of safety than would have been achieved if the CPSC had relied on the mandatory provisions of the Consumer Product Safety Act, Sections 7 and 9, as amended. On that basis, the CPSC was able to withdraw its mandatory standards project and defer officially to the new voluntary kickback standard. Two years after the standard was published, CPSC conducted an audit of industry compliance and found that 100 percent of the industry was complying with the new kickback provisions.

Based on the success of the U.S. standard, a joint CPSC/industry presentation was made to the International Standards Organization (ISO) in 1988 on the ANSI kickback standard and the supporting research. ISO subsequently adopted the ANSI standard developed by the CPSC and industry; this standard is now the world-wide standard where chain saw safety is concerned.

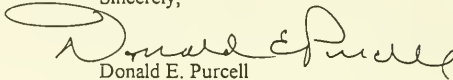
In this time of increasingly scarce resources, PPEMA continues to believe that CPSC's involvement in the development of voluntary standards is among the most cost effective programs

Letter to the Honorable Thomas Bliley  
April 1, 1996  
Page Three

at the Commission. PEEMA believes strongly that the Commission's ability to participate actively in the development of voluntary standards is in the public interest.

During the Committee's deliberations on CPSC reauthorization, we urge that the Commission's involvement in the development of voluntary standards be preserved.

Sincerely,



Donald E. Purcell

cc: Members of the Committee on Commerce, U.S. House of Representatives  
Honorable Ann Brown, Chairman, U.S. Consumer Product Safety Commission  
Honorable Mary Sheila Gall, U.S. Consumer Product Safety Commission  
Honorable Thomas H. Moore, U.S. Consumer Product Safety Commission

NATIONAL COALITION FOR  
CONSUMER  EDUCATION

March 12, 1996

Honorable Thomas Bliley, Jr.  
Chairman  
Committee on Commerce  
2125 Rayburn House Office Bldg.  
US House of Representatives  
Washington, DC 20515

Dear Mr. Bliley:

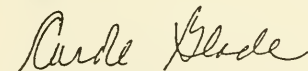
The US Consumer Product Safety Commission (CPSC) is an important agency which works efficiently to protect the safety of Americans of all ages. It is important to consumers, businesses, regulators, enforcement agencies, communities, families, and our society as a whole that the CPSC continue to have the authority to act to protect people from unsafe products. The US CPSC acts to empower consumers and business through information so they can act on their own behalf toward a safer market place.

Through the nation-wide network developed by CPSC with existing state agencies and formal and informal partnerships with groups such as the National Coalition for Consumer Education, safety messages and enforcement activities are implemented in a cost effective manner. It is through these partnerships that unsafe products are removed from the market place, inspections conducted, educational materials developed and distributed, and community training provided, all toward preventing needless hazards, accidents, injuries, and death.

The National Coalition for Consumer Education is the only international non-profit partnership of educators, businesses, media representatives, consumer leaders, government officials, and community leaders to focus solely on improving individual's ability to make decisions, use their resources wisely, and exercise their rights and responsibilities. The 450+ members of the National Coalition for Consumer Education urge you and your committee to continue funding of the US Consumer Product Safety Commission, to enhance its authority to protect the market place from unsafe products, and to continue and strengthen the educational and information safety messages and methods.

Consumer education and information is the first line of defense in today's complex market place. We urge you to protect consumers through the reauthorization of the US Consumer Product Safety Commission.

Sincerely,



Carole A. Glade  
Executive Director

cc: Barbara Rosenfeld ✓



## INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

4025 Fair Ridge Drive • Fairfax, VA 22033-2868

Telephone: (703) 273-0911

FAX: (703) 273-9363

ICHIEFS: IAFCHQ

March 22, 1996

The Honorable Thomas Bliley  
Chairman  
House Commerce Committee  
2125 RHOB  
Washington, DC 20515

Dear Chairman Bliley:

The International Association of Fire Chiefs (IAFC) would like to go on record as being totally supportive of the re-authorization of funding for the Consumer Product Safety Commission (CPSC).

The IAFC represents over 11,000 chief fire officers mostly from the United States. We serve as "the voice of management" for the American fire and emergency services and have a proud history that spans 123 years.

One of the primary missions of fire and emergency service departments everywhere is that of life safety, particularly through fire prevention. In the past decade we have helped achieve a 50% reduction in the number of fire deaths in our nation. This tremendous accomplishment represents about 4,000 citizens this year alone who are alive due to this multi-agency effort.

Over the years the IAFC has worked closely with the CPSC to help bring about legislation and regulation that will advance the cause of fire safety. The CPSC plays a vital role in finding solutions to fire and other life safety problems.

We ask that you please give careful consideration to fully funding the CPSC so that the successes in saving lives which we have worked so hard together to bring about will not be lost.

Respectfully,

*P. Lamont Ewell*

P. Lamont Ewell  
President

*Pioneering leadership for the fire and emergency services since 1873*

*Member, International Technical Committee for the Prevention and Extinction of Fire (ATC) - Technique International De Prevencion Et D'Extinction Du Feu (A.T.P.)*



**The Danny Foundation**  
 KEEPING BABIES SAFE

March 8, 1996

The Honorable Thomas J. Bliley, Jr.  
 Chairman, Committee on Commerce  
 2125 Rayburn House Office Building  
 U.S. House of Representatives  
 Washington, D.C. 20515

RE: Reauthorization of U.S. Consumer Product Safety Commission

Dear Congressman Bliley:

The Danny Foundation® urges you and the Committee on Commerce to move quickly and judiciously to reauthorize the U.S. Consumer Product Safety Commission (CPSC). We further recommend that the present power and authority under which the Commission operates will be maintained.

The Danny Foundation® is a non-profit public charity dedicated to crib and nursery equipment safety. In our ten year history, we have found working with the Commission an indispensable asset in improving juvenile product safety. We believe the Commission plays a critical role in protecting the public from unreasonable risks of injury or death from over 15,000 types of consumer products. The membership of The Danny Foundation® is very concerned that your Committee not consider any movement toward lessening the powers of the Commission. The Commission has done an excellent job on a limited budget with tremendously dedicated staff and personnel.

The Danny Foundation® Board of Directors and membership urges the reauthorization of the U.S. Consumer Product Safety Commissions under its present powers.

Thank you.

Sincerely yours,

Jack Walsh  
 Executive Director

JW/kf

5745d 77 Jul 96

BCC: ANN BROWN, CPSC



# Gerber

ALFRED A. PIERGALLINI • Vice Chairman, President and Chief Executive Officer

GERBER PRODUCTS COMPANY • 446 STATE STREET • FREMONT, MICHIGAN 49413-0001

PHONE (616) 928-2265

March 19, 1996

The Honorable Thomas J. Bliley, Jr.  
2241 Rayburn House Office Building  
Washington, DC 20515-4607

Dear Congressman Bliley:

I am writing you to commend the work of the Consumer Product Safety Commission (CPSC) and to urge you to reauthorize and fund the Commission so that it can continue its life saving efforts for consumers of all ages.

As you may know, Gerber and the CPSC have joined together as partners to promote infant safety through educational events across the nation called baby safety showers. We kicked off this partnership in Washington D.C. on October 25, 1995, and held an event at the Capitol on February 29, 1996, in which Congresswomen Susan Molinari, Blanche Lambert Lincoln and other Members participated. I know many Members plan to sponsor safety showers in their districts. I want to commend Chairman Ann Brown for her initiative in promoting these events and for her cooperation in our joint efforts to make every home safe for babies.

Apart from this project, I have found the Commission to be very fair and forthright in its dealings with Gerber. CPSC is a model of what good government should be.

I wholeheartedly support the work of the CPSC and ask that you use your best efforts to provide a generous authorization to the Commission and to reject any amendments to its statute that would interfere with the accomplishments of its vital mission.

Sincerely,

Al Piergallini

*Babies are our business...o*



# Gerber

ALFREDA PIERGALLINI • Vice Chairman, President and Chief Executive Officer

GERBER PRODUCTS COMPANY • 445 STATE STREET • FREMONT, MICHIGAN 49413-0001

PHONE: (616) 928-2265

March 19, 1996

The Honorable Michael G. Oxley  
2233 Rayburn House Office Building  
Washington, DC 20515-3504

Dear Congressman Oxley:

I am writing you to commend the work of the Consumer Product Safety Commission (CPSC) and to urge you to reauthorize and fund the Commission so that it can continue its life saving efforts for consumers of all ages.

As you may know, Gerber and the CPSC have joined together as partners to promote infant safety through educational events across the nation called baby safety showers. We kicked off this partnership in Washington D.C. on October 25, 1995, and held an event at the Capitol on February 29, 1996, in which Congresswomen Susan Molinari, Blanche Lambert Lincoln and other Members participated. I know many Members plan to sponsor safety showers in their districts. I want to commend Chairman Ann Brown for her initiative in promoting these events and for her cooperation in our joint efforts to make every home safe for babies.

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Sincerely,

Al Piergallini

Babies are our business...®



# B.J. ALAN COMPANY

---

**Corporate Office:**  
555 Martin Luther King, Jr. Boulevard • Youngstown, Ohio 44502

216/746-1064 • 1-800/777-1691  
FAX 216/746-4410

March 20, 1996

THOMAS J. BLILEY, JR., Chairman  
U.S. House of Representatives  
Committee on Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

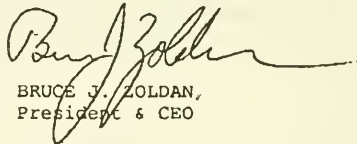
Dear Representative Bliley:

I have recently been made aware of the fact that your Committee's Subcommittee on Commerce, Trade and Hazardous Materials will be holding reauthorization hearings later this month relative to the Consumer Product Safety Commission.

This is to advise you that B.J. Alan Company regularly deals with the CPSC on various issues related to the approval of items that we manufacture and import into this country. We generally find the CPSC to be fair and even handed with us in their evaluation of our products. They are usually conscientious, timely and responsive to our needs.

I sincerely hope this information will be of use to you and your Committee's Subcommittee.

Very truly yours,



BRUCE J. LOLDAN,  
President & CEO

cc: John D. Dingell





*Bringing the benefits of experience and leadership to serve all generations.*

March 20, 1996

The Honorable Thomas J. Bliley, Jr.  
United States House of Representatives  
House Commerce Committee  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

I would like to take this opportunity to express the strong support of the American Association of Retired Persons for the valuable work of the Consumer Product Safety Commission (CPSC).

The Association has a long-standing commitment to the promotion of effective consumer protections, safety being prime among them, to safeguard older consumers. The CPSC has been an important ally in pursuing these goals. Most recently, AARP worked with the CPSC in developing new rules for child resistant packaging in an effort to reduce the 20 percent of child poisonings that occur in the homes of grandparents. AARP has also collaborated with the CPSC in public education efforts informing grandparents of the risk of child poisoning from careless storage of medications and on buying safe toys for the holidays.

The American public has come to expect that they will not be subjected to unreasonable risk of injury or death from products in everyday use. Still, deaths and injuries associated with consumer products continue to occur, at a cost of \$200 billion annually. The CPSC works with industry to develop voluntary standards to improve safety whenever possible, and uses mandatory regulation only as a last resort after conducting a risk assessment and a cost-benefit analysis.

AARP urges you to preserve the effectiveness of the CPSC by maintaining its authority and funding level when it comes up for reauthorization this year. To do less would jeopardize the protections that Americans now enjoy from needless risk from unsafe consumer products. If you or your staff would like to discuss this matter further, please contact Jo Reed of our Federal Affairs staff at 434-3800.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Horace B. Deets".

Horace B. Deets

American Association of Retired Persons 601 F Street, N.W. Washington, D.C. 20049 (202) 454-2277

Eugene L. Lehmann *President*

Horace B. Deets *Executive Director*



333 Pfingsten Road  
 Northbrook, Illinois 60062-2095  
 (708) 272-8800  
 FAX No. (708) 272-8129  
 MCI Mail No. 254-3343  
 Telex No. 6502543343

March 22, 1996



The Honorable Thomas Bliley, Jr.  
 Chairman  
 Committee on Commerce  
 U.S. House of Representatives  
 2125 Rayburn House Office Building  
 Washington, D.C. 20515

The Honorable Michael G. Oxley  
 Chairman  
 Subcommittee on Commerce, Trade and  
 Hazardous Material  
 Committee on Commerce  
 U.S. House of Representatives  
 2125 Rayburn House Office Building  
 Washington, D.C. 20515

Gentlemen:

Subject: The Consumer Product Safety Commission (CPSC)

Underwriters Laboratories Inc. (UL) understands that reauthorization hearings for the CPSC are scheduled for March 29, 1996. We offer the following information for your consideration.

Since the Consumer Product Safety Commission's inception, UL has worked in cooperation with CPSC to address product safety-related issues. CPSC, with its data gathering facilities and engineering and compliance staff, has served as a catalyst for focusing attention on product safety needs.

Adding momentum to these efforts was the action of Congress, in 1981, in revising the Consumer Product Safety Act to require the Commission to make greater use of voluntary standards. This revision to the Act required that the Commission not initiate action for the promulgation of consumer product safety standards when: 1) an adequate voluntary standard exists or is in the process of being developed, and 2) a substantial portion of the industry manufacturing the product(s) in question comply with the requirements contained in the voluntary standard.

A not-for-profit organization  
 dedicated to public safety and  
 committed to quality service

Reliance on private sector voluntary standards has further enhanced the long standing tradition of CPSC and UL working together for the common benefit of consumer product safety. This relationship takes advantage of the capabilities that each organization possesses through a process of shared knowledge. The long list of successfully completed projects on which UL and CPSC have worked together includes such items as: televisions, chain saws, hair dryers, drip coffee makers, kerosene heaters, CO detectors and Christmas tree lights. Further, a representative from CPSC is a member of UL's Electrical Council, one of UL's advisory bodies.

The CPSC, from time to time, seeks new or revised construction or performance features or the initiation of new standards for products. Developments of appropriate requirements and certification procedures to address substantiated safety concerns significantly reduce the necessity, and thereby the associated cost, for CPSC to develop its mandatory specifications. Cooperation with the voluntary standards community and industry has resulted in tremendous savings of government resources and elimination of duplicative efforts.

During various meetings, the staffs of both CPSC and UL exchange views, technical research and field incident data, discuss safety-related issues of mutual interest, and provide updates and anticipated plans of action for the future. It is an excellent example of public and private sector teamwork.

Through the UL voluntary standards process, UL continues to be responsive to CPSC's mission by assisting in key areas of safety concern. UL regularly modifies its requirements when practical field data are presented to corroborate safety concerns.

For the past 102 years, UL has been testing and certifying products for safety. Today, more than 40,000 manufacturers located throughout the United States and 90 foreign countries use our services. The applications of more than nine billion UL Marks on products is evidence of manufacturers subscribing to the voluntary system in the U.S. At last count, there are more than 520 published UL Standards for Safety. These standards contain the requirements that products in over 17,000 product categories must meet to be certified. The majority of these products are defined as consumer products by the Consumer Product Safety Act.

This is evidence of the comprehensive base of product safety standards which exist and the extensive support of industry in complying with nationally accepted safety standards.

Based on UL's experience in the product safety field and its success for more than a century, it has been and continues to be corporate policy to encourage and support the Commission's reliance on voluntary standards.

UNDERWRITERS LABORATORIES INC.

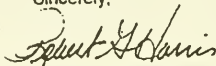
CPSC Reauthorization

Page 3

Technological advancements, consumer knowledge, perceptions and buying habits, the changing economy, and the rapid expansion of international trade continue to result in the development of newer, more sophisticated products that can challenge consumer safety. The high level of safety enjoyed by consumers in the United States stands as testimony to the successful cooperation of the many participants in the U.S. safety system.

It would be a pleasure to answer any questions you may have or to discuss any of the points raised in this letter in greater detail. Please do not hesitate to call me. We also maintain an office in Washington, D.C. Mr. Dave Haataja, our Manager of Governmental Affairs at this office, may also be contacted. He can be reached at 202-296-7840.

Sincerely,



Robert G. Harris  
Vice President  
External Affairs

RGH:mg

c: The Honorable Ann Brown  
Chairman  
Consumer Product Safety Commission  
Washington, D.C. 20207

The Honorable John Dingell  
U.S. House of Representatives  
2328 Rayburn House Office Building  
Washington, D.C. 20515

Mr. David Haataja  
Underwriters Laboratories Inc.  
818 18th Street NW  
Suite 230  
Washington, D.C. 20008-3513




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**NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS**

 1010 VERMONT AVE., N.W., SUITE 514, WASHINGTON, D.C. 20005 • (202) 347-7395 • FAX (202) 347-2563
 

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March 8, 1996

Honorable Thomas J. Biiley, Jr.  
 Chairman  
 House Commerce Committee  
 2125 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairman Biiley:

The National Association of Consumer Agency Administrators (NACAA), representing over 150 consumer protection agencies at all levels of government, strongly supports full funding for the U.S. Consumer Product Safety Commission (CPSC). We believe that CPSC's role is vital in reducing deaths and injuries and ensuring that products produced in this country or imported meet reasonable standards for safety.

STATE AND LOCAL COOPERATION WITH CPSC

NACAA members operate primarily at the state and local levels in departments of consumer protection, offices of attorneys general, county consumer affairs agencies, and city consumer offices. They respond to a broad variety of consumer inquiries and problems, including those relating to products that are defective, mislabeled, or are otherwise unsafe. Since many products are sold on an interstate, and increasing on a global basis, it is imperative that information about safety problems be exchanged between government agencies. Information from state and local consumer protection offices is routinely relayed to the CPSC so that it can track trends and identify situations which may need to be addressed by recalls or product standards.

CPSC, as a central clearinghouse for product safety information, alerts consumer agencies throughout the country about potential safety hazards and recalls. All NACAA member agencies are on a fax alert system through which CPSC notifies them immediately about safety problems. NACAA members also work cooperatively with CPSC to monitor product safety; for instance, participating in "toy sweeps" to ensure that recalled toys are removed from store shelves, or joining in public campaigns to promote fire safety awareness. State and local consumer agencies make extensive use of materials from CPSC to educate their constituents about the importance of using products properly and reporting safety defects promptly.

Honorable Thomas J. Bliley, Jr.  
March 8, 1996  
Page 2

### PUBLIC SERVICE

CPSC also provides an extremely valuable service to state and local agencies and to the general public by making recall information and educational materials available through its toll-free hotline. Furthermore, CPSC's ability to halt the manufacture, sale or distribution of hazardous products a nationwide basis offers protection from avoidable deaths or injuries to all citizens.

CPSC should be commended by Congress for the pragmatic approach it has taken to fulfill its public safety mandate. Under its current leadership, CPSC has achieved great success in forging voluntary standards and agreements with industry to provide practical solutions to safety problems. For example, CPSC worked with the drapery industry to eliminate the strangulation hazards posed to children by the pull-cords on curtains and blinds. Manufacturers agreed not to produce the cords in continuous loops in new products, and consumers who have drapes and blinds with the old cords have been offered free retrofit kits. NACAA members agencies joined the CPSC and the industry to promote public awareness in this regard.

### CONTINUED NEED FOR A STRONG CPSC

CPSC can only do its job if it has adequate funding and if its power to enforce compliance with product safety requirements remains strong. As global trade spurs the entry of new products into the U.S. market, CPSC's role in developing basic safety standards and ensuring compliance is more important than ever.

In closing, we would like to cite CPSC as an example of federal government at its best --- providing tangible services and benefits to the public in an efficient and cost-effective manner. We hope that you give your full support to the mission of CPSC and that funding will be increased to assure that its mission can be carried out. Thank you for considering our views on this matter of national concern.

Sincerely yours,

*Lawrence A. Breeden*

Lawrence A. Breeden, President  
NACAA

cc: Robert Gordon, Counsel  
House Committee on Commerce

Susan Grant, NACAA Executive Director  
NACAA Executive Board





## State and Territorial Injury Prevention Directors Association

March 22, 1996

The Honorable Thomas J. Bliley, Jr.  
Chairman  
House Committee on Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Dear Congressman Bliley:

I am writing to express the State and Territorial Injury Prevention Directors Association's (STIPDA) support for the continued funding of what we believe to be one of the most effective and valued federal agencies in the nation today -- the U.S. Consumer Product Safety Commission (CPSC).

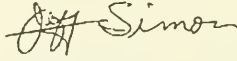
The CPSC has as its major function the protection of consumers against unreasonable risk of injury or death from consumer products. The need for this agency exists in the evidence that each year more than 21,000 people lose their lives due to injuries associated with consumer products and more than 29 million more people are injured. These consumer product deaths and injuries cost the nation \$200 billion annually.

Members of STIPDA have had an excellent collaborative relationship with CPSC working together on successful projects such as fire prevention initiatives; disseminating product safety alerts to the public; developing voluntary and mandatory standards; using CPSC materials to educate and inform the public and health professionals; promoting the use of the CPSC hotline to report potential injury risks due to products; and using valuable injury data collected through the CPSC's National Electronic Injury Surveillance System, and the Medical Examiners and Coroners Alert Project/Emergency Physician Reporting System, to target local and state injury interventions to those populations most in need.

The CPSC, under the leadership of Ann Brown (Commission Chairman), continues to provide injury prevention and life-saving services to the U.S. populace. The State and Territorial Injury Prevention Directors Association recognizes the invaluable work of the CPSC and urges you and your colleagues to continue to reduce the risk of injury and death from consumer products -- by supporting funding to the U.S. Consumer Product Safety Commission at a level commensurate with their proven ability to act as guardians of the public's health and well-being.

If you wish to hear more about the benefits of CPSC and how it prevents injury and death, especially to your constituents, I can be reached at 518/473-1143.

Sincerely yours,

A handwritten signature in black ink that reads "Jeff Simon". The signature is written in a cursive style with a large, stylized "J" and "S".

Jeff Simon, MS  
President, STIPDA

cc: Robert Gordon, Counsel  
Committee on Commerce





## National Fire Protection Association

1 Batterymarch Park, Quincy, Massachusetts 02269-9101 USA  
Telephone (617) 770-3000 Fax (617) 770-0700

George D. Millar  
President

March 19, 1996

The Honorable Thomas J. Bliley, Jr.  
Chairman, Committee on Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6116

Dear Chairman Bliley:

We understand your Committee will be holding reauthorization hearings on the Consumer Product Safety Commission (CPSC) at the end of the month. As the leading private sector fire safety organization in the United States, the National Fire Protection Association (NFPA) is vitally interested in the CPSC programs that impact the fire problem in America.

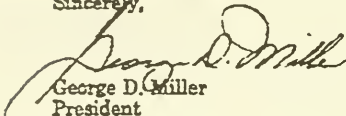
Over the years, we have seen a dramatic reduction in the number of lives lost due to fire and burn injuries in the United States (from 8,000 per year 20 years ago to an estimated 4,275 in 1994), but we still have one of the highest per capita fire death rates in the world. There is much more that can be done to reduce the pain and suffering from fire, not to mention the economic loss from fire, estimated at \$8.1 billion in 1994.

Much of the progress in reducing fire deaths and injuries has been the result of effective public-private sector partnerships at the federal, state, and local levels between organizations such as CPSC and NFPA. Examples of CPSC fire safety programs include collaborative fire injury data collection and analysis, children's sleepwear flammability standards, a National Smoke Detector project, child resistant cigarette lighters, home electrical wiring safety and recently, the CPSC carbon monoxide (CO) project.

The Honorable Thomas J. Bliley, Jr.  
March 19, 1996  
Page 2

In summary, we believe that CPSC plays a vital and important role in helping protect our nation's citizens from fire deaths and injuries. We would ask your Committee to take this into consideration as you review CPSC in the reauthorization process. And, NFPA would be pleased to provide more detailed information for the Committee.

Sincerely,



George D. Miller  
President

GDM:ARON:ews

cc: The Honorable Michael G. Oxley      The Honorable Ann Brown  
Chair, Subcommittee on Commerce,      Chair, Consumer Product  
Trade and Hazardous Materials      Safety Commission

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NEIL A. GOLOBERG

March 19, 1996

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 315-422-5900  
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Hon. Thomas J. Bliley, Jr.  
 Sherman  
 House Commerce Committee  
 2125 Rayburn House Office Bldg.  
 U.S. House of Representatives  
 Washington, D.C. 20515

Re: Consumer Product Safety Commission

Dear Congressman Bliley:

I am writing to you because I understand that the House Commerce Committee is scheduling a re-authorization hearing concerning the Consumer Product Safety Commission. I am the Chairman of the Defense Research Institute's Products Liability Committee as well as the Chairman of the New York State Bar Association's Products Liability Committee. In these capacities as well as in my private practice I have seen, as has the general public, that efforts in Congress to pass products liability reform legislation, and legislation that will further protect the rights and interests of consumers repeatedly has failed. At the time I write this letter it has been publicized in the press that H.R. 956, will apparently be vetoed by President Clinton, in the event that it is actually passed by the House and Senate.

The litigation process is time consuming, costly, and a wholly ineffective way to protect the rights and interests of the American consumer. On the other hand, visionary leadership at the regulatory level has in the past accomplished what no lawsuit can.

The Consumer Product Safety Commission, especially under the leadership of Chairman Ann Brown has taken an imaginative and vigorous initiative with regard to industry. Unlike others that may have attempted to confront and/or alienate industry, Chairman Brown has attempted to work with industry, to assure consumer safety in the most efficient and timely manner.

315 422 6196

## SAPERSTON &amp; DAY, P.C.

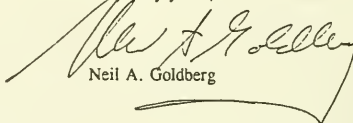
Hon. Thomas J. Bliley, Jr.  
March 19, 1996  
Page 2

I had the privilege of chairing the largest products liability seminar conducted in the United States which was conducted by the Defense Research Institute on February 7-9, 1996 in San Francisco. Almost 700 corporations and attorneys from across the country attended this program. Chairman Brown spoke on the program and dramatically impressed the corporate representatives and attorneys present with her even handed, yet firm approach. It is clear that the CPSC under Chairman Brown is endeavoring to build successful partnerships with regulated industries to assure true product safety for consumers.

Innovation and the attainment of consumer safety do not come without a price. It is imperative that the CPSC be properly funded so that it can continue its good works in the businesslike and efficient manner that Chairman Brown has inspired. I sincerely hope that you will make every effort to assure that the CPSC is properly funded when the authorization hearings take place.

Kindest regards.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Neil A. Goldberg", written over a horizontal line.

Neil A. Goldberg

NAG:jjc

cc: John D. Dingell, Ranking Member  
Robert Gordon, Counsel

bcc: Chairman Ann Brown  
Patricia Adkins

Senator GORTON. Thank you very much, Ms. Brown. Now, we will hear from Ms. Gall.

**STATEMENT OF MARY SHEILA GALL, COMMISSIONER,  
CONSUMER PRODUCT SAFETY COMMISSION**

Ms. GALL. Thank you, sir. I ask that my entire statement be put into the record.

Senator GORTON. It will be included in the record, as will those of each of the witnesses.

Ms. GALL. Thank you. First, let me say I feel privileged and honored to represent the dedicated and professional staff of the Consumer Product Safety Commission, and I am delighted to appear with my colleagues, Chairman Brown and Commissioner Moore. I think that is one of the advantages of having a Commission form of our organization. I think that while all three of us share the same goals, we have differing political philosophies, and that, I think, underscores the importance of the Agency as a Commission. Let me assure you that just because I am sitting to the left of Chairman Brown today, that is no indication of my political philosophy, or hers, I think.

Let me begin by saying that I certainly support the Republican philosophy to eliminate unnecessary agencies and to transfer authority to the States whenever feasible. But some consumer products are sufficiently complex or the hazards of simple products are hidden such that government regulation is justified to protect the consumer. States are not always well suited to the task. The State of California, for example, may impose a certain set of regulations on a particular product or industry, and the state of New Jersey may have different regulations for that industry or product.

Uniform consistent enforcement of product safety regulations permit American manufacturers to compete with imports on a level playing field, and that is good news for American workers, American business, and, most importantly, for American consumers, who now have access to safer products, greater choice, and hopefully for a good price.

As to my regulatory philosophy, I certainly support and put tremendous emphasis on individual and parental responsibility. I oppose regulation where regulation simply is not necessary. I am especially unwilling to regulate products where the underlying cause is one of irresponsible behavior on the part of the consumer. I think it is important to review in-depth investigations. Those are conducted by the Agency, and they include police records, autopsy reports, talking to witnesses, social service reports, and so on, to discover underlying causes of these accidents.

I certainly can give you one example of that, and that is baby walkers. For those of you who are not familiar with baby walkers, they are small round devices that you put a young baby in, so the baby is mobile and can get around. They have wheels. Now, we have seen that there are roughly 23,000 accidents per year with children who are in baby walkers. Eighty (80) percent of those are falls down stairs. But if we look further we see that the same number of children of the same age are falling down the stairs, and these children are not in baby walkers.

Now, that tells us something. In addition, according to one study, in 76 percent of the cases involving children who have fallen down the stairs who were in baby walkers, the parents put them right back in the baby walker again. Certainly, that tells us that the parents do not believe the baby walker is at fault.

There are 3 million of these sold per year, and about 25 million in the hands of consumers. Now, we could ban baby walkers, we could talk to industry about making other developments in baby walkers, or other designs, but it seems to me that the simplest way to solve this problem is to close the door or install and use a baby gate. To me, that is not sufficient reason to regulate the product. Industry has taken upon itself to develop alternate designs of baby walkers, and while I welcome that, I would not support any mandatory regulation involving baby walkers, that is now before the Commission.

I am willing to regulate, when I believe that is necessary. Does that mean that we always have to have a body count in order to regulate? If you look at my philosophy, the answer to that is no. We had a number of incidents recently. We had two deaths pertaining to multiple tube fireworks.

These are fireworks that shoot off several times. Instead of shooting straight up in the air like this, the force of the fireworks was such that they tipped over and, instead of going straight up, fell over sideways and went into crowds. We had two deaths of people who were standing 40 to 60 feet away, and who thought that was a sufficiently safe distance to be away from the fireworks.

So we worked with industry because there were so many imported products we felt that the only way to go with this was a mandatory standard, a performance testing standard, to address the issue of tip-overs. That is something I supported fully because I think that it is a hidden hazard that people standing in a crowd would not be able to see or understand.

In the last couple of years I believe that the Commission has veered away from what I define as a risk-based decisionmaking process in setting its agenda and deciding the products and activities on which we will focus. Risk-based decisionmaking, as I said, does not require a number of deaths and injuries before CPSC can act, but to me it is a management tool that helps us decide which risks we will address and which we will not spend our time, energy, and resources on.

I believe that our present system does not adequately consider the cause of the accidents involving products to determine whether the product itself, or whether unreasonable consumer behavior, caused the accident. One example of this is a study that was done by the Commission pertaining to soft contained play areas. This is something you will see very often at the malls. It is for young children, and contain a number of play activities for the children with adult supervision. One activity is where children jump into an area that has lots of plastic soft balls, and they jump in and out of the balls and have a wonderful time.

There was one death associated with this when the product was used after hours, rented for a private party. A bunch of teenagers were jumping in and out of the area that contained the balls. One of the young people died as a result of injuries sustained when



some other teenagers jumped in on top of him when he was hidden under the balls. However, let us face it, that is not a typical situation that we would see in the ordinary day-to-day use of soft contained play areas.

The Commission did a study and the result was that they are fine. They are safe. They are terrific. Well, I always welcome the idea of sharing knowledge with the rest of the world. But I think this is something where we could have used Commission resources in another area to greater effect.

I think that we have a wide variety of functions, regulatory, enforcement, adjudicatory, and assistance in education. With the present resources and 15,000 products within the Commission's jurisdiction, I think it is obvious that we cannot do everything for everyone all the time. Increasing levels of Commission resources flow into compliance without an in-depth assessment, I think, of whether or not those activities give the Commission the most return in reductions in deaths and injuries as compared with our other hazard reduction activities. I also have some concerns about delegations of authority, and I would be happy to answer any questions about that.

[The prepared statement of Ms. Gall follows:]



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

**SUMMARY OF THE STATEMENT OF THE HONORABLE  
MARY SHEILA GALL BEFORE THE SUBCOMMITTEE ON  
CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM  
OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

April 23, 1996

The need for the Consumer Product Safety Commission continues since accidents associated with the use of consumer products remain a major source of deaths and injuries to the American public. The Commission facilitates interstate commerce by promoting consistent standards for products. The Commission has been successful in its operations as a Commission and it should continue in that form.

The Commission's resources have been reasonably consistent since 1986 but its statutory mission remains as broad as it was when the Commission had almost twice its present level of funding and employees. Both the Commission and Congress need to assess how much the Commission can do with its present resource level.

My regulatory philosophy is to avoid regulating products where products are not the problem, and three examples of my opposition to regulation are my votes against proposals to regulate baby bath seats, to establish mandatory standards for baby walkers, and to require revisions to the label on charcoal. I am willing to regulate when necessary and I voted for regulations on cigarette lighters (for child resistance) and for performance standards for multiple tube mine shell fireworks.

I believe that the Commission could improve its operations by paying closer attention to the principles of risk-based decisionmaking in deciding on Commission hazard reduction activities. Risk-based decisionmaking does not require that the Commission see deaths and injuries before it acts, but that it adhere to a management process set forth in the Commission's regulations. Examples of specific hazard reduction activities that I do not believe reflected adherence to risk-based decisionmaking are the Commission's projects on child safety devices and soft contained play areas. Activities reflecting good adherence to risk-based decisionmaking principles include the infant suffocation project and the carbon monoxide detector hearing.



The Commission could also improve its operations by scrutinizing more closely how it allocates its resources internally and which of its hazard reduction activities yields the greatest results in lives saved and injuries prevented. Congress should be aware of the amount of authority that the Commission has delegated to its staff to ensure that the Commissioners are exercising adequate review of important Commission functions. Congress should provide the Commission with the resources necessary for it to participate in the international standards setting process in a meaningful way.



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

**STATEMENT OF THE HONORABLE MARY SHEILA GALL  
BEFORE THE SUBCOMMITTEE ON  
CONSUMER AFFAIRS, FOREIGN COMMERCE, AND TOURISM  
OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

April 23, 1996

Thank you, Mr. Chairman. I will summarize my written statement for the Subcommittee today, and ask that the written statement be included in its entirety in the record of this hearing.

One of the advantages of the Commission form of organization is that the Commissioners bring different points of view and backgrounds to their work at the Commission. This advantage also works to the benefit of Congress when it considers the reauthorization of the Commission and possible changes to the statutes that the Commission administers. I believe that my views will be of interest to the Subcommittee because I am the Commissioner who has served the longest among the three present Commissioners. In addition, I am in the almost unique position of being a Republican political appointee in a regulatory commission that is a part of a Democratic Administration. The Commission's

authorizing statute contemplates an explicit partisan division among Commissioners. This explicitly partisan division guarantees that differing points of view such as my own and those of Chairman Brown and Commissioner Moore will be represented and I can assure the Members of this Committee that that objective of the statute is being fulfilled.

### **THE COMMISSION'S MISSION CONTINUES**

I have reached a number of conclusions based on my experience with the Commission. Individual and parental responsibility are the key elements in avoiding accidents associated with the use of consumer products. Nevertheless, the Consumer Product Safety Commission remains a necessary agency within the Federal Government. American manufacturers and importers are bringing us products that are significantly safer than in the past, but accidents involving the products within the Commission's regulatory jurisdiction are a major source of deaths and injuries to the American people. Not all of these deaths and injuries could be prevented even by a perfect Commission, but it would be derelict for the Federal Government in the late Twentieth and early Twenty-First Centuries not to have some agency whose mission it was to seek to reduce unreasonable risks of injuries associated with consumer products. Many consumer products are sufficiently sophisticated, or the hazards of even unsophisticated products are sufficiently hidden, that government action to inform or otherwise protect the

public is justified and is a wise use of taxpayer dollars. The Commission has a commendable record of acting to address consumer product hazards since its formation in 1973, and I believe that it should continue to operate as a Commission.

Nor can the problem of accidents involving consumer products be solved by action at the state or local level. With modern transportation and distribution systems, products can be moved coast to coast in a matter of hours, frustrating the enforcement efforts of even the most conscientious state or local officials. Moreover, inconsistent state or local regulation can create a significant burden on interstate commerce, while still leaving large portions of the U.S. population uninformed about and unprotected from serious hazards. Finally, uniform product safety standards keep out imports produced by manufacturers who lower costs by not adhering to such standards, to the disadvantage of American businesses.

#### **COMMISSION RESOURCES: THE UNIVERSAL CONSTRAINT**

I hope that my earlier remarks have established the basis for the continued need for the Commission. Yet even the most necessary government agencies must constantly assess their operations and determine how they can be improved. I firmly believe that this assessment should be carried on in close

cooperation with Congress because Congress furnishes the resources with which the Commission works and Congress defines the mission of the agency. Congress, therefore, should be aware of the limitations that available resources place on the ability of the Commission to carry out its statutory mission, and work with the Commission to adjust both the resources and the mission when necessary. Congress has, in fact, increased the burden on the Commission by directing Commission action on specific products: lawn darts, automatic garage door openers, bicycle helmets, lead-lined drinking water coolers, labeling of art materials, and labeling requirements for toys and games intended for children between the ages of three and six. The Commission, of course, adjusts all of its other activities to meet the demands imposed upon it by Congress, but all of these Congressional actions do have resource implications.

I think that it would be helpful to review briefly the question of resources, even though another Senate Committee expressly considers the question of the resources that the Commission receives. I have attached two charts to my testimony (Attachments 1 and 2). The first shows the Commission's funding history in constant year dollars from 1974 until 1997; the second shows the Commission's staff history during the same period. The first chart shows that the money that Congress has been willing to commit to the mission of the Commission has been remarkably consistent since about 1986: \$15 million in

1974 dollars. This period of time has seen Republican Administrations and Democratic Congresses; a Democratic Administration and a Democratic Congress; and now a Democratic Administration and a Republican Congress. Through it all, the level of appropriations for the Commission has fluctuated around the same level. The only possibility that has not been experienced is a Republican Administration with a Republican Congress. While as a Republican I certainly hope for such a test, I suspect that it would not change the funding level for the Commission very much.

I do wish to commend Chairman Brown and former Chairman Jacqueline Jones-Smith for their efforts to obtain resources for the Commission. With a funding level as low as ours every single dollar counts and without their efforts I believe that the Commission would have even fewer resources than it has now.

I raise the question of resources before a Committee other than the Appropriations Committee because the five statutes that the Commission administers were passed between 1953 and 1972. While these statutes have been amended from time to time, I know of no comprehensive review of what Congress ought to expect from a Commission with this level of resources, and whether there need be any statutory changes to reflect any changes in expectations.

**REGULATORY PHILOSOPHY: GOVERNMENT DOING ONLY WHAT  
GOVERNMENT DOES BEST**

There are a number of sources from which Senators will draw guidance about the what they expect from the Commission as we move towards the Twenty-First Century. The most important will be your constituents, and I do not presume to give you advice about that. But I do believe that the views of a Commissioner, particularly one with nearly twenty years experience in Administrations with differing regulatory philosophies, will be helpful and I offer them to you in that spirit.

I. Do not regulate products where products are not the problem.

The Commission is a regulatory body, but I believe that it should exercise that authority with restraint. The concept of individual and parental responsibility that I advocate does not justify leaving unreasonably dangerous products on the market, but it does justify serious scrutiny of consumer behavior as part of the decision on whether or not to regulate.

a. Baby bath seats and rings

While the Commission is a regulatory body, I believe that it should exercise that authority with restraint. For example, I voted against publishing an Advance Notice of Proposed Rulemaking (ANPR) to regulate baby bath seats



and rings, devices designed to hold infants upright in a tub while parents or other caregivers bathe them. My review of the in-depth investigations (IDIs) our staff prepared revealed that tragic accidents occurred when parents or caregivers left infants unattended in the tub, with or without a baby bath seat, and return to find that they had drowned. These IDIs disclosed that caregivers had left infants alone for many minutes, in some cases even for a half an hour or more. In cases such as these, I am willing to place the responsibility firmly on that of the person who was supposed to be taking care of the child. Babies should not be left alone in or even near a tub of water, and this elementary rule of supervision applies whether the baby is in a baby bath seat or not. There is no point in seeking to ban a product, or to impose mandatory product standards, where the fault lies in the conduct of careless adults! Even after the vote to discontinue rulemaking, at the Chairman's direction the staff is working on a report that includes a discussion of baby bath seats and rings, despite the clear evidence that these products are not causally related to infant tub drownings.

I simply do not agree with the staff notion that the presence of baby bath seats somehow induces caregivers to leave infants unattended in tubs. The staff bases its belief in such reliance because of focus group findings. I base my skepticism on the fact that there are no higher numbers of actual infant-tub drownings associated with the use of baby bath seats. In fact, staff estimates of

the use of baby bath seats tend to suggest to me that children being bathed with the aid of such seats or rings are less likely to drown in tubs than children being bathed without such aids. I voted against the ANPR because I believed that the only possible outcome of rulemaking would be a ban or a withdrawal of the rulemaking. There was absolutely no engineering "fix" that could improve baby bath seats. After all, the sturdier a baby bath seat is, the more likely it is, according to the staff point of view, that caregivers will rely on it; exactly the result that the staff is trying to avoid!

b. Baby Walkers.

Similarly, I voted against issuing an ANPR in the case of baby walkers because I was convinced that no regulation involving a device could substitute for a lack of adult supervision and a willingness to take sensible precautions. The data showed that babies fall down stairs with and without baby walkers. About 23,000 babies are injured each year in accidents involving the use of baby walkers. About 80%, or 18,500 of these accidents involve falls down stairs. But approximately the same number of babies (22,000) are injured in falls that do not involve the use of a baby walker. The simple act of closing a door or installing and using a gate could eliminate over 40,000 accidents per year! It is up to adults to install gates that bar access to stairs and to keep them engaged when babies or toddlers are around, so that they do not fall down stairs.

Mandating a performance standard for baby walkers will have no effect on this behavior and I voted against proceeding on a rulemaking to develop such a mandatory standard because I saw it as an attempt to regulate a product that would leave the underlying cause of that type of accident unaddressed.

Moreover, many consumers favor the advantages offered by baby walkers and the overwhelming majority of babies placed in baby walkers never fall down stairs. A ban on baby walkers, or even a mandatory standard that significantly increased the price of baby walkers, would deprive those consumers of those benefits and unnecessarily restrict the choice to the American public. I am happy to say that industry is looking at the problem and may be able to design a baby walker that resists going down stairs. Even this modification will obviously be of no benefit to babies (not in walkers) or toddlers approaching stairs with open gates or doors.

Without a review of the in-depth investigations that reveal when problems lie not in the product but in behavior, the Commission may proceed with rulemakings that expend both Commission and industry resources, yet result in no savings of lives or reductions in injuries.

c. Charcoal Labeling.

The rulemaking on charcoal labeling began in response to a petition, which Section 9(i) of the Consumer Product Safety Act requires the Commission to consider. A label on charcoal to warn about the hazards associated with burning it indoors has been required for many years by regulations under the Federal Hazardous Substances Act. The petition requested "improvements" in the label.

It is true that a certain number of deaths and injuries are associated each year with the indoor burning of charcoal despite the existing warning. But I did not view this subject as a good candidate for rulemaking because any improvements to the label would have to affect the narrow range of persons who would not burn charcoal indoors after reading the "improved" label, but who would burn charcoal indoors after reading the present label. These results would need to be obtained despite the fact that labels, especially labels on common items, are generally not read and often not acted upon even when they are read. Since the present label warns of toxic fumes that can cause death, I had difficulty seeing what more a label could say, especially in light of a staff finding that the labeling change would have a negligible impact. Nor would the change in labeling be without significant cost to the charcoal industry. Therefore, I believe that this is a petition that should have been denied. I do

favor a small, targeted information and education campaign designed to convey the hazards of indoor charcoal burning to certain identified groups among which this habit is especially prevalent.

2. Regulate when necessary.

Despite my view that regulation should be a last option, four years at the Commission have convinced me that government does have a legitimate role in regulating products to reduce unreasonable risks. For example, I voted for regulations requiring that certain cigarette lighters be child-resistant. I did this because I became convinced that the industry's voluntary standard was simply not going to work, given the prevalence of imported lighters. In this case as well, industry itself recognized the need for a regulation and encouraged and worked with the Commission to arrive at a reasonable mandatory standard.

I also voted for a performance standard in the case of multiple tube fireworks. These firework devices showed an alarming tendency to tip over in use, firing their shells into bystanders rather than into the air. As a result, two spectators, including one child, have been killed in accidents involving these fireworks. I voted for a mandatory performance standard that makes it very unlikely that these devices will tip over in operation, after Commission staff testing showed that there was insufficient compliance with the voluntary

standard to justify Commission deferral to it. In this rulemaking effort I did ask the staff to perform additional cost-benefit analysis, and the analysis justified the costs that the new regulation imposed with the lives saved by requiring more stable devices. Industry supported this performance standard and continues to work on the problem.

## RISK-BASED DECISIONMAKING

### 1. The Process.

These examples, of course, do no more than illustrate the truism that sometimes the Commission needs to regulate and sometimes it does not. My colleagues on the Commission may reach conclusions on specific regulatory questions different from my own and such differences are entirely natural. I believe that we can improve Commission operations with a more rigorous application of "risk-based decisionmaking." While risk-based decisionmaking can mean different things to different people, I define risk-based decisionmaking as a management process by which the Commission determines the hazards that it will seek to address through regulation or other Commission activity. I want to make it clear that I do not believe risk-based decisionmaking means waiting until the Commission sees deaths or injuries before moving to regulate or to take enforcement action against a product. If the Commission has good evidence of the potential for deaths or injuries, it is justified in taking action. The

management process that I believe constitutes risk-based decisionmaking is set forth in the Commission's regulations (16 C.F.R. Section 1009.8) and involves:

- o An assessment of the frequency and severity of injuries associated with the use of particular products.
- o Consideration of the causes of accidents involving certain products and analysis of the extent to which the product and other factors such as consumer behavior are related to the injury pattern. Priority should be given to those products where the defect in the product itself is involved in causing accidents and the extent of injuries that can reasonably be expected to be reduced or eliminated through Commission action.
- o An evaluation of products to determine whether they may be responsible for future injuries or chronic health problems.
- o Performing a rough cost-benefit analysis to determine whether it is likely that Commission action can address the hazard associated with the use of that product at a reasonable cost, both in terms of Commission resources and overall cost to society.



- o Evaluating the unforeseen or foreseeable nature of the risk.
  
- o Evaluating the vulnerability of certain populations, such as children and the elderly to certain risks.
  
- o Assessing the probability of exposure to the hazard.
  
- o Evaluation of additional data that may be relevant to the hazards associated with the use of particular products.

This process of risk-based decisionmaking needs to be adequately documented, so the Commission, its staff, Congress and the interested public can understand why the Commission is proceeding with regulatory and other hazard reduction activities. The process of risk-based decisionmaking is subject to judgment about the nature of risks, and the costs imposed and benefits resulting from potential regulatory and other action. I believe that it is a useful exercise to undertake so that Commission resources are devoted to activities that have the highest probability of yielding the maximum results in terms of lives saved and injuries avoided. Without it, the Commission risks a "scattershot approach," chasing "targets of opportunity," that is, the hazards with the most immediate visibility, while ignoring those that are inflicting the most deaths and injuries.

I do not mean to suggest that the Commission's present hazard reduction activities do not have a risk component. Clearly, activities involving the products that we regulate are associated with some degree of risk, and the staff does attempt to measure the costs and benefits of particular regulations. But I question whether the process by which the Commission presently determines its agenda really reflects risk-based decisionmaking. Specifically, I question whether the process by which the Commission establishes its agenda includes an adequate analysis of accident causation. Without this analysis we risk trying to address behavior problems through Commission regulation directed at products. In an era where resources are not increasing, the Commission needs to return to a program of true risk-based decisionmaking that gives the public the greatest "product-safety bang" for its "regulatory agency buck."

## 2. Examples of Lack of Risk-Based Decisionmaking

### a. Child Safety Devices

The Commission's drift away from risk-based decisionmaking was one of the reasons that I voted not to support the Commission's initial budget request of \$46 million for fiscal year 1997. (The other reason is that I considered the request, which represented a 15% increase over the House Appropriations Committee recommendation for fiscal year 1996, to be too high.) This budget contained activities that I am persuaded are not well-founded on risk. An

example where I believe risk-based decisionmaking is being ignored is the project on child safety devices. I believe that any safety device on which people rely that does not perform its function is grounds for concern and possible Commission action. However, I know of no complaints or data of injury patterns that leads me to suspect that such devices pose an abnormal level of risk. We often say that the Commission is a "data-driven" agency, but no data (incidents, injuries, or complaints) were submitted in support of this project that demonstrates that child-safety devices that fail to perform their function represent a significant risk, or indeed, any risk at all. If the concern is that the manufacturers are promising more than they can deliver without compromising safety, then the proper agency to investigate and take action is the Federal Trade Commission.

b. Soft Contained Play Areas

Another example of a failure to follow risk-based decisionmaking was the project on soft contained play areas. The staff spent considerable time visiting areas in which these soft contained play areas are located and examining activities taking place there. This project was undertaken despite the facts that: (1) these play areas have been responsible for almost no serious injuries or deaths; and (2) the Commission has received no serious complaints about such play areas. (The only known death resulted from late night boisterous play

among teenagers; hardly the group or the hour ordinarily associated with the use of these play areas.) Eventually the staff produced a report. In this case, the Commission staff started investigating a product for which there was no evidence of unreasonable risk, concluded that there was no unreasonable risk associated with it, and produced a report telling the world that there was no unreasonable risk. (The staff did recommend a few improvements to soft contained play areas.) While I'm always glad to contribute the increase in knowledge in the world, I question whether this project was a wise use of Commission staff resources.

### 3. Examples of Following Principles of Risk-Based Decisionmaking.

I do not mean to suggest that none of the Commission's activity reflects wise application of the principles of risk-based decisionmaking. I am very proud of the infant suffocation project carried out by the Commission, which systematically investigated the various causes of infant suffocations. We found that face-down sleeping positions on soft bedding may contribute to up to 1,800 infant deaths per year, representing approximately 30% of the infants diagnosed as dying from Sudden Infant Death Syndrome (SIDS). Our warning against soft bedding for babies was incorporated into the national "Back to Sleep" public health campaign.

In addition, the recent Commission hearing on carbon monoxide detectors showed that the Commission is capable of tackling a complex technical issue involving emerging technology on a genuine hazard. The Compliance effort, carried out in concert with the manufacturer, to recall cradle swings that were an asphyxiation hazard, was highly effective and very commendable. The Commission's efforts to detain and seize hazardous fireworks at the docks is an excellent example of well-founded risk-based decisionmaking. Finally, the idea of baby safety showers, suggested by Elaine Brown, a CPSC staffer in our New York office, and effectively promoted by Chairman Brown, represents a very wise use of Commission resources to educate new mothers about everyday hazards to infants that might otherwise go unnoticed.

#### INTERNAL ALLOCATION OF RESOURCES

I believe that we can improve Commission operations through an assessment of how the Commission allocates its resources among its various activities. The five statutes that the Commission presently administers put great demands on the Commission and its staff. The Commission is first of all a regulatory body that promulgates product safety standards. It is also an enforcement body that takes action when products violate mandatory product safety standards or are otherwise unreasonably dangerous. It is also an adjudicatory body when it makes determinations of substantial product hazards

and orders corrective actions. But the mission of the Commission goes beyond its narrow role as a regulator. The Commission routinely assists private standards setting bodies in developing voluntary standards, whether or not the Commission has any mandatory rulemaking proceeding on the product covered by the voluntary standard. The Commission also gathers data and conducts research about the safety aspects of products within its jurisdiction. Finally, the Commission has the responsibility to educate the public about the various hazards associated even with reasonably safe products so that avoidable accidents do not occur.

Since there are an estimated 15,000 products under the Commission's jurisdiction, the Commission obviously is severely strained to fulfill its regulatory, enforcement, adjudicative, advisory and educational responsibilities for every one of them. At its height in about 1979, with over 900 full time equivalents (FTE's), the Commission had difficulty in succeeding with such a broadly defined mission. With budget and FTE levels about half of the level at their height, it is even more difficult for the Commission to do everything set out in the five laws that we administer.

Since about 1988, the share of the resources devoted to the Commission's Compliance function has increased. (Attachment 3 shows this increase.) The

Compliance function, that is, the enforcement of the laws administered by the Commission, is carried on by the Office of Compliance, divided into the Division of Administrative Litigation, the Division of Corrective Actions and the Division of Regulatory Management. The people in the offices of these three divisions do a great deal of very useful work advising interested persons on how to comply with the laws administered by the Commission and the regulations under those laws. In addition, when persons do not comply with the laws and regulations, Compliance is the function that files, if necessary, the Section 15 actions to force recalls, negotiates civil penalties in the cases where violations have occurred, and refer cases to the Department of Justice for civil or criminal prosecutions. Compliance is a necessary function within the Commission and I highly commend the dedicated men and women who enforce our laws and regulations.

At the same time, we must consider the issue of the resources devoted to the Commission's compliance function, and whether those resources are "purchasing" the greatest reductions in deaths and injuries. Compliance presently consumes about 34% of the Commission's funding and about 39% of our full-time equivalents. In addition, some of the work done in the Office of Hazard Identification and Reduction, particularly the Product Safety Assessments, is performed in support of Compliance. It is possible that the



Commission could achieve greater results in lives saved and injuries prevented by balancing resources in a way that permits greater participation in voluntary standards setting processes, and counting on market forces to induce responsible manufacturers, distributors and retailers to adhere to the voluntary standards. In addition to greater participation in voluntary standards setting processes, the Commission could devote additional resources to other hazard reduction activities. If a review found that selected non-Compliance hazard reduction activity could yield greater savings in lives and reductions in injuries, Compliance activity could concentrate on the small minority of companies that comply with neither voluntary nor mandatory standards, either because they are unaware of them, or because they simply choose to disregard them. I also believe that such a review may suggest that proportionately more resources ought to be allocated to Compliance. Compliance must, of course, concentrate its efforts on the products that pose the greatest risk of death or injury. The Commission is presently engaged in the exercise of developing a strategic plan that will help us answer the question of how to allocate resources among the various functions within the Commission to achieve the greatest benefits in lives saved and injuries prevented. I believe that it would be a useful exercise for the Commissioners, the Commission staff, and the staff of the Committee to examine the resources allocated to Compliance and to determine whether

Compliance activities yield the greatest return in lives saved and injuries prevented.

I want to emphasize that I am calling only for a review of resources allocated to Compliance, an exercise that is undertaken every year in connection with the budget, and is presently being undertaken in connection with the Commission's strategic plan. I suggest that Congress may want to examine this important issue. I believe that it is certain that the Commission and Congress would benefit if Congress, through whatever mechanism, conducted oversight on this crucial point.

#### **INTERNATIONAL HARMONIZATION**

The United States functions increasingly in an economy whose scope is world-wide. Products subject to the jurisdiction of the Commission flow into this country in increasing numbers from our trading partners. The Commission has a Memorandum of Understanding with the Customs Service to search for and detain defective products that pose a risk of injury to the American public. But detaining defective products is only a small part of working effectively with our trading partners to ensure reasonably safe products for the American public. At the present time the Commission staff talks regularly with officials from the Canadian Government to discuss consumer-related problems of mutual interest.

There is also a Memorandum of Understanding between the Commission and the Canadian Product Safety Branch in the Bureau of Consumer Affairs that implements Chapter 6 of the Free Trade Agreement between the Governments of Canada and the United States. There are ongoing discussions between the Commission staff and the Canadian authorities on the subject of the harmonization of standards concerning toy safety. Harmonization of international product safety standards also works to the benefit of American exporters who seek to penetrate foreign markets, but who may find their products at a disadvantage because of inconsistent product safety regulations.

It is clear to me that the Commission needs to do more to work with our major trading partners to harmonize international safety standards so that the citizens of all concerned nations have reasonably safe products with a minimum disruption of international commerce. This matter, however, is very much a question of resources. For the Commission staff to participate effectively in the international standards setting process, it requires a presence with the international standards setting bodies. That presence is, quite simply, not an inexpensive one to acquire and maintain. I hope that sufficient funding is made available to ensure Commission participation in the process of setting of international product safety standards.

## **DELEGATION**

My primary purpose in mentioning delegation in this testimony is to make Members of Congress, many of whom are unfamiliar with Commission operations, aware of the extent to which authority is delegated to the staff. I believe that some degree of delegation of authority to the staff is necessary for the Commission to function efficiently. The Commission can revoke delegations that it has made, and the Commissioners, not the staff, are accountable to Congress for the policies that the Commission follows and the actions that it takes. But I have found that new Commissioners, Members of Congress and members of the regulated community are consistently surprised when they learn how much authority has been delegated to the staff. Perhaps this delegation is perfectly appropriate and optimum, but I think that Congressional review is warranted.

## **CONCLUSION**

I want to thank the Subcommittee for holding this hearing and for its intention to move forward with the reauthorization of the Commission. I also want to thank the Subcommittee for the opportunity to submit written comments and to summarize them for you. I believe that the reauthorization process can be a useful and productive exercise for both the Commission and the Congress. I look forward to working with the Members of the Committee and its staff in

that process.

Thank you, Mr. Chairman.

# CHART I CPSC FUNDING HISTORY 1974-1997

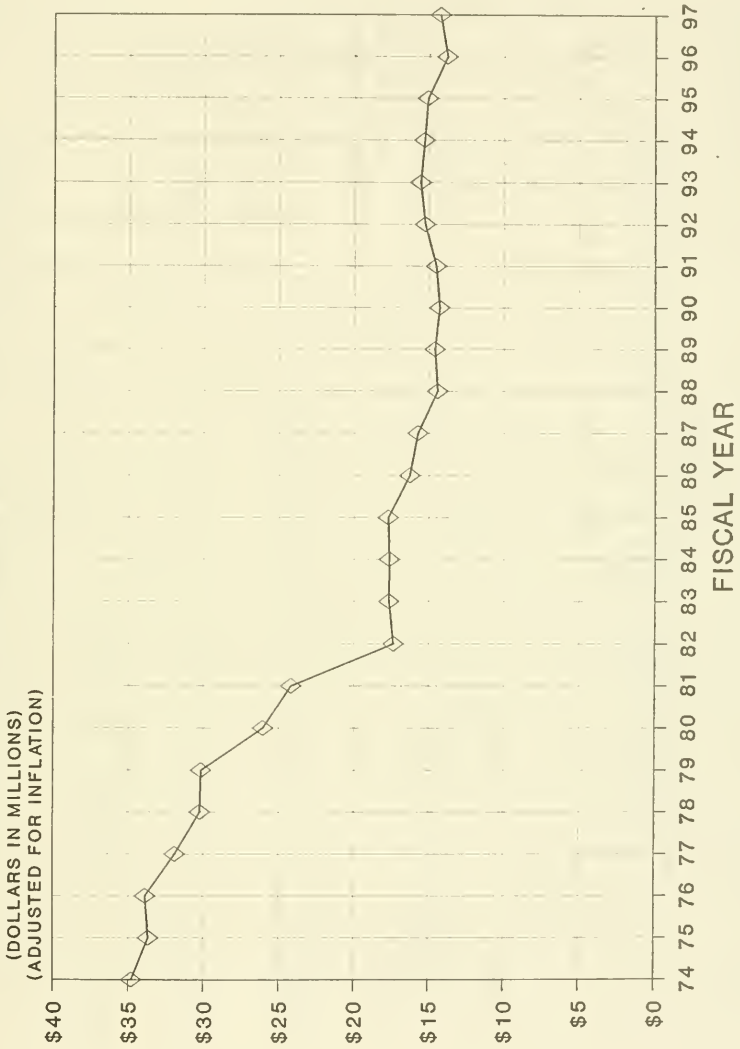
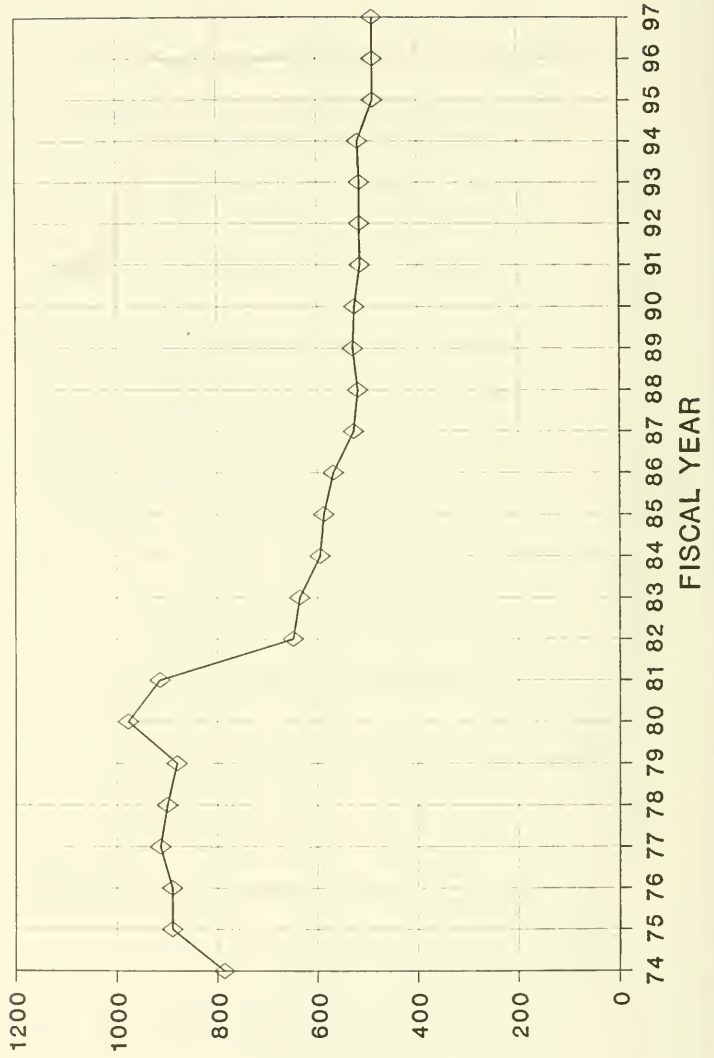


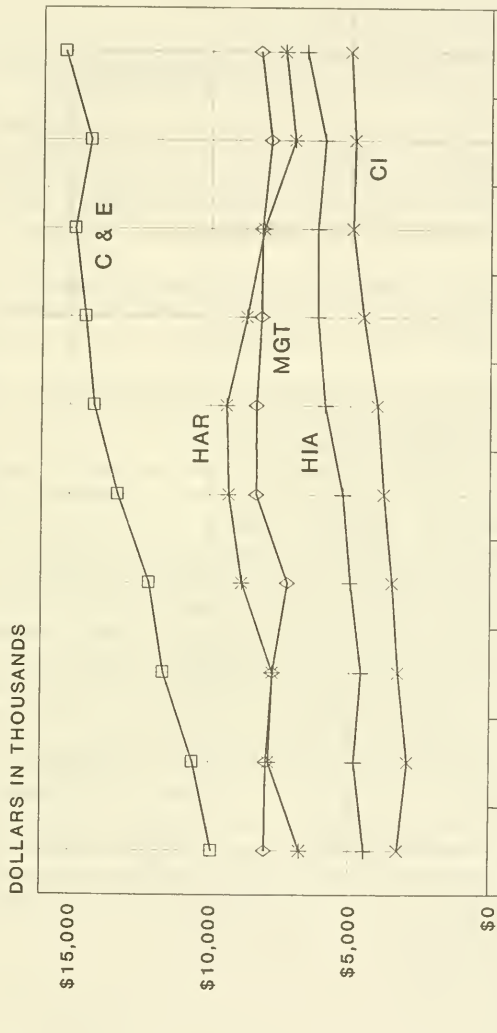
CHART II  
CPSC STAFFING HISTORY 1974-1997





Attachment 3

# HISTORICAL CHANGES 1988-1997



	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
HIA	\$4,447	\$4,826	\$4,585	\$4,975	\$5,255	\$5,904	\$6,183	\$6,199	\$5,936	\$6,605
HAR	\$6,744	\$7,876	\$7,748	\$8,851	\$9,395	\$9,432	\$8,713	\$8,117	\$7,020	\$7,372
C & E	\$9,900	\$10,583	\$11,654	\$12,173	\$13,295	\$14,137	\$14,475	\$14,863	\$14,304	\$15,236
CI	\$3,249	\$2,922	\$3,259	\$3,485	\$3,790	\$4,031	\$4,543	\$4,937	\$4,871	\$5,031
MGT	\$7,998	\$7,964	\$7,760	\$7,219	\$8,345	\$8,365	\$8,192	\$8,181	\$7,869	\$8,256

Senator GORTON. Thank you very much.  
Now, Commissioner Moore.

**STATEMENT OF THOMAS MOORE, COMMISSIONER, CONSUMER  
PRODUCT SAFETY COMMISSION**

Mr. MOORE. Thank you, Mr. Chairman. I want to say good morning to you and to the members of the subcommittee. I also cannot pass up this opportunity to say hello to many of my former staff colleagues. I recall with pleasure the collegiality, the debates over policy, and the debates over legislation, and I miss some of those good times.

I am pleased to be where I am, however, because the work we do here is equally beneficial to the American public. We also engage in a certain amount of collegiality in arriving at decisions at the Commission.

I want to say that I appreciate this opportunity to support the effort to reauthorize the Consumer Product Safety Commission, and I will summarize my statement.

The Consumer Product Safety Commission is charged by Congress with the critical responsibility to protect the public against unreasonable risk of injury or death from consumer products. In making a decision at the Commission personally, I do not bring a particular political philosophy to those decisionmaking processes. I try to follow the mandates of the statutes, to use reason, to examine the facts carefully, including the human factors that may be involved, because we do have at our disposal scientists who specialize in human behavior analysis, we look at all of those factors, including, as I said, the facts, and I try to come to a reasonable decision.

Now, this reauthorization process is rightly focused on the present and future CPSC agenda for meeting this large responsibility. Concerning the present mission and the legislative history of the CPSC, we find the Congress more than 20 years ago was quite prophetic in its concerns about technological advances, creating a variety of new products with the possibility of some having great potential for injury. It was prophetic in that more children in this country, as the chairman alluded to earlier, now die from unintentional injuries than from any disease.

Yesterday's mission is tomorrow's mission, as well. The age of the totally self-reliant individual is gone forever. Government's role in offering reasonable protections for unintentional injury is, I believe, obvious. Still, it is suggested by some that the marketplace of today can regulate itself for product safety. I will only remind this committee of ample evidence that the bottom-line mentality of the marketplace is, in general, still, and perhaps necessarily in some cases, it still reigns supreme.

Just look at corporate layoffs, look at declines in worker income, and most of all witness the bitter fights over the place of nicotine products in U.S. society today. More evidence is that in fiscal year 1995 alone the Commission took direct action against more than 43 million products through recalls, repairs, replacement, design changes, or seizures.

So what does the CPSC need from this committee to sustain its ability to effectively meet its responsibilities to the American consumer? I say modest funding growth and funding use flexibility

are critical if the Commission is to effectively address the risk of injury and death from present and future product safety hazard. You mentioned earlier that we have 29 million injuries a year. Think about that as being more than 10 percent of the total U.S. population in a given year. That is too many injuries, although they are coming down.

As for a specific focus for CPSC's future activity, in my short time on the Commission I have given a special interest in fire safety issues. I believe it is one of the most important areas in the Commission's jurisdiction as consumer products play a role in nearly every residential fire.

Additionally, protecting the most vulnerable segments of society is of special interest. Children, the elderly, low-income families are often disproportionately represented in certain injury and death statistics data.

For example, cities with higher percentages of persons below the poverty level have higher rates of residential fires and higher rates of death from those fires. Addressing fire safety in high poverty areas would dramatically lower related deaths and injuries across the board in our Nation.

Given adequate resources, I also feel that the Commission can play a major role in achieving the harmonization of consumer product safety standards in an increasingly international marketplace. I have had the pleasure to work with some Europeans on some consumer product safety issues, and they look at this country as a model as to what ought to be done in the area of consumer product safety. So working with industry, the Commission can work to ensure common international product safety standards and enforcement compatibility, and thereby enhance international trade and export opportunities without lowering U.S. safety standards.

In closing, I believe that reasoned Commission action should reflect a scientifically based pragmatic approach to resolving safety problems, and should continue to accept the primacy of the statutory mandate that regulation is only one of many options to be employed in addressing safety issues. Industry usually will respond positively, but if safety is not the goal of a certain industry or manufacturer, the Commission should retain full authority, full power and resources, to protect the American consumer expeditiously and without compromise.

I would like to thank the subcommittee again for allowing me to express these views, and I look forward to working with members of the committee and staff in the continuation of the reauthorization process. Thank you, Mr. Chairman.

[The prepared statement of Mr. Moore follows:]



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

Statement of  
Commissioner Thomas H. Moore  
before the  
Subcommittee on Consumer Affairs,  
Foreign Commerce and Tourism,  
Senate Committee on Commerce,  
Science, and Transportation

April 23, 1996



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Summary

The Consumer Product Safety Commission is the only federal agency that identifies and systematically acts to reduce consumer product safety hazards. As was anticipated at the founding of the Commission in 1972, the present state of vulnerability of consumers relates to an ever abundance and increasing variety of consumer products available for their personal use.

Today, America still suffers 21,400 deaths, 29 million injuries and \$200 billion in societal cost as a result of unfortunate encounters with consumer products. It is, therefore, obvious that the need for the work of the CPSC continues to be as essential today as it was at the time of its creation.

Furthermore, it is incumbent upon the Commission to operate in a proactive capacity. High numbers of injuries and deaths should not be required to necessitate action. Early identification of product hazards and trends is integral to reducing injuries and death. The reduction of injuries and deaths directly translates into the reduction of the tremendous societal costs associated with them.

As for specific priorities for CPSC's future activities, in my short time on the Commission, I have taken a special interest in fire safety issues. I believe it is one of the most important areas in the Commission's jurisdiction as consumer products play a role in nearly every residential fire.

In addition, protecting the most vulnerable segments of society is of special interest to me. Children, the elderly, and low income families are often disproportionately represented in certain injury and death statistics. This reality cannot be

ignored. In fact, it is clearly indicated that addressing product safety related concerns in vulnerable segments of society will result in a tremendous overall reduction of deaths and injuries.

The Commission must also ensure that product safety is maintained in the United States as an increasing number of consumer products are imported from the growing global marketplace.

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.

I believe that reasoned Commission action should reflect a scientifically based pragmatic approach to resolving safety problems and should continue to accept the primacy of the statutory mandate that regulation is only one of many options to be employed in addressing safety issues. Industry will usually respond reasonably, but if safety is not the goal of a certain industry or manufacturer, it is the responsibility of this Committee to recognize that the Commission should have full authority; full powers and, most importantly, adequate resources to protect the American consumer expeditiously and without compromise.





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Statement of  
Commissioner Thomas H. Moore  
before the  
Subcommittee on Consumer Affairs,  
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Science, and Transportation

April 23, 1996

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to advocate the reauthorization of the Consumer Product Safety Commission. The Commission is charged by the Congress with the critical responsibility of protecting the public against unreasonable risks of injury from consumer products. This is a crucial responsibility because the consequences of CPSC decisions may literally be of a life and death nature for individual consumers who could unknowingly be exposed to dangerous products.

As you are aware, the reauthorization proceedings are an exceedingly intensive undertaking for the CPSC, yet I welcome this reauthorization process because I believe it presents a unique opportunity to focus on the Commission's present and future agenda. Mr. Chairman, I believe that government is



entering a new era. It is an era where reasoned, and I emphasize the word reasoned, government action will be the rule, and not the exception.

#### PRODUCT SAFETY IN THE 90s

A relevant question that we must answer today concerns the market's ability to ensure that unsafe products will not find their way into the homes of unsuspecting consumers. In examining the legislative history of the statute creating the CPSC more than 20 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.

It has been postulated that there are safer products on the market today. While I don't dispute that many manufacturers are producing safer products, the facts show the risk of injury and death from unsafe consumer products continues to be enormous and

costly. More children in this country die from unintentional injuries than from any disease. Unintentional injuries are the leading cause of death for all Americans under the age of 45 and are the fourth leading cause of death in the nation.

Individuals 75 years of age and older are four times as likely to die of unintentional injuries than their representation in the population. Each year, there are about 21,000 deaths and 29 million injuries associated with consumer products under the Commission's jurisdiction. The societal cost associated with death, injuries and property damage from consumer products cost the nation about \$200 billion annually.

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 step ladder as opposed to a spinal cord injury from a robber's knife or bullet?

The age of the totally self-reliant individual is gone forever. 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 repairing 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 defective consumer products. In today's complex market place it is going to be exceedingly difficult for any amount of libertarian sophistry to overwhelm these obvious facts of modern life.

As for the suggestion that the modern, sophisticated market place of today can 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 as it was 20 plus years ago. Very simply put, competition and voluntary actions of 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.

#### ACTIVITIES TO ADDRESS 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 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 fiscal year 1995 alone, the Commission obtained corrective actions involving 413 items subject to its regulations. These actions covered more than fifteen million products units that violated the Commission's regulations. Another 268 corrective action plans were accepted involving approximately fourteen million product units that were not subject to mandatory standards, but which contained a product defect.

With the help of U.S. Customs Service, we detained an additional 13.5 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 protects not only the American consumer, but the American manufacturer as well.

Thus, in fiscal year 1995 alone, the Commission took direct action against more than 43 million product units through recalls, repairs, replacements, refunds, design changes or seizures. These millions of products were destined to fall into the hands of unsuspecting consumers and the consequences of these products reaching consumers could be death or serious injury to loved ones.

Funding flexibility is critical if the Commission is to 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 20 years ago, the Commission should have the capability to handle increasingly technologically complex products as well as the capability to uncover high injury risk 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.

#### COOPERATION AS A KEY ELEMENT

It can be asserted that certain principles of a reasonable regulatory process are undisputed. Clearly, the American public deserves a regulatory system that works for them, and not against them. We should have a system that protects and improves the health, safety, environment, and well-being of the American public without imposing unacceptable or unreasonable costs on society.

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.

At the Commission, 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.

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. Commission involvement has led to the adoption of many voluntary standards and has spurred others to be developed more quickly and more scientifically than they otherwise would have been. The Commission recognizes that, in this time of shrinking resources, voluntary action is preferable to mandatory regulations when such action is implemented timely and carried out productively and most importantly when such action adequately addresses a substantial product hazard.

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 rule-making process. So in this time of shrinking resources, the Commission is always looking for faster, more cost-efficient ways to reach our goals.

Similarly, the Commission has learned that finding and

rating 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 short time at the Commission, I have been very pleased to learn of the Commission's many successes. The agency, with a \$40 million budget for FY 1996 really pays for itself many times over by reducing societal costs associated with hazardous consumer products.

For example, the effectiveness of the mandatory standard for walk behind mowers showed a reduction in injuries of about 23,000 per year, with cost savings of about \$200 million per year.

Also, the recently issued rule on child-resistant cigarette lighters is projected to prevent 80 to 105 of the estimated 150 fire deaths each year associated with children under age 5 playing with lighters. The estimated annual net benefits are nearly \$400 million, consisting of reduction in deaths, injuries and property damage.

Furthermore, before safety standards were enacted, there were an estimated 150 to 200 infant deaths associated with baby cribs each year. These deaths have been reduced to about 50



annually and occur primarily in older, previously used cribs. Total saving to society is about \$500 to \$750 million per year.

Commission activities from just these three mandatory actions alone total over 1.2 billion dollars annually in savings to society. These savings for a one year period approach the total cumulative budget of the agency since its inception in 1973, and these are just a few of the many success stories of the Commission.

Prior to the establishment of the Commission, there was no national, centralized collection of injury data relating to consumer products. Now the Commission's national injury information clearinghouse stores case reports each year on over 300,000 injuries related to consumer products reported through the Commission's National Electronic Injury Surveillance System or "NEISS."

This information is extremely valuable in helping the Commission spot hazard patterns, set priorities, and give direction to product safety efforts. It is also valuable to industry, which can use the data to spot hazard patterns to help give direction to their own product safety efforts.

With additional resources, the expansion of the Commission's NEISS capabilities would be a plus for the Commission, industry and even for other agencies which share the Commission's NEISS injury data through interagency agreements.

## PRIORITIES

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.

As an example, although one of the great success stories in fire safety has been getting smoke detectors in residences (in 1972, less than 5% of all homes had a detector; now about 90% of homes have at least one detector), 60% of all home fire deaths occur in the 10% homes that do not have any smoke detectors at all. A recent NFPA study has shown that cities with higher percentages of persons living below the poverty level have higher rates of residential fires and higher rates of death from those fires. Addressing fire safety in these high poverty areas would have a resounding affect on deaths and injuries across-the-board.

I would also like to see greater emphasis at the Commission on education and information campaigns, but I appreciate that the overall effectiveness of such campaigns is hard to quantify. Nevertheless, the Commission's use of Video News Releases (VNRs) has proven to be an effective, inexpensive way of quickly reaching tens of millions of consumers with critical product

safety information.

Balancing the concerns of product safety in vulnerable populations will always be one of my more challenging tasks at the Commission. It just seems to naturally follow that the more educated the public is to the dangers of the use or misuse of a product, the more sensible their use of that product will be.

Additionally, the future success of the Commission in sustaining a lasting relationship with the public in order to effectuate safety over time using information and education campaigns depends on the adequate staffing of the Commission at the regional levels. The continuous process of educating the public is done more effectively from the local perspective and if there is a contemplation of restructuring the Commission, additional resources for adequate local staffing should be part of the consideration.

Recently, the prevention of deaths and injuries associated with carbon monoxide (CO) poisoning has also been a high priority item with the Commission. Hearings were held on February 21st and 22nd, 1996, to gather information on the effectiveness of CO detectors, health effects due to exposure to various levels of carbon monoxide, and the adequacy of the current voluntary standard for CO detectors. The prevention of the production of CO due to incomplete combustion in faulty appliances is the primary concern of the Commission. However, consumer confidence in CO detectors currently on the market also is a major concern.

Furthermore, the Commission is working very closely with industry to do all we can to prevent product-related fires. We are looking at ways to prevent fires caused by faulty home electrical wiring, particularly in older homes. Each year, there are 41,000 fires and 300 deaths involving home electrical wiring. Another potentially important home fire control project centers on the kitchen--range and oven appliance fires. With the support of the U.S. Fire Administration we've contracted with the National Institute of Standards and Technologies to determine a feasible technology to automatically shut off a range before a fire occurs. Range and oven fires are associated with almost 100,000 fires annually. In 1994, 3,425 deaths, 19,475 injuries, and \$4.2 billion in property damages were caused by 438,000 home fires in the U.S. range/oven appliance fires averaged about 20% of all home fires and approximately 20% of the injuries. So, you can see why we've targeted this problem.

We are also looking at ways to reduce fires associated with ignition of flammable vapors emanating from gas water heaters. Each year these fires cause at least 17 deaths, 316 injuries, and \$26 million in property damage.

I also strongly feel that the role of the Commission is increasingly 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.

Of course, the Commission's role in working together with industry on all of these exciting developments would hinge on the availability of adequate resources from the Congress.

## CONCLUSION

In closing, I think that consumers must take more responsibility for their own safety. This is something that all three Commissioners feel strongly about. You have heard the Chairman speak about the "Safety Triangle." Government, Industry, and Consumers all working together to make product safety a reality. And no doubt you have heard Commissioner Gall advocate parental responsibility. I think that consumers should be informed about the products they purchase and take reasonable care in using them.

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. I think that we will work actively to achieve safety goals, and I expect, as often the case, that 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.

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, Mr. Chairman

Senator GORTON. Chairman Brown, I think personally that one of the major steps forward in the Commission is the use of risk assessment in decisionmaking. I think you would agree with me that it is very clear that the American people do not know much about weighing risk. You can get a great headline out of a dramatic incident in which someone is killed or injured for which the chances are a billion to one against, but most citizens do not distinguish that incident from one in which the odds are a thousand to one.

Now, with that in mind, and this is practically a given, can there be, in your view, is there a potential and sometimes an actual conflict between a policy in which decisionmaking is risk-based, and the Commission's great reliance on high visibility through the news media? I think in many respects you rightly say that much of what you do, that much of the good you do, is accomplished by being visible. You are rightly proud of that television segment there. But cannot there be, and is not there often a very real conflict between publicity-based activities and a risk-based decisionmaking process?

Ms. BROWN. Mr. Chairman, I do not see a conflict, because what we do at the Commission every day is to seek to achieve balance. That is, when I came in as an advocate I realized that an advocate and a regulator are two different people. What I do at my desk is to achieve balance.

Risk-based decisionmaking and high visibility in fact I think, go hand in hand rather than conflict. As you saw from the television segment, that is a way to give people information about a variety of risks and educate them and get information out to a large number of people. We can cover many risks at one time without being sensational. One of the things I try to do in all of the media coverage is to be upbeat about it. This is the way that good parents can become better parents and grand parents, not to say oh, these are the terrible things that can happen.

The other kind of information that we must get out, besides education, is about our recall. Most of these, 99 percent of them, are cooperatively arrived at with the industry doing the recall. We have the cooperation of manufacturers and retailers in getting hazardous products off of store shelves, but we must get them out of people's homes. These have been deemed dangerous, or they violate our regulations.

Again, that is the kind of media attention that we can get in a very reasoned way.

When I reach 5 or 6 million people on Good Morning America, the language that I must use has been negotiated with the company whose product we are recalling. When we decide on risk-based decisionmaking, we have certain factors that we use, the degree of risk, the vulnerability of the population, the unforeseen nature of the risk, the frequency and severity of the injury, the addressability of hazard, and the cost benefit considerations. All of those go into our analysis of whether to do anything in public.

Senator GORTON. You answered my next question, and that is going to lead me down the road to Commissioner Gall, who I think implied to me, perhaps in a shorthand because there were the same number of accidents with baby walkers going downstairs as there were with toddlers going downstairs who weren't in baby walkers, that there may not have been an undue risk. Commis-



sioner Gall, if, in a given period of time a thousand pedestrians are killed by being hit by automobiles and 500 bicyclists are killed by being hit by automobiles, does that mean that bicycles are twice as safe as walking?

Ms. GALL. No, that is exactly my point, Mr. Chairman. You have to look at the causation of accidents.

Senator GORTON. It seems to me you have to look at how many people are involved.

Ms. GALL. Well, absolutely.

Senator GORTON. If there are a thousand pedestrians for every one bicyclist, obviously bicycling is more dangerous. Well, do all babies spend an equal amount of time in walkers as they spend out of walkers?

Ms. GALL. Well, that is something that the staff actually did look at. My point with baby walkers, one of my points, was that when you have the same number of children falling down the stairs who are not in baby walkers as you do in walkers, a better solution, rather than tinkering with a product that is responsible for some, but not all, of those injuries or deaths, would be to address the core problem, which is the stairs. Do we ban stairs? No. Do we ban babies? No. What we have to do is take a look at practical solutions that would address the problem of falling down stairs. The most obvious one is closing the door.

Senator GORTON. But when you tell me there are a certain number of accidents in baby walkers and a certain number outside, you are giving me a meaningless statistic unless I know how many babies spend how much time in baby walkers.

Ms. GALL. And that is something we did look at. That was part of our investigation of the issue, how much time on the average children spend in baby walkers as opposed to out of baby walkers.

Senator GORTON. Good. That was the point I wanted to make.

Ms. GALL. There were a number of studies that we read that also addressed that issue.

Senator GORTON. And that is an element, I take it Chairman Brown, in any risk-based decision, is the degree of utilization of a particular product, is it not?

Ms. BROWN. Of course, Mr. Chairman.

Ms. GALL. We call that exposure rate, the number of products out there, the number of times it is used per day or per year, that constitutes an exposure rate, what your exposure is to potential risk.

Senator GORTON. Fine.

Back to you again, Ms. Brown. I would like to know what your definition of voluntary action is. I gather there is a difference of opinion between you and some of the private sector with which you deal with respect to that, and some of them are going to testify that they do not actually regard action as voluntary when they are subject to an immediate threat that if they do not do something the formal processes of the Commission are going to come down upon them. Do you want to comment on that? Is it voluntary in your view as long as it is not enforced by a legal action?

Ms. BROWN. Voluntary, in my view, certainly does not mean that there then is a threat of mandatory if you do not agree to a certain action. Since the Agency's inception in 1973 we have done 300 vol-

untary standards; for instance, with the independent testing organizations who bring in all of industry and all representatives of a product. I think that I can just mention here that the ASTM, the American Society for Testing Materials, the largest organization, is going to present me with the Margaret Dana award, which is awarded to a single individual for outstanding contributions in development of voluntary consumer product standards.

Senator GORTON. I am sorry, what is the name of the organization?

Ms. BROWN. It is the American Society of Testing and Materials (ASTM). They are the oldest—they were organized in 1898. They are the nation's largest and oldest voluntary standard organization, with 37,000 members in 91 countries, and they have published over 10,000 voluntary standards. I do not think that ASTM, a highly regarded standards organization, would reward an individual with their coveted award for his or her coercive practices.

Senator GORTON. I am going to have a couple more questions, but I want to give Senator Exon, the Ranking Member on the subcommittee, an opportunity to ask questions.

Senator EXON. Thank you, Mr. Chairman. I would first like to ask unanimous consent a statement by Senator Breaux be included in the record at this point.

Senator GORTON. Without objection.

#### STATEMENT OF SENATOR BREAUX

[The statement of Senator Breaux follows:]

##### PREPARED STATEMENT OF SENATOR BREAUX

Mr. Chairman, thank you for holding this hearing to discuss the reauthorization of the Consumer Product Safety Commission. I especially want to recognize and welcome Commissioner Thomas Moore, who as you may remember served as my Legislative Counsel to the Commerce Committee before his appointment to the Commission.

Too often we take the safety of the goods and services we use daily for granted. Our national economic policy over the years has encouraged an outburst of consumer choice and diversity of consumer products. Not only are these goods more varied, complicated and competitive than ever before, but increasingly they are being produced in foreign countries not subject to the jurisdiction of the United States.

I am a strong advocate of free and fair trade, but I also recognize that free and fair trade is not enough. We must also ensure that the products we import and export, as well as produce domestically, are safe for the eventual users. The increasing emphasis we see on prices and how fast a product can be brought to market will make safety an even greater concern. Efforts to weaken product liability laws in the U.S. will contribute as well.

Increased imports and price competition, more complicated products, a growing emphasis on bringing goods to market as quickly as possible, as well as efforts to reform the safety incentives of US product liability laws all will make the Consumer Product Safety Commission even more important to Americans in the days to come.

Thank you again, Mr. Chairman for calling this important hearing today.

Senator EXON. Let me, if I might—

Ms. BROWN. I hate to interrupt. I am deaf in one ear, and if I do not see your lips—

Senator EXON. Let me ask you the question that I suspect—and correct me if I am wrong, might be somewhat of a problem with the Commission. You have, as I understand it, full jurisdiction over foreign imports, as you do for toys produced in the United States, is that correct?

Ms. BROWN. Yes, sir.

Senator EXON. What percentage—if you have the figures available, what percentage of total volume of toys sold in the United States is shipped in from abroad, and what percentage of it is produced domestically?

Ms. BROWN. I may not be able to answer that. David, can you help?

David Schmeltzer, Head of Compliance. I do not want to give you the wrong information, Senator.

Mr. SCHMELTZER. The numbers keep increasing. It is clear the pattern toward importing toys has grown more and more through the years, and I believe, based on conversations I have had with the Toy Manufacturers' Association, that it is up there in the 70 to 80 percent range.

Senator EXON. 70 to 80 percent imported toys?

Mr. SCHMELTZER. Yes.

Senator EXON. Have you and the Commission had generally cooperation from the 20 percent or so of the toys that are produced by American manufacturers? Has there been a good working relationship? I am sure you have had some problems, but overall, would you and the Commission describe your working relationship with the domestic toy manufacturers as good, fair, satisfactory, excellent?

Ms. BROWN. I would describe it as excellent, Senator. We have an excellent relationship, particularly with the CEO's of the individual toy companies, and also the toy retailers. It has been a very productive, cooperative relationship.

Senator EXON. Would that same description be true of foreign toy manufacturers?

Ms. BROWN. We have had, with foreign nations and foreign manufacturers, a more complicated relationship, because they do not always understand our laws and regulations, so we have undertaken an education program. David Schmeltzer has been to China twice. David, you might talk further, and we have worked with the country of India on their imports of flammable fabrics, so you just might elaborate on that.

Mr. SCHMELTZER. We have tried to have a better relationship particularly with the Chinese manufacturers, and a great percentage of toys are manufactured in China, but our close relationship is really with the importers, because regardless of where the toy is made we have jurisdiction over the importer who brings the toys in and we work very closely with the Customs Service and with the toy manufacturers and with the Toy Manufacturers Association toward enlightening the Chinese, or any product made overseas.

Senator EXON. Has there been any movement or thought toward international standards in this area, or is that too far removed from reality?

Ms. BROWN. No, that certainly is not far removed. The international harmonization of standards, as long as we maintain the safe standards that the United States has, that we do not harmonize down is very important, and we are moving in that direction now.

Last year, we organized an international conference with the late Ron Brown, Mickey Kantor, Toys R Us CEO Michael Goldstein,



and had a conference on international harmonization. I would like to submit the proceedings of this excellent conference for the record, if I may.

Tomorrow Canadian Government officials will meet with me and my staff to review our memorandum of understanding with Canada and discuss how we can better cooperate in a wide range of program areas. We are working closely with the voluntary standards organizations such as ASTM and ANSI to place more emphasis on safety, too, as they develop international voluntary standards.

These efforts cut across many areas of our programs, and it is something that we are emphasizing at the present time.

Senator EXON. I want to salute you for your excellent work. I must say from a personal standpoint my wife and I have been blessed with eight wonderful grandchildren. It seems to me that we worry and are more concerned about the grandchildren than we ever were about our own. I do not know why that is. [Laughter.]

Senator EXON. I suspect we were just better parents. At least we have had one or two incidents with our grandchildren, and when you mentioned the crib in there, I remember one a few years ago where one of our granddaughters got caught between the mattress in the middle of the night, and if she had not have cried, why, she would not have made it through.

So these are very, very important things, and I salute you for your work.

I suspect that there has to be some adversarial relationship between you and the manufacturers. That would only be normal.

On the other hand, I am wondering with regard to the lawsuits, there must be many of them brought. Have there been cases where civil action has been brought for damages against the toy manufacturer where the allegation has been made in the courts that the toy manufacturer did not follow the rules and guidelines by the organization that you work very hard to make sure is responsible and reasonable?

Likewise, on the other side of the coin, are there not instances where the defense lawyers in these suits have been able to point to the fact that the toy manufacturer in this particular case has, indeed, cooperated with and been in lockstep with your overseeing organization?

Does not this work two ways with regard to lawsuits?

Ms. BROWN. In regard to product liability, Senator, which is something that we as a Commission have not taken a position on, certainly, if the Congress is trying to address what they consider some of the excesses, it would be very important to have a very strong Consumer Product Safety Commission so that there is not a squeeze, so you are not trying to restrict both ends. We can protect against some of the injuries and thus reduce the number of product liability suits.

As to the first part of your question on civil penalties, we do work cooperatively with industry and with the toy manufacturers, of course, but when a firm violates Commission statutes and regulations and a civil penalty is appropriate, we do seek it, and have been proactive in that, but it has not been more excessive with the toy industry than with any place else. They are, I would say, a particularly responsible industry.

Senator EXON. Mr. Chairman, thank you very much for your courtesy and the members of the Commission. I may have some additional questions for the record that I will submit, and I hope that any questions that I do submit can be answered in a timely fashion. Thank you, Mr. Chairman.

Senator GORTON. Madam Chairman, one more question. You state that you are about to create a small business ombudsman in the agency. What perceived problems that small businesses have with the Commission are designed to be dealt with by that appointment?

Ms. BROWN. Well, we do many things to try and help small businesses to understand our regulations so that they can comply in advance. We are not seeking to play "Gotcha" after a problem, we are seeking to avert problems.

We give them copies of new regulations, discuss regulations, and participate in industry seminars. We give out recall handbooks on reporting requirement and how to conduct necessary recalls, but sometimes they do not understand what are the reporting requirements, what are the necessary recalls that must be conducted. We thought that this conference and the appointment of one special point person within the agency who a small business could feel comfortable coming to, would help with any communication difficulties, or any feelings of timidity on the part of small business working with an agency.

Senator GORTON. Do you think it is likely to have any impact on the substance of what you do as a Commission?

Ms. BROWN. I think at this point we always consider the size and the financial condition of the firm. We are very cognizant of problems with small business. I think what it will do is increase the reporting, increase the cooperation, and perhaps decrease the number of recalls, because the businesses will understand our laws better.

Senator GORTON. Commissioner Gall, I am going to double up and ask two questions in one here.

You have a couple of areas in your written testimony in which you raise questions about the way in which the Commission operates, and I would like to get your oral comments on each of them.

One of them is that those who are regulated are consistently surprised when they learn how much authority has been delegated to the staff. I do not know whether you mean to the staff or the Commission as an entity.

You also are impliedly critical of the internal resource allocation within the Commission. Would you expand a little bit on each of those, and tell us what you think ought to be changed?

Ms. GALL. Thank you. First let me say that I think often people are amazed to see how much authority has been delegated to staff within the Commission.

Senator GORTON. Not how much power the Commission has itself.

Ms. GALL. No. I am talking about delegation of authority from the Commissioners to the staff. I think whether it is in terms of compliance activities and negotiating settlements, civil penalties and that sort of thing to press releases—there are a whole host of

things that we deal with on a day-to-day basis that have been delegated to staff.

Some of that is necessary. We could not, certainly, spend all of our time from day to day going through every single compliance activity, but I think there is a middle ground that we should be looking at.

I think certainly, as we move toward the Government Performance and Results Act activities that we are now undertaking, I am hoping that will instill a greater discipline with regard to internal resources and how they are used, and perhaps address some questions related to delegations of authority.

In terms of internal resources, about one-third of our resources go to compliance, and our compliance staff does an excellent job in recalls and other activities that they undertake.

However, as I said in my opening statement, I am concerned that we spend more time looking at the causation of accidents. Perhaps it is necessary to move some of those resources toward those types of activities at the initial stages of material information coming from emergency room hospital reports, or our coroner reports, to look back at what is the cause of this product accident.

One good case comes to mind: the baby bath seats. There was an effort to regulate baby bath seats because some children had died. We looked back, I looked back, I read all the in-depth investigations, and discovered—I will give you a couple of examples—a father who put his baby in a bathtub, in a bath seat, went downstairs, fixed his supper, sat down, ate his supper, read the paper, and then another child came and told him after about an hour of being away from the baby in the tub that the baby was in trouble.

We had another case of a day care provider who put a baby in a stationary tub in the laundry room with some water in a tub, in a bath seat, went to answer the phone, talked on the phone, went over to find a videotape for another child in her care, went into the bedroom and talked to her daughter for about 20 minutes, and then came back to discover that water from the laundry room had gone into the living room, the dining room, and the kitchen. The baby died of thermal burns and drowning.

These are the kinds of cases on which we are supposed to judge whether or not bath seats are safe products. I question that.

Fortunately, a majority of the Commission stopped that activity, and we went on to other things.

Then I discovered that we had a drowning study underway to determine why babies drown in bathtubs. Now, that is not public yet, because it has not been published, and so I cannot reveal the exact numbers.

But I will tell you this. When I first heard of it, I went to the Chairman and said, I do not think that is a good use of our staff resources, because it is obvious why babies drown in bathtubs, because they are left alone. I cannot give you the details of the report yet because it is not public, but I can safely tell you that babies drown in bathtubs because they are left alone for an extended period of time.

Those resources could have been applied to other activities, perhaps additional investigations to see the cause behind some of



these accidents, or perhaps could have been, as Senator Exon brought up, the issue of harmonization of international standards.

That is a very important issue for domestic industries and for all of us as consumers and taxpayers, and I think perhaps some of the resources that we are devoting to activities that do not have a high consumer bang for the taxpayer buck could be applied to these other activities that I consider to be important.

We had a press release, for example, that came out on snowboarding safety. The press release said that people fall off snowboards, and that is how they get hurt, and that perhaps you should take lessons.

Well, needless to say, Fox Morning News got a hold of that and had a field day with it, and some Members of Congress introduced it into the Congressional Record, and that did not really provide anything for the American taxpayers' money.

There are a number of other activities like that that I could go on and talk about, but let me assure all of you that we do do activities that are very important to saving lives across the country. Certainly our cigarette lighter safety standard will probably save more lives by that one action than anything else that we have undertaken in the 20 years of the existence of CPSC.

Senator GORTON. A cigarette snuffer might do even better. [Laughter.]

Ms. GALL. I am afraid we cannot get into that. That is somebody else's jurisdiction, sir.

Senator GORTON. Thank you. Let me ask you one more set of questions. I understand that you are strongly in favor of a risk-based decisionmaking, but have some criticisms about the cautious way in which it is being used by the Commission. Do you mind expounding a little on your views, or have I misstated your views?

Ms. GALL. My concern is that we are not applying, in my view, risk-based decisionmaking to the range of activities that we have underway at the Commission.

Certainly one activity in the compliance area would be glass doorknobs. We were informed that two people cut their hand on glass doorknobs that shattered. While I am sorry to hear that, you know, I do not know that I would have moved the Commission forward to undertake an 8,000 doorknob recall based on that situation.

Another one is vending machines. This past year—in the past, in the seventies and early eighties, we had problems with vending machines, people trying to swipe a can of soda or something like that—

Senator GORTON. Whoa, wait a minute. These instances are very interesting, but is your quarrel that there are too many times that risk-based—that the decision has not involved a determination of the degree of risk, or is it that you just ignored risk entirely, or is it that you make recalls when the risk is so remote as not to be worthwhile?

Ms. GALL. I think risk-based decisionmaking should be a management tool that is used across the board. Whether it is press release activity, whether it is epidemiology activity, whether it is compliance or field investigation activity, I think it needs to be



used from the very inception of our awareness of products involved in accidents through the end result.

My concern is that we are not always using the principles of risk-based decisionmaking to decide those management decisions we have to make about where we put our resources.

Do we spend time on one issue as opposed to another?

I see some real needs for us, for example, in the harmonization of international standards. I see another need in spending more time and more money on causation of incidents and accidents. I see us doing some things that really do not have much bang for the buck, and I think if we used those principles, then we would not spend that kind of money on those activities.

Senator GORTON. Commissioner Moore, Commissioner Gall has been really quite eloquent on her view that you should not regulate a product when the problem is really with consumer behavior, with babies in the bath being an example of that.

Do you agree or disagree with that point of view? Give me your insight into a couple of the subjects we have been discussing in the Q and A time.

Mr. MOORE. Well, in terms of the baby in the bathtub, you have to initially get engaged to find out what the basic facts are. You have to do that. You have to spend some staff time investigating and collecting the facts, and then coming to some kind of decision.

I was not there at the time this was before the Commission, so I do not know how far we proceeded with that, but I would have no objection initially moving into that area and carefully gathering the facts and making the decision. The same about the doorknobs. I do not know what all the facts are concerning the doorknobs.

Senator GORTON. You are saying you need to engage in the investigation even to come up with a negative answer.

Mr. MOORE. Precisely, one way or the other.

Now, in terms of the baby walker situation, as an example, now in some instances, as in this one, the Commission's investigations and discussions with industry have led to positive safety developments—even though I do not think we ever reached a decision about banning baby walkers, that decision has never come up. On the other hand, the investigation itself and discussions with industry have led to the development of new and safer products in that area.

In other words, some companies have come out with pseudo walker devices that do not move, but allow the same result in terms of a child having some activity, but they are stationary, and those products are now available to parents, and I suspect as a direct result of our engagement in discussing the problems.

Even if there are deaths or injuries to children outside of the walker, if you could eliminate without undue burden on industry one source of injuries and deaths which might be related to the walker, I think you have done a service to the parents and to industry, because the result is a more effective product.

So in many instances, where we are investigating and we are discussing what can we do about this problem with industry, they take a careful look to see if something can be done. In some instances you get a much more effective product and the result is less injuries without any banning or any regulations.

So investigating and discussing potential remedies when you have had a number of serious problems result in oftentimes some wonderful solutions.

Now, I give you another example. A month or so ago I had a meeting with representatives of the chain saw industry. Chain saws are inherently dangerous, as I understand them, based upon a kickback problem. Years ago there was a more serious kickback problem. They kicked back so much that many users of the product were being injured, and some killed.

The industry began working with us very reluctantly because they did not appreciate our involvement. But over a period of time they engaged themselves in the solution, and actually came up with a lower kick back angle than we recommended; now they say that our work with them has been most positive, and they are among our best friends out there.

I was not around at that time, but if the CPSC had not—if we had said, look, this product is dangerous, and consumers are going to get injured using it; why bother with it, let's ban it, or had made some other kind of impatient decision. But fact that we got engaged, became patiently engaged, and used our scientists and engineers to work with their people, and that we negotiated over a long period of time—they reluctantly gradually and came along and said, yes, you are right, we can do something about this.

We offer solutions that may or may not be the best solutions initially, and they say, well, we can do this, but we cannot do that. We negotiate these things with industry over a period of time.

This business about the voluntary standards, maybe in some instances they may not feel that it is voluntary, but once they get involved and we come up with a better solution, that is what we are about. I think that is what the statute contemplates; to have the Commission try to resolve a problem in a reasonable way by negotiating, and by trying to get industry engaged in coming up with a better product, if the design is the reason for the problem.

We have also looked at in-line skates. We have not tried to stop people from skating since I have been at the agency, but we have seen the graph lines showing that the injuries are going up for in-line skaters.

Now, the in-line skates are not inherently dangerous. I mean, it is not a defect in the product. But we have said, look, if you are going to use these things, you ought to have safety gear, and that is the best we can do in that particular case.

We look at human behavior. Maybe it is wrong for a parent to leave a child for a long period of time. If you study—and I am not a scientist in this area, but I prefer to see what behavioral scientists say about parents usual behavior under these circumstances.

If you get situations where enough parents are creating the same kind of risks for the innocent children—the child is innocent; the child cannot protect himself—what do we do about that? If enough of this is happening, we may be able to say, improve this product by redesign, if that is a reasonable solution.

I think we had a problem also with the five gallon buckets, the buckets that are used mainly at construction sites. Parents were taking these products for home use and leaving water in them. It

does not take much water for a child to drown. Children would fall in the bucket and drown.

We looked at this situation carefully. We had to investigate it. We got the information out there. We did not ban the buckets, but we do say put some kind of warning label on them so that a parent would be aware and say, look, if I am not careful with this bucket, I could have a problem.

So that is basically how I see it.

Senator GORTON. I want to thank all of you.

Senator GORTON. I do have another panel, and I have to leave time for it. So, Madam Chairman and Commissioners, thank you very much for your enlightening testimony and your cooperation.

Chairman BROWN. Thank you so much, Mr. Chairman.

Senator GORTON. We will call up the second panel at this point.

Good, it looks like we have all of you here. I am going to ask you to speak in the order in which your names appear on our roster here today. I will ask your indulgence in limiting your oral remarks to 5 minutes apiece, as there are five of you. In each case, your entire testimony will be included in the record.

Mr. Miller, you are first on our list. I do remember your help to us in formulating the Toy Safety Act a number of years ago, and the other work that you have done with respect to consumer product safety. So I welcome you, as I do all of the rest, to share with us your insights on the way in which the Act is being administered at the present time and what could be done to improve it. So we will start with you.

#### STATEMENT OF DAVID A. MILLER, PRESIDENT, TOY MANUFACTURERS OF AMERICA, INC.

Mr. MILLER. Thank you, Senator Gorton. You preempted me from thanking you first for all the wisdom and insight and balance that you brought to the discussions last year, when new toy labeling legislation was fashioned.

As you know, I am President of Toy Manufacturers of America, and we are the industry association. Prior to assuming this job, I spent 20 years as chairman and owner of a stuffed toy manufacturing company, and so not only do I speak for my colleagues, but from experience myself.

The toy industry is probably the most regulated industry of any consumer product industry under the Consumer Product Safety Commission. On page 2 of our statement, you will see all the different regulations that we must comply with. That statement is not made as a complaint, but just to show the broad range of regulation that is in place and, in our opinion, working successfully.

The first point I would like to make is that we support keeping the CPSC in its current form, as an independent regulatory agency. I do not think I preempt my colleague from the National Association of Manufacturers in saying that most of the members that have participated in our coalition feel the same way, and for the same reasons.

From my own experience as a toy manufacturer and having been regulated both by the Food and Drug Administration and the CPSC, I can tell you that both the public and industry is better



served by the current structure. It works well, and we have given you many good reasons in our statement as to why.

We also support formalizing the CPSC regarding international harmonization of toy standards. The staff, in their submissions, has proposed a new Section 29(f), and we support the proposal the staff has made in principle. We are an international industry. Most of our members do business around the world, both in producing product and in selling product. So we need the Commission badly around the world. It is widely respected. We have a system that works better than any other in the world.

We would put one other provision in the staff recommendation. That is that any standard that we adopt from another country—and there are some that we should—should be risk-based hazard analysis proven. We do a lot of research in this country. We have an information system on hazards. There are many regulations being bandied about the world today that are not risk based, and are based solely on anecdotal evidence. We know that that is not an effective way to regulate. So I would add that not so much to remind the Commission, because I think they understand that mandate, but I think it is more to let the rest of the world know that we demand these standards in that form.

There is one area where we probably differ from our retail colleagues, who are going to testify. I would like to read from my statement there, if I may. Legislation should be enacted that prohibits the staff from informing customers—customers being retailers—of a preliminary hazard determination in a report filed under Section 15(b) unless the requirements of Section 6(b)(5) have been met. Such disclosures to the public are prohibited, and such actions have resulted in the immediate return of merchandise to manufacturers while it was still negotiating or contesting enforcement action and the existence of a substantial hazard.

The reality—I understand the concern of the retailers, and I know that they want to be informed. They have every right to be informed, but only after the Commission has made a determination that there is a substantial hazard. What happens as a practical matter—and it is understandable and I hate to be critical of our best customers in the United States—but if you are selling 100,000 different products in your stores, as a Kmart or a Walmart or a Target might, if you have any inkling that you are going to have a product on your hand which is not as safe as you would like, you are going to return it to your vendor. You are not going to wait. You are not going to hear out the whole story. In the case of small manufacturers, this could prove to be disastrous.

So, due process is something that should be observed. I think that this committee should look at it very closely.

Finally, I would like to support the suggestion that the National Electronic Injury Surveillance System be enhanced by the Commission. Today we examine product-related injuries. We really should be investigating product-caused injuries. So that is our final suggestion. I thank you for your time, sir.

[The prepared statement of Mr. Miller follows:]

**TESTIMONY OF**  
**DAVID A. MILLER,**  
**PRESIDENT OF TOY MANUFACTURERS OF AMERICA, INC.**

**SUBMITTED BEFORE THE SUBCOMMITTEE ON CONSUMER AFFAIRS,  
FOREIGN COMMERCE AND TOURISM**

**SENATE COMMITTEE ON COMMERCE, SCIENCE AND  
TRANSPORTATION**

**APRIL 23, 1996**

My name is David A. Miller. I am President of the Toy Manufacturers of America, Inc., a trade association whose members account for approximately \$17.5 billion of the \$21 billion in retail sales of toys, games and related items annually in the United States. Members of TMA account for approximately 85 percent of the two billion toys sold in the United States annually. The American toy industry is the world's largest toy industry. It is probably the most regulated industry of all those within the jurisdiction of the Commission. It is regulated pursuant to the provisions of the Consumer Product Safety Act and the Federal Hazardous Substances Act in the following areas:

Use and Abuse Testing Procedures	Lead-in-Paint on Toys and
Sharp Point Technical Requirements	Children's Products
Sharp Edge Technical Requirements	Labeling Requirements for Art Materials
Small Parts	Ban on Small Balls
Rattles	Choking Incident Reporting Requirements
Pacifiers	Substantial Product Hazard Reports
Pacifier Nitrosamine Enforcement Policy	Reports Submitted Under Section 37 of
Electrically Operated Toys & Children's Products	the Consumer Product Safety Act
Toxic Substances and Highly Toxic Substances	Sound Level of Toy Caps Test Method
Irritants and Strong Sensitizers	Labeling Certain Toys and Games
Highly Flammable and Flammable Substances	Intended for Children, Ages 3
Combustible Substances	to Under 6 as well as Small
	Balls, Marbles and Balloons

I would like to point out that the TMA's relationship with the Commission goes beyond enforcement issues to cooperative efforts in consumer education, manufacturer education, both in the United States and foreign countries, and harmonization of standards with other countries.

Having described the size and nature of the industry and its regulation by the Commission, let me now address several areas which I believe will improve the operation of the Commission under the Consumer Product Safety Act and the Transferred Acts.

1. Keep Consumer Product Safety Commission An Independent Regulatory Agency

The Commission's status as an independent regulatory agency should be maintained. Recent proposals concerning the agency include shifting it to an Executive Branch or department of the federal government and replacing the Commission as a collegial body with a single administrator. We oppose such changes. The Commission should not be restructured. It should not be subject to partisan influence that would inevitably follow its transfer to an Executive Branch or cabinet department. The Commission's functions should be carried out with the impartiality and neutrality that the public has a right to expect of regulatory agencies formed for its protection. In our opinion, a collegial body of independent Commissioners is both more desirable and more effective in securing and maintaining the controlled use of Commission authority in the interest of public safety. Substituting a single administrator would inevitably politicize the agency.

At the present, the Commission is a carefully balanced collegial body appointed by the President with the advice and consent of the Senate. Its Commissioners serve in staggered terms. No more than three of the Commissioners may be affiliated with the same political party when the Commission is constituted as a five member body. When operating with three Commissioners, no more than two are affiliated with the same political party. This mode of an independent regulatory agency follows that which was created by Congress in other regulatory agencies such as the Federal Trade Commission and Federal Communications



Commission. It is designed to provide balance, impartiality and diversity in a setting far removed from possible partisan influence. It should not be changed.

2. Formalize CPSC Activity Regarding International Harmonization

The toy industry in the United States functions increasingly in an economic sphere whose scope is worldwide. A significant number of the industry's products are made in the Far East and in China. Almost half of the profits of many of the industry's largest manufacturers come from sales in Europe. The North American Free Trade Agreement (NAFTA) calls for harmonization of standards between the United States, Canada and Mexico as does the Free Trade Agreement between the United States and Canada. The American toy industry has met with representatives of the Canadian Toy Association, the Canadian Product Safety Branch, and representatives of the Commission and agreed to harmonization of standards between United States and Canada. While the standards are similar, there are differences. Several technical discussions have taken place. A better standard will be the result.

Harmonization of international product safety standards works to the benefit of American manufacturers seeking to penetrate foreign markets and who may find their products at a disadvantage because of inconsistent product safety regulations. The Commission has already been very cooperative and encouraging in this area. Apart from working with the Canadians and Mexicans under NAFTA, the Commission should also be empowered to do more work with our major overseas trading partners to harmonize international safety standards, thus ensuring the manufacture of reasonably safe products with minimal disruption of international commerce. Although the Commission may not require additional legislation to act in the areas of international harmonization, we believe this area of activity should be referenced in the Act and the processes necessary to harmonize product safety

regulations should be facilitated.

Some important and critical harmonization activity is taking place now in standards setting bodies such as International Standards Organization (ISO). We recognize that a Commission presence within international standards setting bodies is not an inexpensive process to acquire and to maintain. We believe, however, that the Commission should be directed to allocate its resources to ensure and support such international harmonization.

### 3. Address Excessive Commission Delegation to the Staff

The Commission should be directed to systematically review and assess the number of functions delegated to its various directorates. While we recognize that delegation is necessary to ensure the functioning of the Commission, we believe that all Commission press releases issued on Commission letterhead should not be released without the review and concurrence of all the Commissioners. At the present time, such review exists only for press releases announcing Commission votes or dealing with Class "A" hazards. Public pronouncements on Commission letterhead outside the regular framework of the Commission's collegial system were never contemplated and should not be countenanced. We believe this is a problem which the Commission is currently addressing. Nevertheless, if it is not corrected by the Commission, it should be remedied by Congress.

We further believe that there should be greater involvement by the Commissioners themselves in actions negotiated by the staff, more specifically in recalls made under Section 15 of the Act. These recalls should receive direct Commission review and involvement. Moreover, we believe that Commission directed action under Section 15 of the Consumer Product Safety Act should either be required to meet the test of a cost benefit analysis or should be limited by language which requires the Commission to impose the least burdensome

requirement which prevents or adequately reduces the substantial hazard presented.

Until recently the Commission staff has not made disclosure to customers, distributors, wholesalers, and retailers of a product which is the subject of a Section 15(b) report, apparently believing that they were part of the "public" to which disclosure is prohibited under Section 6(b)(5). That position has changed. The enforcement staff now takes the position that customers can be informed of a preliminary substantial hazard determination. Such actions have resulted in the immediate return of merchandise to the manufacturer while it was still negotiating or contesting enforcement action or a substantial hazard determination. Section 6(b)(5) should be clarified to prohibit the disclosure of a preliminary substantial product hazard determination to customers, distributors, wholesalers, and retailers of the product which is the subject of a Section 15(b) report. We believe this to be the original intention of the Act.

4. Maintain Commission Involvement in the Voluntary Safety Standards Process But Allow Market to Enforce Compliance

We believe that the greatest impact of the Commission on the safety of products sold to American consumers today has been its role in encouraging and participating in the development and proliferation of voluntary safety standards. The number and scope of these standards has grown enormously since the Commission encouraged its staff to work in and for the process of setting voluntary safety standards. The voluntary safety standards process conducted in the United States under the auspices of the American National Standards Institute (ANSI) and American Society of Testing and Materials (ASTM), Underwriters Laboratories (UL) as well as more than 260 other standards writing bodies, has been most successful without involvement in the complex web of government regulations under the Consumer Product Safety Act and the Transferred Acts. ASTM has

developed more than 8,000 voluntary non-government, consensus-based standards. There are nearly 400 private organizations involved in testing and certification of compliance with voluntary standards.

Voluntary safety standards are highly effective in promoting safer products. In the case of the toy industry, and indeed others, voluntary safety standards are both more extensive and sometimes more stringent than federal regulations. Moreover, compliance with these standards is very high. Most manufacturers, as responsible members of the business community, desire to make safe products and to comply with the industry's voluntary safety standards. Compliance is also achieved not through the threat of penalty, but the operation of market forces including a potential threat of liability lawsuits as well as contractual requirements of retailers and distributors that all products comply with the industry's voluntary safety standards. Products which are subject to voluntary safety standards are currently required to be reported to the Commission only if they are defective and if they could create a substantial hazard. This voluntary safety standard setting process should be left alone and should not be tampered with by the Commission.

I have recently seen a CPSC staff proposal which would require reporting under Section 15 any non-compliance with a voluntary safety standard upon which the Commission has relied under any statute it administers. It would further prohibit false certifications of compliance with a voluntary safety standard, an action which is already prohibited under Section 5 of the Federal Trade Commission Act which prohibits unfair or deceptive acts or practices.

The voluntary safety standards process in the United States is not broken. It should not be fixed by consideration of such requirements.

5. Utilize Commission Budgetary Funds Effectively

TMA is committed to the belief that the Commission is the ultimate arbiter of product safety in the United States. Its actions in conjunction with the voluntary standards process and product liability lawsuits shape the design and safety of consumer products in the marketplace. The Commission's resources, however, are finite and are best utilized by encouraging the development and proliferation of voluntary safety standards. Regulation should be undertaken as a last resort and in a manner prescribed by law when products truly present an unreasonable risk of injury which may be effectively reduced by a rule imposing the least burdensome impact on the product being regulated. Not every consumer product which is associated with injury can or should be regulated. Only those products which are defective in design or construction and which present an unreasonable risk of injury should be targeted for agency action and then only when the voluntary standards sector does not rise to the occasion by addressing the risk presented by these products effectively.

6. Improve the National Electronic Injury Surveillance System (NEISS)

TMA believes that the Commission should sharpen its hazard analysis process by refining its National Electronic Injury Surveillance System (NEISS) to provide information as to the causes of accidents and not merely that information which associates the risk of injury with a particular product. Priority should be given to collecting data which provides both the government and the private sector with information relating to the causes of accidents and not merely the occurrence of accidents.

The public and the Commission are not well served by the annual publication of injuries associated with toys and children's products when almost 90 percent of

the products involved do not cause the injury and are not defective in their design or manufacture. This type of raw data involving product associated injuries only serves to inflame certain segments of our society who believe that not enough is being done to regulate toys and children's products because the number of injuries continue unabated each year. Given the continual presence of these raw statistics, one may properly question whether all the Commission regulations affecting the toy industry have had any effect on product safety. The Commission should be directed to refine its NEISS system to provide injury statistics for products which cause injuries and not merely report those injuries which are associated with consumer products. Only then will the system truly be effective as a tool in reducing risks in consumer products.

I would like to thank the Committee for giving me this opportunity to present the views of the toy industry as it moves forward to consider matters of oversight and reauthorization and I look forward to working with members of the Committee and staff in furtherance of this process.



Senator GORTON. Mr. Rohn.

**STATEMENT OF DAVID W. ROHN, EXECUTIVE DIRECTOR, ASSOCIATIONS COUNCIL, NATIONAL ASSOCIATION OF MANUFACTURERS**

Mr. ROHN. Mr. Chairman, members of the subcommittee, ladies and gentlemen, I am David Rohn, Executive Director of the National Association of Manufacturers, Associations Council, which is where the NAM/CPSC Coalition is housed. As Executive Director of the Council, one of my duties is to coordinate the duties of the Coalition, which represents about 40 associations, a broad cross-section of the industry, whose members manufacture consumer products.

The Coalition's focus is on process and procedure. We do not engage in any industry-specific/product-specific issues. I recently sent to each subcommittee member's office a copy of our concepts paper for legislative changes. This work is a blueprint for possible changes that would continue to protect the consumer, while assuring fairness and due process to product manufacturers.

While some organizations and individuals have called for the agency's elimination, this group believes that preservation of the CPSC, with appropriate reforms, will help improve product safety without restricting consumer choice and without placing unnecessary burdens on businesses that supply the public with consumer products.

Given the many ideas that have been submitted to the committee for consideration, it appears that there is a consensus among all interested parties that the current regulatory scheme is time-consuming, expensive, inconsistent, and unfair. These proposals should be carefully weighed to determine which solutions will result in a more efficient, consistent approach, in which careful thought and analysis occur prior to the expenditure of scarce resources from either public or private sectors.

For example, ill-conceived compliance investigations and public statements can create confusion, waste time, and increase costs to everyone involved. Threats of investigations, arm twisting and other informal means are used to extract design changes, retrofit of products and other actions. Manufacturers and importers that are faced with public stigmatization and protracted legal costs may capitulate to demands before any adequate basis for action is established.

This is particularly true of smaller businesses with fewer resources for such a battle. Thus, requiring up-front analysis and decision at the highest levels of the agency will both conserve scarce Federal and private resources as well as limit the ultimate cost to the public. Additionally, the agency should be required to consider more real-world analysis of hazards to prevent society from having to pay the cost for those users who flagrantly misuse or abuse products.

The focus of Commission activity should be true product defects and not consumer misuse. A minority of users should not be able to force increased cost, inconvenience and reduced choice on those who use products in a common sense manner.



To that end, the Coalition has long encouraged the Commission and Congress to devote more resources to improving the National Electronic Injury Surveillance System, known as NEISS. To clearly determine the causes of accidents, the CPSC should modify the NEISS data system to include the behavioral aspects of reported incidents, including product and user misuse, lack of adult supervision and substance abuse. This improved information, as well as the requirement that the Commission consider it, will allow consumers and manufacturers to better evaluate the true safety of a product, thereby providing market incentives for safety.

We further recommend the elimination of CPSCA Section 37 to reduce reporting requirements to only information that is necessary and useful for CPSC purposes. Both industry and agency compliance representatives have advised us that this requirement has not yielded any new significant information to the Commission, but has only drawn away valuable resources from other important efforts. While we have suggested to repeal this provision, the Commission has countered with a proposal to create a bigger and better bureaucracy at an undetermined cost to manufacturers to report information about which the Commission is already aware.

Manufacturers have repeatedly questioned the value of Section 37 reporting requirements, as they are vague, easily misunderstood and, most importantly, duplicative of reporting requirements found under Section 15(b). Additionally, the requirements under 15(b) are more carefully defined to require careful reporting of suspected product defects.

If the Commission believes there is a continuing problem with under-reporting pursuant to 15(b), it seems to us that a more cost-effective approach would be to amend Section 6 to make 15(b) reports immune from the legal process, just as Congress did with Section 37 reports.

In sum, the NAM/CPSC Coalition continues to support the existence of the Commission. We believe, however, the Commission's mission and activities must be refocused to ensure fair treatment of manufacturers and conservation of scarce public and private resources. These goals can be easily accomplished by focusing Commission's activities on true product defects and reducing excessive reporting requirements.

A refocused Commission will more effectively ensure the continued safety of consumer products in the United States.

I think you for your time.

Senator GORTON. Thank you, Mr. Rohn.

[The prepared statement of Mr. Rohn follows:]

**NAM** National Association  
of Manufacturers

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## Testimony

of David W. Rohn

*Executive Director, NAM Associations Council*

*on behalf of* the National Association of Manufacturers  
Coalition on the Consumer Product Safety Commission

*before the* Subcommittee on Consumer Affairs, Foreign  
Commerce and Tourism, Senate Committee on Commerce,  
Science and Transportation

*on* reauthorization of the Consumer Product Safety Commission

**April 23, 1996**

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**MANUFACTURING  
MAKES AMERICA STRONG**



# Manufacturing:

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- ▶ The United States was rated number one in overall global competitiveness by the World Economic Forum in 1994, and again in 1995.
- ▶ U.S. manufacturing productivity growth averaged more than 3 percent over the last decade, compared with less than 1 percent growth in the rest of the U.S. economy.
- ▶ U.S. manufacturing's direct share of the Gross Domestic Product (GDP) has remained remarkably stable at 20 percent to 23 percent since World War II. Manufacturing's share of total economic production (GDP plus intermediate activity) is nearly one third.
- ▶ A change in manufacturing output of \$1 results in a total increase of output throughout the economy of \$2.30.
- ▶ The U.S. share of world exports in manufactured goods is now 12.9 percent, up from 11.6 percent 10 years ago.
- ▶ Manufacturing provides the bulk of technological advances and innovation for the economy.

Summary Points of Testimony by  
David W. Rohn, Executive Director  
National Association of Manufacturers Associations Council  
for the NAM CPSC Coalition

- The NAM coalition represents approximately 40 industry associations on legislative issues involving the Consumer Product Safety Act and related statutes.
- We support the CPSC's mission to protect consumers against unreasonable risks of injury but believe there are possible reforms that will eliminate unnecessary burdens on manufacturers and retailers without a sacrifice to product safety.
- Any legislative changes should achieve solutions in the most cost-efficient, consistent approach to best utilize scarce resources in both the public and private sectors.
- The CPSC should not take any action, formal or informal, that is not justified by analysis and commissioner review.
- The National Electronic Injury Surveillance System (NEISS) should collect data on the behavioral aspects of reported accidents to better evaluate legitimate product-safety needs.
- The Section 37 law suit reporting requirement is redundant as CPSC already has access to the data.
- Section 6 should be amended to provide immunity from legal process section 15(b) reports to encourage timely reporting of substantial product hazards.
- The coalition wants to work with the committee on any future legislative proposal.

Testimony of  
David W. Rohn, Executive Director  
National Association of Manufacturers Associations Council

before the  
Subcommittee on Consumer Affairs,  
Foreign Commerce and Tourism  
on behalf of the NAM CPSC Coalition

Senate Committee on Commerce, Science  
and Transportation

April 23, 1996

Mr. Chairman, members of the subcommittee, ladies and gentlemen:

I am David Rohn, executive director of the National Association of Manufacturers Associations Council. The Associations Council, a department of the NAM, is made up of more than 200 industry associations. Within the Associations Council is housed the NAM Coalition on the Consumer Product Safety Commission. In my capacity as executive director of the Associations Council, one of my duties is to coordinate the activities of the coalition. The NAM coalition has been working together for more than 16 years. The coalition represents about 40 industry associations, a broad cross-section of industry whose members manufacture consumer products.

Historically, the NAM CPSC Coalition has worked with Congress and the agency to improve the Consumer Product Safety Act and all related statutes to protect against unreasonably hazardous consumer products. The coalition's focus is on process and procedure and we do not engage in any industry's product-specific issues. I recently sent to each subcommittee member's office a copy of our Concepts Paper for Legislative Changes. This work in progress represents a blueprint for possible changes that would continue to protect the consumer while assuring fairness and due process to product manufacturers.

Congress created the CPSC in 1972 to protect consumers against unreasonable risks of injury from consumer products. Since that time, the agency has had some notable successes and, at its best, has worked cooperatively with industry to advance the cause of product safety. While some organizations and individuals have called for the agency's elimination, this group believes that preservation of the CPSC, with appropriate reforms, will help improve product safety without restricting consumer choice and without placing unnecessary burdens on the manufacturers, distributors and retailers that supply the public with consumer products.



To achieve this goal, federal legislation should facilitate government, consumer and industry interaction in a common-sense system that makes the best use of scarce federal and private resources. Given the many ideas that have been submitted to the committee for consideration, it appears that there is a consensus among all interested parties that the current regulatory scheme is time-consuming, expensive, inconsistent and unfair. These proposals should be carefully weighed to determine which solutions will result in a more efficient, consistent approach in which careful thought and analysis occur prior to the expenditure of scarce resources from either the public or private sectors. In sum, federal legislation should refocus and prioritize the CPSC's mission to ensure the fair treatment of all parties while conserving scarce resources.

For example, ill-conceived compliance investigations and public statements can create confusion, waste time and increase costs to everyone involved. Threats of investigations, "arm-twisting," and other informal means are used to extract design changes, retrofit of products and other actions. Manufacturers and importers faced with public stigmatization and protracted legal costs may capitulate to demands before any adequate basis for action is established. This is particularly true of smaller businesses with fewer resources for such battle. Thus, requiring

up-front analysis and decision at the highest levels of the agency will both conserve scarce federal and private resources as well as limit the ultimate costs to the public.

Additionally, the agency should be required to consider more real-world analysis of hazards to prevent society from having to pay the costs for users who flagrantly misuse or abuse products. The focus of commission activities should be true product defects and not consumer misuse. A minority of users should not be able to force increased costs, inconvenience and reduced choice on those who use products in a common-sense manner. To that end, the coalition has long encouraged the commission and Congress to devote more resources to improving the National Electronic Injury Surveillance System (NEISS). To clearly determine the causes of accidents, the CPSC should modify the NEISS data system to include the behavioral aspects of reported incidents, including product and user misuse, lack of adult supervision and substance abuse. This improved information, as well as the requirement that the commission consider it, will allow consumers and manufacturers to better evaluate the safety of a product, thereby providing market incentives for safety.

We further recommend the elimination of CPSA Section 37 to reduce reporting requirements to only information that is necessary and useful for CPSC purposes. Both industry and agency compliance representatives have advised us that this requirement has not yielded any new, significant information to the commission but has only drawn away valuable resources from other important efforts. While we have suggested repeal of this provision, the commission has countered with a proposal to create a bigger and better bureaucracy, at an undetermined cost to the manufacturer, to report information about which the commission is already aware. Manufacturers have repeatedly questioned the value of Section 37 reporting requirements as they are vague, easily misunderstood and, most importantly, duplicative of reporting requirements found under Section 15(b). Additionally, the requirements under Section 15(b) are more carefully defined to require careful reporting of suspected product defects.

If the commission believes there is a continuing problem with under-reporting pursuant to Section 15(b), it seems to us that a more cost-effective approach would be to amend Section 6 to make Section 15(b) reports immune from legal process, just as Congress did with Section 37 reports. The commission has agreed that affording manufacturers this type of protection will give them an

additional incentive to comply with the legal obligations imposed on them by Section 15.

In sum, the NAM CPSC Coalition continues to support the existence of the commission. We believe, however, the commission's mission and activities must be refocused to ensure fair treatment of manufacturers and conservation of scarce public and private resources. These goals can be easily accomplished by focusing commission activities on true product defects and reducing excessive reporting requirements. A refocused commission will more effectively ensure the continued safety of consumer products in the United States.

Thank you for your time and attention. The NAM CPSC Coalition appreciates the opportunity to participate in the dialogue you have opened on ways to improve the efficiency and productivity of the CPSC.

**STATEMENT OF ROBIN LANIER, VICE PRESIDENT, INTERNATIONAL TRADE AND ENVIRONMENT, INTERNATIONAL MASS RETAIL ASSOCIATION**

Ms. LANIER. Thank you, Mr. Chairman. I am Robin Lanier. I am a Vice President with the International Mass Retail Association. IMRA represents 170 mass retailers across the country, including discount department stores, home centers, category-dominant or specialty discounters, catalog showrooms, dollar stores, warehouse clubs, deep discount drug stores, and off-price stores. Collectively, our members operate 61,000 stores in the United States.

Our formal written submission outlines two main concerns that retailers have with the renewal of the CPSA. I want, in the interest of time, only to focus on one of them, which my colleague alluded to. As you know, every American retail company has at one time or another found itself on the front lines of product recalls. Indeed, while many industry groups up here say they care about the American consumer, none deals directly with them each and every day the way we do.

Most retail companies do not create the product hazards. We are not the manufacturers. We sometimes are the importers. But we do almost always administer the recalls negotiated and required by the CPSC. I would like to talk to you a little bit and provide you at least one example about how not to do a recall. I think this will illustrate some of the concerns that we have.

In 1995, the CPSC issued a recall of garments that were made from fleece manufactured by a company called Covill, Inc. The fleece in question was used, in turn, by 45 apparel makers, and did not meet Federal flammability standards. There was no question that these garments needed to be taken off the market and taken off the market very quickly. Maybe 2 weeks before the CPSC announced this recall, I got a call from a reporter representing a textile and apparel trade newspaper. She told me she had heard from her textile industry sources of an impending recall. She said she had the facts, and all she needed from me was a confirmation of this recall.

I had not heard anything about this recall and could not confirm or deny the rumor. But I did what every good Washington representative did. I immediately got on the phone, had some of my staff get on the phone, we called the CPSC. We called numerous different places at the CPSC. I have to say that some people at the CPSC flat out denied that this recall was in the works. Others gave us a kind of a reaction that I would call a non-denial denial. We were given no information whatsoever about this recall. But we came away knowing something was definitely up; it is just that the CPSC would not tell us what it was.

A week went by. On a Thursday evening, someone from the Office of Compliance and Enforcement called me. At that time, CPSC confirmed that there would be a recall announced the following Monday or Tuesday. I asked for a list of the apparel makers who had used this fleece. I was told that the information would not be available until the next day.

On Friday, the next day, February 24th, at 3:22 p.m., CPSC finally faxed me the list of the 45 manufacturers. My staff and I turned around a 2-page memo and faxed it to our CEO's and the

legal counsel of our 170 companies. That is more than 300 people. For all intents and purposes, that fax did not arrive on anybody's desk until Saturday evening, because it takes a long time to fax that many people.

As a practical matter, retail CEO's and lawyers who were busy with their Monday morning business probably did not even notice that fax until midmorning on Monday. The recall was announced Tuesday morning on national TV. Meantime, the 45 apparel manufacturers were supposed to be notifying the retailers with whom they had done business. Some of them did that very well. They were supposed to begin the Thursday before—the day I got the first phone call.

Unfortunately, some of those apparel manufacturers wrote letters. Some of them faxed and called. Some of them sent letters to billing departments. Some of them sent letters to buyers. OK. There were a number of folks in our retail companies, people who are responsible for managing recalls, who knew nothing about this impending, very large recall.

Panic resulted on Tuesday morning, when the recall was announced. Many store managers were not aware of what the 800 number was or what the policy was for returns. It was so chaotic, in fact, that a day after the recall, I was getting phone calls from product manufacturers who knew that we had some information because they had gotten the information from their customers.

This is not a way to do a recall. Unfortunately, this keeps repeating over and over again. A few weeks later, the CPSC recalled some beanbag chairs. I had a senior retail executive call me up the day of the recall—this is the fellow who is in charge of consumer affairs for a large discount department store—who told me that he learned about this recall on the morning news.

Our view, and it is all detailed in our written comments, is that we would like advance notice of recalls. We are not asking for advance notice before the CPSC has finished negotiating recalls with a manufacturer. We are asking for at least 5 business days to prepare store managers to deal with the American consumers. We feel this is extremely reasonable. We think it is necessary for our companies to be able to manage recalls in a way that makes sense for consumers. Thank you very much.

[The prepared statement of Ms. Lanier follows:]





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RETAIL ASSOCIATION

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WRITTEN SUBMISSION  
OF THE  
INTERNATIONAL MASS RETAIL ASSOCIATION  
BEFORE THE  
SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE  
AND TOURISM  
OF THE  
UNITED STATES SENATE  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
ON  
CONSUMER PRODUCT SAFETY COMMISSION  
REAUTHORIZATION

APRIL 23, 1996

IMRA represents 170 mass retailers that include discount department stores, home centers, category dominant or specialty discounters, catalogue showrooms, dollar stores, warehouse clubs, deep discount drugstores, and off-price stores. Collectively, IMRA retail members operate more than 61,000 stores in the U.S. and abroad and employ millions of Americans. IMRA retail members cumulatively represent over \$346 billion in annual sales.

Every one of these retail companies, at one time or another, has found itself on the "front lines," of a Consumer Product Safety Commission (CPSC)-supervised consumer product recall. IMRA's members are retailers, not manufacturers. While many industry groups say they care about the American consumer, none deals directly with the consumer each and every day the way retailers do. Indeed, most of the time retail companies don't create the product hazards, we aren't manufacturers, but we do often administer recalls negotiated and required by the CPSC. We therefore have a unique perspective about the recall process, and specifically the needs of American consumers. Like many other business groups we also have concerns about the process that goes into determining which products ought to be taken off the market.

Because of this unique perspective, IMRA submits the following suggestions for changes in the Consumer Product Safety Act (CPSA).

#### **PRODUCT RECALLS**

Section 6(b) of the CPSA regulates the type and timing of information that the CPSC may release and the procedures it must follow to protect the party that has

submitted the information. CPSC currently interprets Section 6(b) to prohibit the staff from releasing information to the public regarding the anticipated recall of a consumer product under Section 15 of the Act until (1) the person providing the information consents (usually the recalled product's manufacturer or distributor), (2) the CPSC issues a complaint asserting that a product constitutes a "substantial product hazard," or (3) the CPSC accepts a remedial settlement rather than pursue an enforcement proceeding.

Most consumer product recalls occur as a result of voluntary corrective action programs that are negotiated by the manufacturer and the CPSC staff. Agency regulations require that this type of program include the manufacturer's proposed method of informing retailers of the anticipated recall, including directions as to the disposition of the recalled product received from consumers. A press release announcing the recall also is generally negotiated with CPSC staff by the manufacturer.

However, neither the CPSC nor the manufacturer is required to provide any of this information to the retailer until the manufacturer "consents." This generally happens when the corrective action program also is accepted by the staff. Invariably, the CPSC issues a press release announcing the recall almost immediately, providing no time to the retailer to prepare for a program that the manufacturer and the CPSC sometimes have been planning for weeks.

Recent examples of how the failure to notify retailers creates huge confusion in the market place abound. For example, in 1994, the CPSC and a trade association representing mini-blind manufacturers began a negotiation on strangulation hazards

posed by these products. The trade association developed a retrofit program and was charged with notifying retailers of the program. For whatever reason, the trade association principally notified only those retailers which it determined were "importers" of mini-blinds, and attempted to get these retailers to "ante up" into their compliance program. Retailers who were not importers or who refused to pay a sum of money were kept out of the loop and not provided with detailed information about the retrofit program. Obviously, when the recall was announced, many retailers whose suppliers had not participated in the program, or who had not done a good job of communicating with their customers simply knew nothing about how to obtain retrofit kits for their customers.

In another instance, CPSC recalled bean bag chairs. In this recall, retailers were to have been notified of the recall by the manufacturer in question. Nevertheless, IMRA learned of one member-company whose Director of Consumer Affairs (the person responsible for carrying out recalls) learned of the recall by listening to the morning news. It turns out that the manufacturer sent a letter a few days prior to the recall to this retailer's billing address.

CPSC has told IMRA that in these instances, where recalls are negotiated as part of a corrective action, notification must come directly from the manufacturer. But even in cases where a product safety standard violation exists--and the CPSC itself can notify retailers--real advance notification has been non-existent.

For example, in February 1995, CPSC recalled garments that had been made of a fleece fabric (manufactured in the US) that failed to meet federal flammability standards. Even though rumors of the recall abounded for weeks prior to its announcement, CPSC repeatedly denied to IMRA staff that a recall was eminent. Finally, at 3:22 pm on a Friday afternoon CPSC faxed IMRA a list of 45 manufacturers who were subject to the recall. IMRA faxed this list to our members that night, but it did not effectively arrive on most desks until the following Monday. On Tuesday, less than 24 hours later, Chairman Brown announced the recall on a nationally televised morning news show. The result was chaos and confusion.

In another instance, CPSC recalled imported rayon chiffon skirts. Although the commission advised IMRA of the impending recall many weeks prior to its announcement, IMRA staff was under direction from the commission not to disseminate any information until more details (such as the name of the importer and manufacturing labels) could be determined.

When the recall was ultimately announced, IMRA was provided about four days advanced notice, but details about the manufacturer and importer of the skirts was so sketchy as to be non-existent. Retailers were basically told to contact their suppliers to make certain the skirts had been tested. IMRA could have given that information to its members weeks before. We waited, because CPSC asked us to wait and because we thought the Commission would have additional details that would help retailers identify the small number of skirts that posed a problem for consumers.

As a result of this lack of basic recall information, retailers are frequently confronted by concerned and angry consumers wanting to return products that have been recalled, or products that are merely similar to recalled products. Yet, the retailer has had no opportunity to disseminate to its stores any information, such as which products are recalled, the nature of the recall (for example, refund of the purchase price or replacement), or how the recall will be executed. Retailers, such as IMRA members, that have stores numbering in the hundreds, must have recall information sufficiently in advance of a public announcement in order to ensure a recall's success. The fleece example is a classic, as is the recall of rayon chiffon skirts, which was also undertaken in 1994. While IMRA was aware of this recall some weeks prior to its announcement, we were asked repeatedly by the CPSC not to disclose any information to our members about it. Moreover, the information available about the importers and makers of these skirts was literally non-existent. When the recall was announced in August, 1994, many IMRA members had advanced notice through IMRA, but the information provided was so sketchy and incomplete as to be useless. The best a retailer could do was to pull every chiffon skirt from the selling floor and test them for flammability.

IMRA also believes that the Commission has an obligation to provide information about the products that are not covered by the recall. Every retailer--especially those who are *not* selling products subject to a recall--need to know about a recall in advance. Frequently, in well-designed corrective action programs, manufacturers send fact sheets to retailers and make public announcements describing not only the products that are



recalled, but also the identity of similar products or models, styles, etc. that are not recalled, but which may easily be confused with the recalled product. The dissemination of such information should be mandatory, both in materials provided to the retailer who is selling recalled products and also to the consumer and the general public, including other retailers. Such information should also be required in statements by the Commission in its press release and any public discussion of the recall by the Chairman, another Commissioner, or the staff.

IMRA believes these problems can be eliminated largely by amending Section 6(b)(5) to provide that, in any product recall implemented under Section 15 or any of the other statutes administered by the CPSC, the manufacturer of the recalled product must provide each known retailer of the product *at least five business days advance notice* prior to the public announcement of the recall. (A statutory exception could be drafted for products presenting an imminent unreasonable hazard.) This advance notice requirement would apply regardless of whether the recall was pursuant to a voluntary corrective action plan or an order of the Commission.

Such advance notice should be directed to a specific individual whom the retailer has designated (to the CPSC) as the official recipient of these notices. The advance notice should specify the scope of the recall (*i.e.* the name, model name or number, style name or number or other appropriate identification), the dates the product was sold by the manufacturer or distributor, the nature of the recall (*i.e.* whether the manufacturer will repair, replace or reimburse the purchase price of the product), and

the manner in which the recall will be executed at the retail level. If, as part of the program, the manufacturer is providing its retailers with display materials announcing the recall, these should be included with the advance notice.

The CPSC also should be required to maintain a fax list of retailers who will receive any release announcing a product recall *at the same time* that it is sent under embargo to news organizations. To the extent that the advance notice procedure outlined above did not identify a particular retailer, this mailing list would provide some ability to disseminate recall information in advance at the retail level.

In the event that the Commission staff or the manufacturer, after reasonable investigation, has identified products (whether they be those of the same manufacturer or another), that a reasonable retailer or consumer may easily confuse with the recalled product, the advance notice must identify those products by name, model, style or other appropriate identification. Any Commission press release or public statement concerning the product recall by the Chairman, any Commissioner or staff must include the information regarding similar products.

Finally, Section 6(b) should require that any press release or other public notice by the Commission that identifies the retailers of a product subject to a voluntary or mandatory product recall under Section 15 must attempt to list every retailer of the subject product known to the Commission. It is unfair and inaccurate to name only the largest and best known retailers of a particular product subject to recall. Moreover, greater information will ensure better recall results.

## RISK ASSESSMENT

The CPSA authorizes the Commission to undertake notice and comment rulemaking proceedings to promulgate consumer product safety rules and standards, such as those relating to lawn mowers and automatic garage door openers. As part of the rulemaking process, the Act requires that the Commission must publish an advance notice of proposed rulemaking, soliciting public comment, which also must identify the nature of the risk of injury associated with the product.

As an alternative to a mandatory standard, the Commission may endorse a voluntary standard submitted by interested persons during the comment period mandated in the rulemaking proceeding. However, the CPSC must be convinced that there will be substantial industry compliance with the voluntary standard and that it will adequately reduce the risk of injury previously identified. These voluntary standards frequently are the product of elongated rulemaking-type proceedings, such as that which has been ongoing for some time regarding children's bunk beds.

Unwilling to deal with the sometimes protracted nature of even the voluntary standard proceedings, the Commission has begun to regulate more frequently by the issuance of "guidelines" or press releases. Sometimes these informal guidelines are intended precisely to head off real, sound assessment of the risks posed by a product.

While the CPSC has received many compliments for its guidelines on drawstrings in children's wear, few know the informal guidance was issued as a group of apparel makers and retailers--all of whom had *already ceased producing garments with*

*drawstrings*--were preparing to undertake a major study of drawstrings and playground equipment to determine if it were possible to design a new kind of shorter drawstring, without a toggle, that might pose little if no risk to children. When CPSC issued its informal guidelines banning all drawstrings, the chances for developing a new, safer type of drawstring, including the expensive study of children at play, were abandoned. The view was that the guidelines--even though they were issued without a risk assessment and the usual notice and comment--would have the force of law. The consumer does not win when innovation is stifled in this way.

More important, nothing prevents the Commission, the Chairman or the staff from merely announcing what they believe should be industry practice without any formal proceeding for input by all those who are the subject of the regulation, or even when the evidence of risk is practically non-existent.

In early 1995, for example, CPSC called a Sunshine Act meeting of interested parties together to discuss moving ahead with a voluntary flammability standard for adult sleepwear. The Commission staff felt that sufficient evidence existed that adults over the age of 65 were at some considerable risk of injury or even death as a result of sleepwear catching on fire. The Commission staff felt it was time to move ahead with an adult sleepwear flammability standard similar to that used for children's wear. Such a standard, it should be noted, would eliminate all cotton sleepwear from the market.

To justify the meeting and presumably a push for a voluntary standard, the Commission staff handed out the attached "Hazard Sketch." (Attachment 1). This is a

remarkable document. The chart on page one shows, very convincingly, that people over the age of 65 die at a higher rate than people younger than 65. The second page provides some real examples of the hazards senior citizens face from their sleepwear. There is the example of the man smoking in bed, and the woman using rags for pot holders. Thankfully, the CPSC *did not* move forward with its plans for elderly sleepwear guidelines. But they have moved ahead in other circumstances with evidence that was just as flimsy.

IMRA remains concerned these informal guidelines and releases may be granted the effect of Commission regulation or standard if the Commission and its staff use them to measure accepted industry practice in subsequent enforcement actions. In addition, of course, these informal guidelines become an issue in every product liability case.

IMRA believes that this lack of adequate agency review can be eliminated by amending Section 6 to add a new subsection to provide for the following: prior to issuing any press release, informal guidelines, or any public statement by the Chairman, a Commissioner or the staff as to the manner in which a product (or category of products) should be manufactured, advertised, labeled, marketed, offered for sale or sold, the Commission must undertake an assessment as to the risk of injury presented by the product or category of products.

The new subsection should specify the types of information to be in any risk assessment; IMRA suggests that the subsection could incorporate the type of criteria that

CPSC regulations currently require reporting persons to consider in determining whether a "substantial product hazard" exists: the pattern of the safety concern (as measured by complaints or reports to the CPSC, press reports or Section 15(b) reports); the time the product has been in commerce; the number of affected products in commerce; and the severity of the risk, including the seriousness of the injury and the likelihood the injury is to occur.

After conclusion of the risk assessment, if the Commission determines to proceed with its informal pronouncement or guidelines, in whatever form, the new subsection must require that the risk assessment (or an executive summary thereof), be included whenever the pronouncement is published or communicated, so that industry and the public will have an understanding as to the basis for the Commission's statement.

As an alternative, IMRA would support an amendment to Section 6 that would prohibit the issuance of any informal guidelines regarding a product's safety absent the type of formal proceedings provided for in Section 9 of the Act. This would ensure that industry, including retailers, is provided adequate opportunity for notice and comment, followed by meaningful staff and Commission deliberation.

In closing, mass retailers remain committed to providing the best possible customer service. We want to be able to provide information to our customers when a product recall occurs. That requires us to have the information in time to deal with the confusion and legitimate concerns that product recalls generate. IMRA's members are



on the "front lines" of that consumer concern. No other industry group deals so directly with the affected party in a recall situation.

We thank the Committee for this opportunity to present our views on these critical issues affecting CPSC reauthorization. If the committee has any further questions about IMRA or its views on this matter it can contact Ms. Robin Lanier, Vice President International Trade and Environment, at 703/841-2300.

## HAZARD SKETCH

CLOTHING IGNITION INVOLVING THE ELDERLY  
(AGE 65 & OLDER)

## All Clothing Ignition

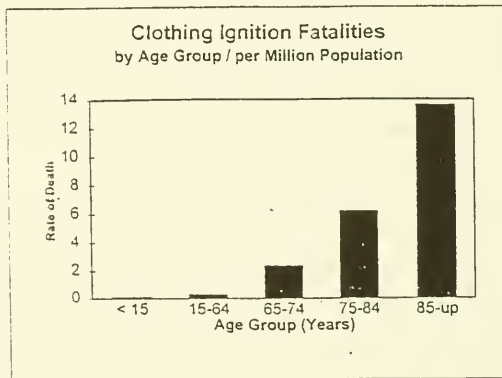
Deaths:

Mortality data from the National Center for Health Statistics (NCHS) indicated that an annual average of about 140 people age 65 and older died from clothing ignition over the most recent 5 years for which these data were available (1987-1991), about 75 percent of all clothing ignition deaths in the U.S.

Forty-eight percent were male, 52 percent were female. Males comprised about 40 percent while females comprised about 60 percent of the 65 + age group in the U.S. population.

The death rate from clothing ignition was almost six times higher among those age 65 and older than among the general population (4.6 deaths per million for those age 65 +, compared to 0.8 deaths per million for the general population).

Among the age group of 65 years and up, the death rate rose with age (shown below); the death rate per million population was 2.3 for ages 65 to 74, 6.1 for ages 75 to 84, and 13.6 for ages 85 and up. (In comparison the death rate was .1 per million for children under age 15 and .3 per million for people age 15-64.)



## Nightwear Ignition

### Deaths:

A review of death certificates, medical examiners/coroners reports and newsclips for the 5-year period, 1990-1994, indicated that nightwear was involved in 52 percent of the deaths where the type of clothing was specified.<sup>1</sup>

Applied to NCHS reported annual average clothing ignition fatalities, nightwear was involved in an estimated 75 deaths of people age 65 and over each year.

### Injuries:

Among injuries treated in hospital emergency rooms, nightwear was involved in an estimated 30 percent of all clothing ignitions among this age group, an estimated 800 injuries annually, over the period 1990-1994.

### Products:

Among incidents where the type of nightwear was known, 42 percent involved nightgowns, 40 percent involved bathrobes, and 18 percent involved pajamas.

The following products reportedly were involved in nightwear ignition:

- 39 percent cooking appliances,
- 32 percent smoking material,
- 22 percent heating equipment, and
- 7 percent other open flame.

### Typical Hazard Scenarios:

- A 74-year old woman died when her night gown caught fire while removing burning food from a gas range with rags used for potholders.
- Standing too close to a space heater set an 86-year old man's bathrobe afire. He later died of thermal burns to 75 percent of his body.
- A 66-year old man's pajamas blazed after he fell asleep and dropped his cigarette in bed.

### Source:

Estimates based on the following 1990-94 CPSC data bases: Death Certificate file, Injury or Potential Injury Incident file, and the National Electronic Injury Surveillance System. National Center for Health Statistics estimates were used for years 1987-1991. U.S. Consumer Product Safety Commission/EPHA  
January 17, 1995

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<sup>1</sup> About 65 percent of the incidents did not specify clothing type.

Senator GORTON. Ms. Fise. First, tell me if I am pronouncing your name correctly.

Ms. FISE. Yes, it is Fise.

Senator GORTON. Fine, it is your turn.

**STATEMENT OF MARY ELLEN R. FISE, GENERAL COUNSEL,  
CONSUMER FEDERATION OF AMERICA**

Ms. FISE. Thank you, Chairman Gorton. It is a pleasure to appear here today before you and Senator Bryan. I think that you have done more to protect American children from injuries, with the Child Safety Protection Act, than any of your colleagues. CFA greatly appreciates your leadership in bringing that bill to passage.

It is also a pleasure to appear today to offer CFA's very, very strongest support for the reauthorization of the Consumer Product Safety Commission. Safety is an issue that consumers care deeply about. CPSC, if you think about it, is the one Federal agency that consumers really identify with. They recognize the value and the fact that it protects them and their families.

We have heard already from the Commission about how their budget has been cut. In fact, CPSC has suffered the deepest cuts to budget and staff of any health and safety agency in this country. So, faced with such limited resources, CFA is extremely concerned about the agency's ability to operate efficiently and effectively to reduce consumer deaths and injuries. That is why we believe the most important thing that you can do in reauthorizing this agency is to assure that sufficient multi-year reauthorization funding levels are approved. We believe the amount sought by CPSC, ranging from \$47.9 million to \$57.9 million, are overly conservative and should be expanded by at least 10 percent.

I would like to kind of go through why we support such levels. It is first important to understand the constraints and challenges facing CPSC. Their current budget, staff and equipment is stretched to the point of breaking. CPSC salaries and rent currently consumer 86 percent of the agency's appropriation. An additional 4.5 percent of the agency's budget pays for other functions that merely allow the CPSC to keep the doors open each day for business. They do not have extra funds for large contracts, for example, to support research.

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, as we have heard today, of voluntary agreements reached between the CPSC and manufacturers and 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. They will need even further extensive evidence and testing should a legal complaint be filed.

In effect, not having sufficient resources puts CPSC in a really terrible position as an enforcement agency. It cannot put its money where its mouth is, so to speak, because it really cannot be sure it will have the needed resources.

This concern is further exacerbated as new products and new technologies come onto the market. Sophisticated, high-tech products, which Commission engineers may have never even seen much less have expertise with, pose particularly resource-intensive chal-

lenges. For CPSC to live up to its safety mandate, it must be able to keep pace with the ever-changing development of American technology.

In addition to new products, CPSC must also be able to respond to changing demographics. For example, our Nation is getting older. In 1960, 9.2 percent of our population was 65 and older. This year that number will reach 12.7 percent. In the year 2030, 20 percent of our population will be 65 and older. In one recent survey, 85 percent of those 55 and older said they want to stay in their homes and never move.

Now, these numbers and others like them have very significant implications for CPSC. As people age, it is clear they have an increased risk of falls. In 1987, 87 percent of all fall deaths were to those 65 and older. In 1993, nearly half-a-million consumers 65 and older required hospital emergency treatment for injuries associated with stairs and steps, floors, flooring materials. These are all fall-related product categories. These and other issues associated with older consumers will need increased CPSC scrutiny in the coming years.

We believe fire is another example where there is unacceptable life loss and enormous costs which need CPSC attention and resources. The United States has the highest fire death rate in the industrialized West. The National Fire Protection Association estimates that more than 4,000 consumers die each year in fires. There was over \$8 billion of property damage associated with fires in 1984. While you may think these statistics result from big hotel fires, actually 80 percent or more of all these fires occur in the home.

Finally, I would like to address the proposals put forward by CPSC. Those are the only ones that we have had an opportunity to look at. I realize other parties have given the committee some other proposals. But with respect to the CPSC submission, we would like to say that we support the majority of these. We do oppose, however, the CPSC proposal that any report furnished to the agency under Section 15 be inadmissible in any civil action.

While we support the goal of increasing reports to the Commission, we believe the method proposed is flawed and really is unfair to individual consumer litigants. CFA is displeased that CPSC is willing to barter away consumer rights in order to gather information that the agency really has a right to obtain anyway. So we urge you to reject that recommendation and instead, if you are concerned about that issue, consider increasing penalties as a deterrent for the failure to report.

And last, we support the CPSC proposal to expand the scope of Section 37 reports, to include all civil actions and settlements. However, we believe the requirement that there be three actions in a 24-month period be eliminated. I remember discussing this with you back at the time these amendments were passed in 1981. We argued then that these limitations, the three actions in a 24-month period, will allow companies to be able to avoid reporting by timing their settlements. We understand that this has happened. To truly achieve the goal of increased number of reports, all civil action settlements and judgments should be reported. Thank you.

Senator GORTON. Thank you.

[The prepared statement of Ms. Fise follows:]





# Consumer Federation of America

TESTIMONY OF

MARY ELLEN R. FISE  
GENERAL COUNSEL  
CONSUMER FEDERATION OF AMERICA

before the

U.S. SENATE

SUBCOMMITTEE ON  
CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM

on

CONSUMER PRODUCT SAFETY COMMISSION REAUTHORIZATION

April 23, 1996

Mr. Chairman, and members of the Subcommittee, I am Mary Ellen Fise, General Counsel and Product Safety Director for Consumer Federation of America (CFA). CFA is a non-profit association of some 240 pro-consumer groups, with a combined membership of 50 million, 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 the 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 consumer 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 over 15,000 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 federal health and safety agency. CPSC's budget today is less than it was in 1978 (\$40.4 million) and this does not

even take into account inflation. The number of staff serving the agency today (487) is less than half of what it was in 1980 (978).

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. It is for this reason that CFA believes that the most important thing your Subcommittee can do in reauthorizing the CPSC is to assure that sufficient reauthorization funding levels are approved. We believe the amounts sought by CPSC, ranging from \$47.9 million in 1998 to \$57.9 million in 2002, are overly conservative and should be expanded by at least 10%. We agree wholeheartedly with agency's request for a multi-year reauthorization.

In a time when cutting 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. First, CPSC's current budget, staff, and equipment is stretched to the point of breaking. CPSC salaries and rent currently consume 86% of the agency's appropriation. An additional 4.5% 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 the CPSC to keep its doors open for business each day. Much of CPSC's equipment, particularly at the laboratory, is old and outdated. This equipment makes it difficult (if not sometimes impossible) to deal with new challenges, much less meet the continuing daily demand in addressing existing hazards.

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 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 a trial, may need to be contracted out and is very costly. This contingency is one with enormous ramifications. In the past, funds have not been set aside to address contested recall actions. However, even with the small amount designated for FY 1997, should more than one manufacturer contest a recall or should a recall be of such a complex nature as to require extensive analysis, that contingency fund could become depleted and the agency would be unable to take action or would be forced take funds from other worthwhile programs. 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 has the money.

This concern is further exacerbated as new products and new technologies come on to the market. Sophisticated, high tech products, which Commission 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 American technology.

In addition to new products, CPSC also must be able to respond to changing demographics. For example, our nation is getting older: in 1960, 9.2% of our population was 65 and older; in 1996, 12.7% of our population will be 65 and older; and in 2030, 20% of our population will be 65 and older. According to the American Association of Retired Persons (AARP) Housing Survey, 85% of those 55 and older want to stay in their homes and never move. These numbers and others like them have significant implications for CPSC and the injury prevention movement. As people age, they have an increased risk of falls: in 1993, 87% of fall deaths were to those 65 and older; in 1993, nearly 500,000 consumers 65 and older required hospital emergency room treatment for injuries associated with stairs, steps, floors or flooring materials (fall-related product categories). Costs associated with these injuries are enormous. These and other issues associated with older consumers will need increased CPSC scrutiny in the coming years.

Fire is another example where there is unacceptable life loss and enormous cost which, CFA believes, will call upon CPSC resources. The United States has the highest fire death rate in the industrialized west. More than 4,000 consumers die each year in fires and a whopping \$8,151,000,000 in fire-associated property damage occurred in 1994. Approximately 80% of all U.S. fires and fire deaths occur in the home. Initiating new programs to address this issue must take place in order to save lives and money. Nicking away at it here and there with limited resources is not going to begin to turn this problem around. CPSC must begin to address this challenge in a comprehensive manner and it needs the support and commitment of Congress, including the needed resources to take on this initiative.

Because of CPSC's limited resources, some might argue that the private sector could do more to take up the slack in protecting the public from consumer product hazards. While on the surface this might appear an appealing partial solution, CFA believes it 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. CPSC's ability to set product standards, ban products and force recalls are functions which must necessarily remain with government.

With respect to other activities that are part of the agency's mission, such as information and education, it is clear that the private sector is already doing more than it has in the past. Like many organizations, CFA is working on several fronts to increase public awareness of safety issues. Our state and local members are currently surveying hundreds of playgrounds nationwide to help communities identify hazardous playgrounds and assist in making them safer. We have worked with the Coalition for Consumer Health & Safety, an organization of insurance companies and their trade associations and non-profit consumer and health groups, to prepare brochures and public service announcements about consumer hazards. This Coalition has also prepared a pamphlet that alerts insurance company personnel about the need to work with their insureds to report hazardous products to CPSC. CFA is also working with a major retail store, Lowe's Companies, on their philanthropic initiative, the Lowe's Home Safety Council, to develop a school curriculum on safety to teach our youngsters in a comprehensive manner what they need to know to protect themselves and their families. This Council is also working to addressing fire deaths in Kentucky and is working with Johns Hopkins University to research ways of implementing



safety measures for economically disadvantaged families in Baltimore. These are just some examples of the ways that the private sector is helping out on issues where the safety message is fairly well established. But with competing requests from those working on other health issues, it is not feasible to expect the funds for these information and education programs to expand indefinitely. While CPSC has managed to leverage its resources in working with such private sector partners, its leadership position as our nation's consumer safety agency should not be further compromised.

Finally, I would like to address other measures that might be included in a reauthorization bill. CFA has reviewed the agency's submission of Proposed Substantive Amendments to CPSC Statutes. CFA supports six of these amendments, we agree with one other (but believe it should be strengthened), and we oppose one. We believe that the following amendments will assist the Commission in carrying out their Congressional mandate and as a result will net enhanced safety benefits for consumers. Specifically, we support:

- o Amendment to section 6 (new subsection g) regarding prohibiting disclosure of documents received from a foreign government, if such disclosure is requested by the foreign government;
- o Amendment to section 9 (new subsection j) regarding consumer product safety rules for safety devices;
- o Amendment to section 15 (b)(1) regarding reporting requirements for FHSA, PPPA and FFA;
- o Amendment to section 19 (new subsection a (2)) regarding false certification;
- o Amendment to section 20 (new subsection e) regarding creation of a civil penalty fund for use in notifying consumers about hazards in cases where the company is

financially unable to provide such notification; and

o Amendment to section 29 (new subsection f) regarding the harmonization of international product safety regulations.

CFA opposes the CPSC proposed section 6 (f) stating that any report furnished to the agency under section 15 be inadmissible in any civil action (except in actions brought by the Commission). While we support the goal of increasing reports to the Commission, we believe the method proposed is flawed and is unfair to individual consumer litigants. These reports arise because there is a potential defect in the product or it fails to meet a mandatory standard or a voluntary standard upon which the Commission has relied. These are situations where there is a suspected problem with the product. The consumer should have the right to introduce this report, along with all other facts, for consideration by the jury or judge. CFA is displeased that CPSC is willing to barter away consumer rights in order to gather information which the agency has a right to obtain anyway. We urge the Subcommittee to reject this recommendation. Instead, the Subcommittee should consider increasing penalties as a deterrent for failure to report.

Lastly, we support the CPSC proposal to expand the scope of Section 37 reports to include all civil actions filed involving an allegation of death or injury and for settlements of claims involving allegations for which a civil action was not filed. However, we believe the requirement that there be three actions in 24-month period be eliminated. As we argued when section 37 was first enacted, we believe limiting the scope to a 24-month period and a

requirement that there be three judgments or settlements is super-limiting. Companies are able to avoid reporting by timing their settlements and we understand that this has happened. To truly achieve the goal of increasing the number of reports, all civil actions, settlements and judgements should be reported.

**STATEMENT OF HEATHER PAUL, PH.D., EXECUTIVE  
DIRECTOR, THE NATIONAL SAFE KIDS CAMPAIGN**

Dr. PAUL. Thank you, Chairman Gorton, Senator Bryan, distinguished members of the subcommittee. My name is Heather Paul, and I am the Executive Director of the National Safe Kids Campaign.

Safe Kids is comprised of more than 200 grassroots coalitions in all 50 States, the District of Columbia and Puerto Rico. Safe Kids is the only national organization solely dedicated to reducing the No. 1 health threat to our children—unintentional injury. An average coalition is made up of fire fighters, police, nurses, emergency personnel, and other health advocates who know firsthand the value of safe and unsafe products.

I am honored to speak with you today about the future direction of the CPSC. I would like to take this moment to note that Chairman Gorton and Senator Bryan are past recipients of the Safe Kids Champion Award, awarded by C. Everett Koop. I am sure they are prominently displayed in your offices today.

Mr. Chairman, as you well know, unintentional injuries continue to claim the lives of thousands of kids each year. The financial implications of these preventable deaths and injuries remain staggering. In my written testimony, which I would ask to be included in the record, I outline in more detail the scope of the problem. But, for purposes of discussion today, I would like to point out that each year approximately 14 million children are seriously injured—enough to require medical treatment—14 million children, costing society \$165 billion a year. That number would be greater, of lives lost and money spent, if it were not for the work of the CPSC.

My overall message today is simple: CPSC, as everyone has said, is a very small agency, with an enormous responsibility. It saves lives of children and prevents many, many injuries. It does a very good job, but it can do a better job with a modest, reasonable increase in resources.

CPSC is the only Federal agency that identifies and acts on a wide range of product safety hazards, from toys to bikes to household products. Its commitment to childhood injury prevention saves lives and money. The agency, working with Congress, has amassed an impressive track record in the area of child injury prevention alone.

Since 1987, when Safe Kids was founded, America has witnessed a 17-percent decrease in injury-related mortality. It is to the credit of the U.S. Congress and CPSC that the Nation has the highest consumer product safety standards in the world. But there is a lot more to do.

I would like today to focus on two specific functions of the agency: data collection and public education. The CPSC's data collection is unique among all Federal agencies, and is one of its most important functions. Information gathered from the NEISS system, the safety hot line and other sources guide the Commission in identifying potentially hazardous products that may warrant future action, especially given these evolving technologies, as has been mentioned today.

This data is also used by outside organizations when developing their injury prevention initiatives.

Community-based groups such as Safe Kids have very limited resources. We must rely in large part on information collected by the Consumer Product Safety Commission to determine which hazards we need to address to do our work—whether it is through media work, whether it is public policy or other aspects of public education.

The Campaign recommends that the subcommittee work with the CPSC to support and enhance the agency's data collection capabilities. Although there are nearly 6,000 hospitals across the country, the NEISS system currently draws its information from only 100. Chairman Brown has made it possible to increase that number from, I believe, the low 90's to 100 hospitals.

The Campaign believes that the addition of more hospitals, including children's hospitals, to the NEISS system will allow it to more accurately capture data on injury and product hazards, whether there be causal relationships or other aspects of injury and death.

In areas of public education, we know that at the heart of responsible consumerism is an informed public. The CPSC's public education efforts to help create safer environments for American families is very important. Grassroots-based organizations such as Safe Kids are especially effective in spreading safety information to underserved and hard-to-reach populations. We really see our efforts at a local level as sort of the army, to deliver the CPSC's messages.

Last spring, for instance, our family safety check, the 10 simple steps that families can take to keep their kids safe, came from CPSC data, and we circulated 22 million copies of that family safety check in schools and communities around the country.

Since the agency's inception in 1973, it has helped to save children's lives and prevent countless injuries in important areas. Child-resistant packaging mandated by the Poison Prevention Packaging Act has saved the lives of more than 700 children since the early seventies. Significantly, in 1972, 216 children ages 4 and under died from ingesting medicines and household chemicals. By 1994, that number is down to the low twenties.

Prior to the adoption of flammability standards in 1971, 60 children on the average died of sleep wear fires. Since then, this number has dramatically decreased to below 5 children a year. Prior to CPSC action in the mid-seventies, nearly 200 infants died each year due to unsafe cribs. Today this number has been reduced to 50 and below. This is not even documenting the injuries decrease.

These examples demonstrate the past effectiveness of the CPSC, an effectiveness that we should continue in the future, with adequate resources wisely spent. As unsafe cribs were an emerging hazard in the seventies, the CPSC has identified, for instance, carbon monoxide as a potential hazard of the nineties and beyond. The agency is presently investigating the effects of carbon monoxide on children and others, as well as the effectiveness of carbon monoxide detectors. This effort is one important one that demonstrates the need for this small and very effective agency.

Mr. Chairman, members of the subcommittee, a simple and sensible reauthorization of the CPSC will not only continue to reduce

health care costs, but preserve the health and safety of this Nation's most precious resource—its children. Thank you.

[The prepared statement of Dr. Paul follows:]



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Heather Paul, Ph.D.

**TESTIMONY OF HEATHER PAUL, PH.D.  
EXECUTIVE DIRECTOR  
THE NATIONAL SAFE KIDS CAMPAIGN  
BEFORE THE SENATE COMMERCE,  
SCIENCE &  
TRANSPORTATION COMMITTEE**

**SUBCOMMITTEE ON  
CONSUMER AFFAIRS,  
FOREIGN COMMERCE & TOURISM**

**TUESDAY, APRIL 23, 1996**





**TESTIMONY OF HEATHER PAUL, PH.D.  
EXECUTIVE DIRECTOR  
THE NATIONAL SAFE KIDS CAMPAIGN  
BEFORE THE SENATE COMMERCE, SCIENCE &  
TRANSPORTATION COMMITTEE  
SUBCOMMITTEE ON CONSUMER AFFAIRS,  
FOREIGN COMMERCE & TOURISM  
TUESDAY, APRIL 23, 1996**

Chairman Gorton, Senator Exon and distinguished members of the Subcommittee:

My name is Heather Paul and I am the Executive Director of the National SAFE KIDS Campaign. As you know, the Campaign, comprised of more than 200 grassroots coalitions in all 50 states, the District of Columbia and Puerto Rico, is the only national organization solely dedicated to reducing the #1 health threat to our children -- unintentional injury. I am honored to speak with you today about the future direction of the Consumer Product Safety Commission.

Mr. Chairman, as you well know, unintentional injuries continue to claim the lives of thousands of kids each year. And the financial implications of these preventable deaths and injuries remain staggering. In my written testimony, which I would ask be included in the record, I outline in great detail the scope of this problem. But for purposes of framing today's discussion, I would like to point out that each year approximately 14 million children are injured seriously enough to require medical treatment. **14 million children -- costing society \$165 billion every year.**

At the outset, let me state that **SAFE KIDS supports the CPSC and believes that the Agency has a critical role in keeping all Americans, especially our children, safe from consumer product-related injury and death.** It is the only federal agency that identifies and acts on a wide range of product safety hazards, from toys to bikes to household products. Its commitment to childhood injury prevention saves both lives and money. The Agency, working with Congress, has amassed an impressive track record in the area of child injury prevention. Since 1987, America has witnessed a 17 percent decrease in injury-related mortality. In fact, our nation has the highest consumer product safety standards in the world.

I would like to focus today's testimony on two specific functions of the Agency: data collection and public education.

### Unique Data Collection Capability

The CPSC's data collection is unique among all federal agencies and is one of its most important functions. Information gathered from the NEISS system, the "Safety Hotline" and other sources guides the Commission in identifying potentially hazardous products that may warrant future action.

This data is also used by outside organizations when developing their injury prevention initiatives. Community-based groups, such as SAFE KIDS, have limited resources. We must rely in large part on information collected by the CPSC to determine which hazards to address.

The Campaign recommends that the Subcommittee work with the CPSC to support and enhance the Agency's data collection capabilities. Although there are nearly 6,000 hospitals across the country, the NEISS system currently draws its information from a mere 100. The Campaign believes that the addition of more hospitals, including children's hospitals, to the NEISS system will allow it to more accurately capture data on injury and product hazards.

### **Effective Public Education**

At the heart of responsible consumerism is an informed public. The CPSC's public education efforts help to create safer environments for America's families. Grassroots-based organizations, such as the National SAFE KIDS Campaign, are especially effective in spreading safety information to underserved and hard-to-reach populations. The Campaign strongly recommends that the CPSC consistently and routinely partner with such organizations. These partnerships, along with the cooperative efforts of industry, will help to ensure that educational campaigns more effectively reach their target population.

Since the Agency's inception in 1973, it has helped to save children's lives and prevent countless injuries.

- Child-resistant packaging, mandated by the Poison Prevention Packaging Act, has saved the lives of more than 700 children since the early 1970's. Significantly, in 1972, 216 children ages 4 and under died from ingesting medicines and household chemicals. By 1994, Mr. Chairman, that number had dropped to 42.
- Prior to the adoption of flammability standards in 1971, 60 children each year died when their sleepwear caught fire. Since then, this number has dramatically decreased to 4 children per year.

- Prior to CPSC action in the mid-70's, nearly 200 infants died each year due to unsafe cribs. Today, this number has been reduced to 50 deaths each year.

These examples demonstrate the past effectiveness of the CPSC, an effectiveness that we hope will continue in the future. As cribs were an emerging hazard in the 70's, the CPSC has identified carbon monoxide as a potential hazard for the 90's and beyond. The Agency is presently investigating the effects of carbon monoxide on children and others, as well as the effectiveness of carbon monoxide detectors. This effort alone demonstrates the need for this small, yet effective Agency.

Mr. Chairman, members of the Subcommittee, a simple and sensible reauthorization of the CPSC will not only continue to reduce health care costs, it will also help to preserve the health and safety of this nation's most precious resource -- its children. I would be happy to answer any questions.

Senator GORTON. Thank you very much. Now I am going to ask Senator Bryan to present his questions first.

Senator BRYAN. Thank you very much, Mr. Chairman. Thanks to each of the witnesses for their testimony.

Ms. Lanier, let me begin with you. I, once upon a time, practiced a little law and I know that there are two sides to every story. Your version presents at least some compelling reason as to some additional time notice. Your proposal would require a 5-day notice, as I understand it.

Ms. LANIER. This would be before public announcement of a recall. This is in order for retailers who are going to administer the recall to get ready. You have to consider that when you take a large discount department store that has literally hundreds of stores all across the country, with numerous store managers on call in rotating shifts, it is quite a job to get those people ready. That is what we are talking about.

We are really not asking for a change that would require us to get notice before the determination of a substantial hazard. That is not our position. We have a number of other recommendations with respect to how retailers are named in press releases and what have you that are in our formal submission. But we think this is a reasonable request.

Had someone at CPSC in my little example admitted that something was in the works, I think we could have gotten better notice out to the retail community in that particular instance. In that instance, of course, it was a violation of a Federal statute. So it was not even a negotiated recall, although they were treating it that way.

Chairman Brown said that she is cooperating with retailers and retailers are cooperating with her. I guess this was an example of where we had a very major failure to communicate. Unfortunately that happens all too often, because retailers last people brought in, but the people on the front lines.

Senator BRYAN. I understand that concern. I suppose there is always a balance. I mean to get the recall order out as quickly as possible, its primary office is to protect the consumer. You are asking for a little bit more of a lead time. I would want to hear, obviously, from the Commission and get their response. But at least implicit in your proposal was an assertion—and I want to make sure that I fully understand this—that you are of the opinion that the CPSC takes the position that this information cannot be shared if there is an ongoing negotiation with the manufacturer.

Ms. LANIER. That is correct. That is correct, that they cannot share with us any information when the negotiation is underway. To some degree, they feel they have more leeway if it is a violation of a Federal statute, like the Flammability Act. But if it is a voluntary compliance negotiation, they cannot give us that information.

We are really not asking for them to give us that information prior to the determination of a hazard. But there is a point at which the compliance action has been agreed upon and the manufacturer goes and tells us what is going on and what we need to do in order to administer the recall. Unfortunately, what happens is that the CPSC just rushes out with that press release to let peo-



ple know before the retailer is in a position to handle it and has in hand the information needed to actually administer taking back the products.

It is very confusing when you have similar products that are subject to a recall and some that are not.

Senator BRYAN. Ms. Lanier, I thought in the example that you cited that you found out before the press release went out, but it was too short a period of time. I think you indicated you faxed it.

Ms. LANIER. Right.

Senator BRYAN. And by the time it got out, it was Saturday afternoon.

Ms. LANIER. I have to say it was 5 days. Maybe I should be more specific. We really are talking about 5 business days. It was a Friday afternoon when we finally got the information that we needed in order to decide what fleece garments were subject to the recall and which were not.

Senator BRYAN. And the recall was issued when, then? Ms. LANIER. Tuesday. We got it on Friday at 3:20. We got it to our members. Now, if you were not a member of the International Mass Retail Association, you did not get that information. We only sent it to our members. There are obviously many retailers who did not get that information.

The other problem is that the manufacturers themselves were required under the compliance agreement to notify retailers. But I heard from many retailers that the notices were mailed. So they did not arrive until after the recall. In some cases, notices were sent to billing offices or to buyers, to the sleep wear buyer for fleece. Those people are not people who would normally handle recalls.

So one of the other suggestions we have made is that there ought to be some way that retailers can have a designated hitter for recalls, so that the notice that a manufacturer sends to a retailer goes to somebody who really knows what to do with it.

Senator BRYAN. And I understand. I am not unsympathetic to your problem. I am also, however, sensitive to the fact that we do not want to burden the agency with such a level of notice that we lose some time in which individuals may be injured or even killed because of a failure to get a timely recall notice.

If I might ask our consumer representatives, Dr. Paul, to speak. Do you have any comment at all? I know you are hearing this for the first time, I am gathering. Any suggestions that you might have or response to that?

Ms. FISE. Yes, Senator. One of the concerns I would have with amending the law is that there are a variety of circumstances that come up in every recall situation. I do not think it is clear that amending the law to require 5 business days would be in the best interest in protecting consumers. For example, what if there was a recall situation that involved one retailer and the manufacturer only had to notify one retailer? There is no reason to require 5 business days and potentially expose consumers for another week to that hazard.

So I think, without having seen the IMRA proposal, the agency needs discretion. Let us remember why the recall situation comes about. It is because there is unsafe product that has been manufac-

tured and there should be responsibility on the part of the manufacturer to carry out an effective recall. I am sympathetic to some of the things that IMRA is identifying, because we want consumers to be notified as quickly as possible. The designated hitter idea (to identify one individual responsible for receiving recall notices) is a common sense solution.

I do not think the Consumer Product Safety Act needs to be amended to accomplish that. I think the Commission is all sitting here in the room, and has heard this discussion and I think that they should go back and consider.

Senator BRYAN. With the chairman's indulgence, if I might get Dr. Paul's response, and then I will yield.

Dr. PAUL. Dealing with 200 coalitions around the country, it sounds like a process question, whereby if you had the right address, the right list of those who would get the message and get it out quickly to retailers—even something that simple would help as opposed to the amendment of a law. When you have got notices going to the wrong offices, those are small.

Ms. LANIER. Even when it gets to the right office, if all you have got is 24 hours and you are a Walmart or a Kmart or a Target or even some of the smaller regional companies that have hundreds of stores, 24 hours is not enough time to get to every store manager or to get the 800 number information or the poster in hand. We heard earlier that one of the reasons manufacturers do not want us in the process early on is because the minute we hear that a product is unsafe, obviously we are going to return it to the manufacturer.

So there is a balance there. What we are saying is that the minute we hear of a recall, we are going to take those products off the shelves. You know we will. But we are also going to have the time to make sure that when the public learns about it that the people who are on the front lines, the store managers and the sales associates, will be well educated and be able to give consumers the information they need, or know where to get the retrofit kit or whatever the compliance option is on a recall.

Senator BRYAN. Thank you very much, Mr. Chairman.

Senator GORTON. Well, I will follow up and let Mr. Miller have a crack at that, too.

Mr. MILLER. We are talking about two different issues. Our concern—and we are certainly sympathetic to the points that have been made by everyone—retailers do need time, particularly mass retailers—it could be unreasonable to wait 5 days if there is a single retailer who has four stores. The issue we were concerned with was the notification of retailers before a determination has been made that you have got a hazardous product. Is then, I think you will agree, that retailers will summarily return it, even if the ultimate decision is a finding that the product is not a hazard which calls for a recall.

So these are two separate ones. We think the Commission either should, by itself, agree that they should not do this and will not do this. I know of one instance with a crib manufacturer where this was done, where the retailers were notified and, before a determination was made, the product was back, out of the stores. If I were a retailer, I would do the same thing. But this was a small



manufacturer. They could have been put out of business. We may be able to find other instances.

I think we would like the Commission to clarify their position on this. If they disagree with us, then I think we want to find a solution and recommend it to the committee.

Senator GORTON. Mr. Miller, I am going to follow up on that while I have got you here. I want to ask you another question. This question I would also like the two consumer representatives to comment on.

You suggested that the National Electronic Injury Surveillance System be revised so that it provides information of the causes of accidents rather than simply involvement in an accident. Why and how would you put it into effect? And then I would like the comments of the other two on this same subject.

Mr. MILLER. The reason why I think it affects all of us, when there is an injury, particularly in our industry, in toys—and if it is a serious injury, the Congress is criticized for not passing the right laws, the Commission is criticized for failing to enforce those laws, we as manufacturers are always criticized for not doing enough to ensure product safety. My mission in heading an association is really to help education manufacturers to make safe toys, because we all suffer from those criticisms.

If you look at the injury data, it looks as if there has been no progress, because they hover around 150,000–160,000 reported incidents of injuries related to toys. We know that there is only a very small fraction of those reported incidents that have to do with product failure. We would rather take the intake of the most ignorant person deciding what the cause of the injury was, along with the report of the injury, than to live in the dark as to whether there are causal relationships or not.

I do not think we measure whether the CPSC and the toy industry is doing its job by just looking at related injuries. There are going to be X number of children who ride their bicycles into the street and get hit by a car. There are X number of us who will slip on a toy on a staircase. Those are not the issues. Those are not the problems. That is why we would like to see the causal relationship. I think it will measure all of our performances better.

Senator GORTON. Ms. Fise?

Ms. FISE. Well, I think first you have to understand the NEISS system. That hospital emergency room data collection system collects from information from people that come in to those 100 selected hospitals. That number, then, creates a sample which then can be used to project to a national estimate.

So, first off, dealing with the costs of collecting causal information from every single person that comes through the NEISS system would be, I think, a very burdensome addition to this system. But that is only one piece of information that the Commission uses.

Routinely the Commission does what they call in-depth investigations. They also collect information from their hot line where they receive complaints. The in-depth investigations are assigned, and they are assigned for a good reason, to those situations where the outcome may be more serious.

So if a child went to a hospital emergency room and died and a toy product was involved, I cannot say for certain, but I am gues-

ing that CPSC is going to investigate that death. That in-depth investigation is a many-, many-page document. Many questions are asked and many people are talked to in putting together that report. Intertwined through all those reports are questions aimed at obtaining in-depth information about how the injury or death occurred. As a result the Commission obtains a lot of causal information on really serious investigations.

But to collect it every time someone went through the hospital emergency room is going to, I think, take resources from the Commission that they could use in other ways. I think probably one of the frustrations that Mr. Miller has is when it gets out in the news media that there are 150,000 injuries associated with toys every year. It is not discussed about how many of those are serious; how many of those are not serious, whether the parents tripped on the toy as they walked through the room, etc. That is a job that all of us try to explain.

Every time CFA talks about toys, we always try to always talk about the most serious risks. That also is why Congress passed the Child Safety Protection Act, which gives consumers information on choking hazards the product label. That is another way that you can get at informing the public about consumer risks.

Senator GORTON. Dr. Paul.

Dr. PAUL. We do not have a formal position on whether causal relationships should be included in a NEISS system. On the other hand, we do think that we want to know much, much more about injury causes than we have got now. For instance, when it comes to this issue that was debated earlier on baby walkers. For instance, if the cause is determined that a lot of these injuries is because these baby walkers plunge through the baby gates because the baby gates are not childproof and they give with a certain amount of force, we want to know that because that affects the nature of the messages that we give to parents about baby walkers and how they have to beware of assuming that baby gates protect them against children falling down stairs.

So I am not sure what the added cost would be of adding behavioral factors, but they are certainly significant in the overall understanding of any death or injuries. So it needs more research probably.

Senator GORTON. Let me ask now the two manufacturers, Mr. Miller and Mr. Rohn, about the distinctions between voluntary and mandatory standards, when each is appropriate and how you work with them and whether or not you think that the distinctions made in the Commission are appropriate.

Mr. MILLER. Well, the Commission is obliged to defer to a voluntary standard that deals with the hazard. Voluntary standards are enforced in a number of ways. No. 1, the Commission can use a voluntary standard to determine whether there is a hazard or not. No. 2, market forces are the way that voluntary standards are enforced.

There is hardly an IMRA member that does not specify when buying toys, for example, that compliance with both the mandatory Federal standards and the voluntary standards is necessary. So I think voluntary standards are a faster way to get a standard in place, and that market forces drive compliance with it.

Senator GORTON. And should a voluntary standard preempt a mandatory standard, even if the Product Safety Commission felt the voluntary standard was inadequate?

Mr. MILLER. No, I do not think so. I do not think they are bound to that, but it is only when it is adequate. We work, I think, closely with the Commission. The chairman, for example, spoke to our industry leaders several years ago about a few areas where she thought voluntary standards should be beefed up, and we have worked very hard to get those standards in place. They are just about there at this point.

Senator GORTON. Mr. Rohn?

Mr. ROHN. I would just add that the Coalition has historically been very supportive of the voluntary standards system. We think it has a long history of success and achieving the objectives of the Commission.

Senator GORTON. You, Mr. Rohn, have had a number of criticisms of the Safety Commission. I asked questions about what really is a voluntary action of Chairman Brown. I wonder if you would like to comment on that. Do your members sometimes feel that your voluntary actions are not really voluntary at all?

Mr. ROHN. Well, not all companies are brought in to work cooperatively. There are a lot of companies that have had some other experiences. In a lot of cases voluntary by one group's measure is arm twisting by other standards.

More than anything else, what we are concerned about is that the Commission go through due process, which requires that all sides of an issue be looked at in instances of imminent hazards. There are some instances that we have heard from in our Coalition that are allegedly voluntary but have not been voluntary in reality. Certainly, if you have the threat of a press release or of exposure of a particular product of a potential hazard before all the facts are in, then I think that a company has a legitimate concern that maybe the actions that they are being pushed toward are not exactly voluntary.

Senator GORTON. Dick, do you have anything more?

Senator BRYAN. Yes, I do, just one more. Just to follow up on that line of questioning that was at the conclusion of the last round of questions that I had. It strikes me that we have three interests here that are represented: the consumer interest, which is obviously the reason why the Commission was established in the first instance, and that has to be the overarching interest; the manufacturers' interest—that is a very legitimate interest; and the retailers' interest that Ms. Lanier has mentioned. I am not unsympathetic to what she had to say.

It seems to me that we have to be so careful not to burden the Commission with such a humongous notice requirement. Because, as you point out, Ms. Lanier, not all retailers in America belong to your group. Maybe from your perspective they should. This maybe is a chance for you to make an editorial plea to enlarge membership in this forum. But those who do not, obviously you are not responsible, nor should you try to make an effort to. I am just sensitive to that concern. I would just say—I know this is not the forum, Mr. Chairman, but maybe if the Commission could at least



submit their response to this general line of colloquy that we are having, I would appreciate that.

[The information referred to follows:]

NOTE: At the time of printing, September 13, 1996, no response to the above referred to information had been received.]

Ms. LANIER. We do not wish to burden the Commission on this. We do think that some kind of advanced notice can be given to the retail community in a way that is probably not burdensome. The other thing we would ask, which would not require any change in the legislation—just perhaps some more care on the part of the Commission—is to make sure that when they negotiate corrective actions that the folks with whom they are negotiating are really doing the notification the way they are supposed to do the notification.

Time after time after time I hear that retailers just do not get the word. That does not serve the consumer interest. Because the minute a retailer gets the word, they are going to take the product off the selling floor. If the retailer does not get the word, then they look very bad. They are sitting there with a product that is announced on the morning news has been recalled and it is still sitting there on the selling floor.

Senator BRYAN. Ms. Lanier, let me just say, and not to be contentious here, but it seems that you have a responsibility, too, in terms of the information that the manufacturer has.

Ms. LANIER. Absolutely.

Senator BRYAN. You pointed out that some of these faxes that went out did not really go out to the appropriate department of section, and so it took some time for that to work its way through the system. I think we can all relate to that. But it seems to me that retailers have a responsibility in dealing with their manufacturer, particularly those that you are involved with and can help them in a broader sense, craft—that there ought to be some kind of a notification mechanism which your organization can set up with the manufacturers with whom you are—

Ms. LANIER. Many of them do.

Senator BRYAN. And to simply say, Look, in case of a recall. We know from experience that there will be some recalls in the future. So it is not something that is without precedent. So rather than having it just sent to the business number where billings and other things might go, there ought to be, Attention, in case of a recall, notify X, and that procedure could be worked out in house, at least in terms of your membership.

Ms. LANIER. And many of them do. Manufacturers do not always send it to the right place anyway.

Senator BRYAN. I understand that.

Ms. LANIER. These sort of things happen. There is another issue also, and one that is in our formal submission. That is that very often on a recall—beanbag chairs happens to be a perfect example—you have competing products that are not subject to the recall, and what happens—fleece was also an example, too, where you had a very major domestic brand-name manufacturer of fleece that was not subject to the recall, but everybody calls fleece by that brand name. That caused huge confusion.

Among the other things that we are recommending is that any press release identify similar products that are not subject to the recall; that there may be perhaps a mailing list or a fax list that a retailer could get on, perhaps at a price—sort of a user fee kind of thing—so that when the press release is mailed under embargo to news stations a few days before the recall is announced, one assumes it goes out the day before or so—that that could also be faxed to the mailing list, whatever the industry mailing list is.

There are a number of ways that I think are not terribly burdensome and would not be terribly expensive and would go a long way to making sure that the retail community, whether or not you are subject to a recall, is prepared for the consumer who comes in the store and says, I have a beanbag chair, is this subject to the recall?

Senator BRYAN. And do you feel that you have the ability to have that kind of conversation informally with the Commission?

Ms. LANIER. We have talked to them, to the Commission, about this. As yet, we have not made a whole lot of progress. But we are willing to work with them. We want to cooperate with them. We really do want to avoid the kind of situation we had with the fleece recall. That was really a nightmare.

Senator BRYAN. I am just thinking, in terms of that lesson—I understand exactly what you are saying, a beanbag or whatever, it has kind of a generic reference and if there is only a particular manufacturer. However, I am just wondering if the Commission did as you are suggesting, indicate that we are referring only to the Smith Company's beanbag as opposed to the Jones Company beanbag, if you do not list every other beanbag company that is not subject to recall. I mean you can appreciate the problem?

Ms. LANIER. I certainly can. But they can be specific. We have had instances where the description of the product was so vague as to be unworkable for us.

Senator BRYAN. I am not unsympathetic, and we will look forward to the Commission's response in terms of how they might approach it. Thank you so much, Mr. Chairman.

Senator GORTON. One more question, Mr. Rohn. We are at almost the final stages of a vitally important and highly controversial national debate over product liability. One of the elements that was in one of the product liabilities bills, of course, was granting certain protections against product liability litigation to those who conformed with rules imposed by the Food and Drug Administration and the Federal Aviation Administration.

Is it your view that compliance with the regulations of the Consumer Product Safety Commission, whether those requirements are voluntary or mandatory, should provide a certain degree of defense, without defining it, against product liability litigation with respect to such products?

Mr. ROHN. Respectfully, Mr. Chairman, I am not a technician on those issues, and I would have to defer to the written statement of the Coalition.

Senator GORTON. I am not surprised, but I thought I might roll that ball down the alley and see how many pins it hit.

Mr. ROHN. It was a nice throw. [Laughter.]

Senator GORTON. And perhaps you may want to communicate with us later on, on that subject.

Mr. ROHN. We would be more than happy to in a timely fashion.  
[The information referred to follows:]

[NOTE: At the time of printing, September 18, 1996, no response to the above referred to information had been received.]

Senator GORTON. We now have the chairman of the full committee here, Senator Pressler.

The CHAIRMAN. Thank you, Mr. Chairman, for holding this hearing.

I just have one question, and that is also devoted to David Rohn. You indicated the CPSC's current regulatory scheme is time consuming, expensive, inconsistent, and unfair. Would more risk-based decisionmaking on the CPSC's part improve this state of affairs, and what do you mean by your comment?

Mr. ROHN. There is a lot covered in that statement. The consuming point goes to some of the duplicative reporting requirements that are in existence. If you include some risk assessment that may also help. Our intent is to underscore the notion that you need to give due consideration to items such as: hazards that are clearly understood, the existence of warnings from manufacturers regarding the use of products, appropriate supervision, substance abuse, product misuse, or the intervention of another product or instrument.

Overall, I think what we want is to have an agency that, in an era of limited resources uses more risk-based decisionmaking. I guess the comment of the Coalition is that a scatter-shot approach or more is better attitude does not make sense. Running around through the hall saying, What have we got today, and scrambling to come up with a press release or sound bite or television appearance du jour is probably not the most effective way to determine priority hazards and risks in an era of limited resources.

The CHAIRMAN. Thank you very much.

The CHAIRMAN. I want to commend you again for holding this hearing. Thank you.

Senator GORTON. And I want to thank each of you, as I did the previous panel, for being very helpful and enlightening us on the problems and challenges that you and we face together.

Senator BRYAN. Mr. Chairman, let me just echo those comments and thank you very much for convening this hearing and the selection of the witnesses. These were very thoughtful, very helpful comments. We appreciate that. I recognize that the Commission has got a very difficult job in balancing all of the interests that you have articulated here this morning.

I thank you again, Mr. Chairman. I thank each of the witnesses.

Senator GORTON. The hearing is adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]



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# APPENDIX

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## OTHER MATERIAL SUBMITTED FOR THE HEARING RECORD



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### STATEMENT FOR THE HEARING RECORD

#### SENATE COMMERCE SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM

#### HEARING ON REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

APRIL 23, 1996

The Association of Home Appliance Manufacturers (AHAM) represents the manufacturers of household appliances, including white goods such as refrigerator-freezers, freezers, clothes washers and dryers, kitchen ranges and ovens, microwave ovens, room air conditioners, and dishwashers as well as portable appliances such as coffee makers and toasters. AHAM is an active member of the National Association of Manufacturers (NAM) Coalition on CPSC and assisted in drafting the Coalition's "Concepts Paper for Legislative Change." We strongly support the witness testimony offered by Mr. David M. Rohn, Executive Director, NAM Associations Council.

Congress created the CPSC in 1972 to protect consumers against unreasonable risks of injury from consumer products. Since that time, the agency has had some successes and, at its best, has worked cooperatively with industry to advance the cause of product safety. While some organizations and individuals have called for the agency's elimination, AHAM believes that preservation of the CPSC, with appropriate reforms, will help improve product safety without restricting consumer choice and without placing unnecessary burdens on manufacturers, distributors, and retailers which supply the public with consumer products.

#### *AHAM's Suggested Legislative Reform Proposals*

While AHAM supports the overall goals of the NAM Coalition on CPSC, we also have more focused legislative reform proposals based on the specific experiences of the appliance industry. First, disclosure of privileged information that the Commission gains under Section 15(b) filings is of concern to our members. We believe information that companies make available to the Commission, which may be in the "grey" area of hazard identification or on which a company seeks a ruling from the Commission staff as to whether it constitutes a hazard, should be protected. Information contained in these preliminary determination files should not be released to the general public. We support amending Section 6(b)(5) to prohibit disclosure of such preliminary information until the Commission has reached a final determination.

Second, we believe general allegations that the Commission receives in consumer complaints should be reviewed and substantiated prior to release to the public even if the complaint does not identify a manufacturer but mentions only a product-type. For a consumer to "blame" a product is not unique. However, before this information is shared with the public, it should be reviewed by the Commission's technical or epidemiological staff for accuracy and for technical substantiation. Such a change shows our support for the Commission staff and belief that once reviewed, they will separate unwarranted claims from true potential hazards. We

support adding a new section 6(b)(6) to provide for investigation and substantiation of such reports before public disclosure.

Third, we believe any action by the Commission should be limited to cases where there are defects to the product. Consumers, in many cases, understand the risk of many products, and even when injuries result, the consumers recognize their responsibility. Such a policy would also serve to focus the Commission's limited resources. In addition, when determining if a substantial hazard exists, the Commission, in some actions, gives scant consideration to warnings issued with the products. Manufacturers spend considerable time and effort designing warning information and labels for products. Additionally, product liability caselaw recognizes the use of warnings to reduce unavoidable product hazards. We support amending Section 9 to provide for CPSC consideration of product nature, content, design or labeling in determining risk.

Fourth, manufacturers frequently file information under Section 15(b) which results in an investigation by Commission staff. In some cases, manufacturers receive no further communication from the Commission and the investigation seems to languish indefinitely. Years later, the manufacturer is notified that they are still under investigation. We submit that the enforcement division should make a determination on these issues within a reasonable period of time, perhaps three years, and fully inform the manufacturers of that determination.

Fifth, our manufacturers have for many years questioned the value of Section 37 reporting requirements. They are vague, easily misunderstood and most important, duplicative of requirements under Section 15(b). Legal actions filed against manufacturers are not presumptive of product defect. If manufacturers choose to settle nuisance actions filed against them rather than incur large legal costs, this does not necessarily mean that there is a problem with the product. The requirements under Section 15(b) are more carefully defined and speak to the main point. We support elimination of Section 37.

Finally, AHAM strongly supports restrictions on the public disclosure of product specific information through the addition of a new provision to Section 6(b) requiring the Commission to adopt a policy or procedure for investigating and approving press releases, public announcements, or public appearances by Commissioners or staff. Comments not based on substantial evidence, even if specific brands or companies are not named, have caused damaging consumer reactions to some products. The Commission exercises great authority and it should do so with appropriate deliberation.

#### *AHAM's Response to CPSC Legislative Proposals*

AHAM has reviewed the proposed amendments forwarded to Congress by the CPSC and would like to comment on several of the Commission's technical and substantive proposals.

AHAM supports CPSC's technical proposal to amend the Federal Hazardous Substances Act (FHSA) to authorize the Commission to obtain samples from manufacturers, distributors, or retailers at cost. Further, AHAM supports the Commission's legislative proposals amend the Consumer Product Safety Act (CPSA) to make inadmissible in civil actions in State or Federal courts all reports furnished under Section 15(b) as well as the proposal to make unlawful the manufacture, offer for sale, distribution or importation of consumer products bearing false certification for a voluntary safety standard. These are reasonable, "good government" proposals which AHAM members support.

However, AHAM strongly opposes several so-called technical and legislative amendments proposed by the Commission. First, AHAM opposes the Commission's proposal to require appeals filed after a formal Commission hearing be filed in the U.S. Court of Appeals. Currently, appeals to either the CPSA or the FHSA can be filed in district courts and then appealed to a court of appeals. AHAM opposes this proposal on the grounds that it would

restrict the process of judicial review. Business owners should not be forced to travel unnecessarily to Washington to challenge the CPSC.

Second, the CPSC has proposed that preliminary injunctions issued under section 15(g)(1) last for the entirety of a CPSC proceeding. Currently, CPSC must renew all injunctions every 30 days. AHAM opposes this proposal as it provides undue power to the Commission and believes the Commission should be required to show evidence of need to continue an injunction as is the case in all other litigation.

Third, AHAM strongly opposes the Commission's proposal to drop current requirements for cost-benefit analysis for issuance of a consumer product safety rule for a safety device that is a distinct product. Without the guidance offered by cost-benefit analysis, resources can be directed toward obscure hazards or ones without cost-effective technological solutions. The effect can be to significantly increase product costs and price less affluent consumers out of the new product market.

Fourth, AHAM opposes the Commission's proposal to expand product hazard reporting requirements to include all statutes administered by the CPSC. To include statutes other than the Consumer Product Safety Act in manufacturer reporting requirements is unnecessary. AHAM knows of no vacuum in actual reporting which requires an expansion in the scope of reporting requirements.

Fifth, AHAM opposes the Commission's request for authorization to undertake product safety harmonization in cooperation with other U.S. and foreign agencies, governments, or public or private institutions. AHAM believes that CPSC staff lack the technical expertise to negotiate and implement such harmonization. By focusing on the United States, the Commission will also focus scarce resources on those projects which have the greatest impact on U.S. consumers.

Finally, AHAM vigorously opposes the Commission's proposal to expand Section 37 reporting requirements. The Commission has proposed to require reporting of products that are the subject, during any 24-month period, of any combination of three: 1) civil actions filed in Federal or State court; 2) final settlements in civil actions; 3) final settlements of claims for which a civil action was not filed; or 4) court judgments involving such allegations in favor of the plaintiff. Additionally, the new CPSC proposal would no longer require manufacturers to determine whether a lawsuit was for grievous bodily injury, but rather includes all claims of injury. The proposal also expands Section 37 reports to apply to any one category of consumer product instead of individual models. AHAM members believe that Section 37 has only added additional administrative burdens without providing any new meaningful data to the CPSC. The CPSC proposed language would result in a deluge of paper, as almost all complaints alleging a product defect include some generalized claim of injury, fear of future injury, or psychological injury. As previously stated, legal actions filed against manufacturers are not presumptive of product defect. We believe Section 37 should be repealed and strongly oppose the Commission's attempt to expand upon this redundant reporting requirement.

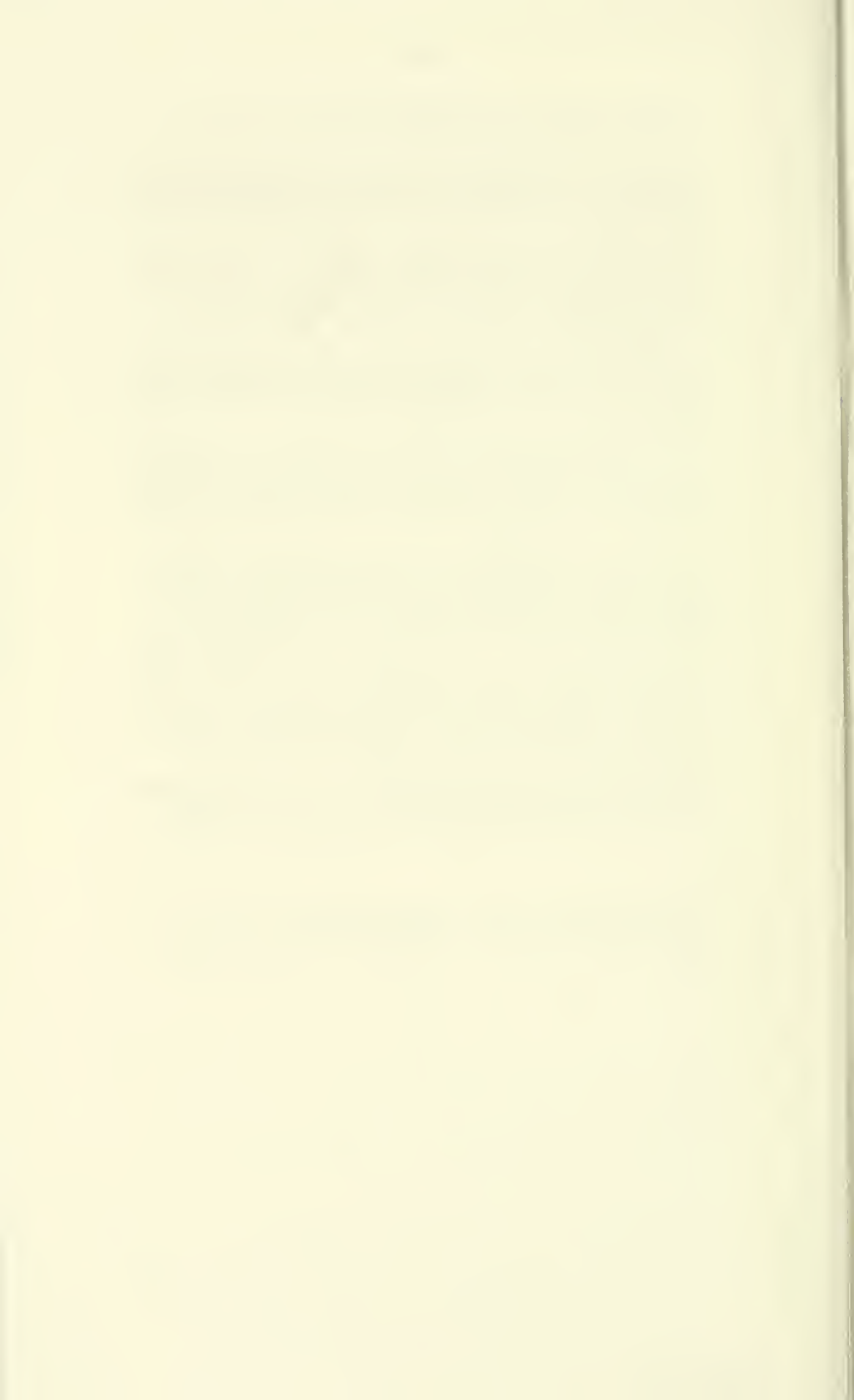
In conclusion, AHAM favors the continued existence of the CPSC but supports changes to the authorizing statutes aimed toward the continued protection of consumers while assuring fairness and due process to product manufacturers.

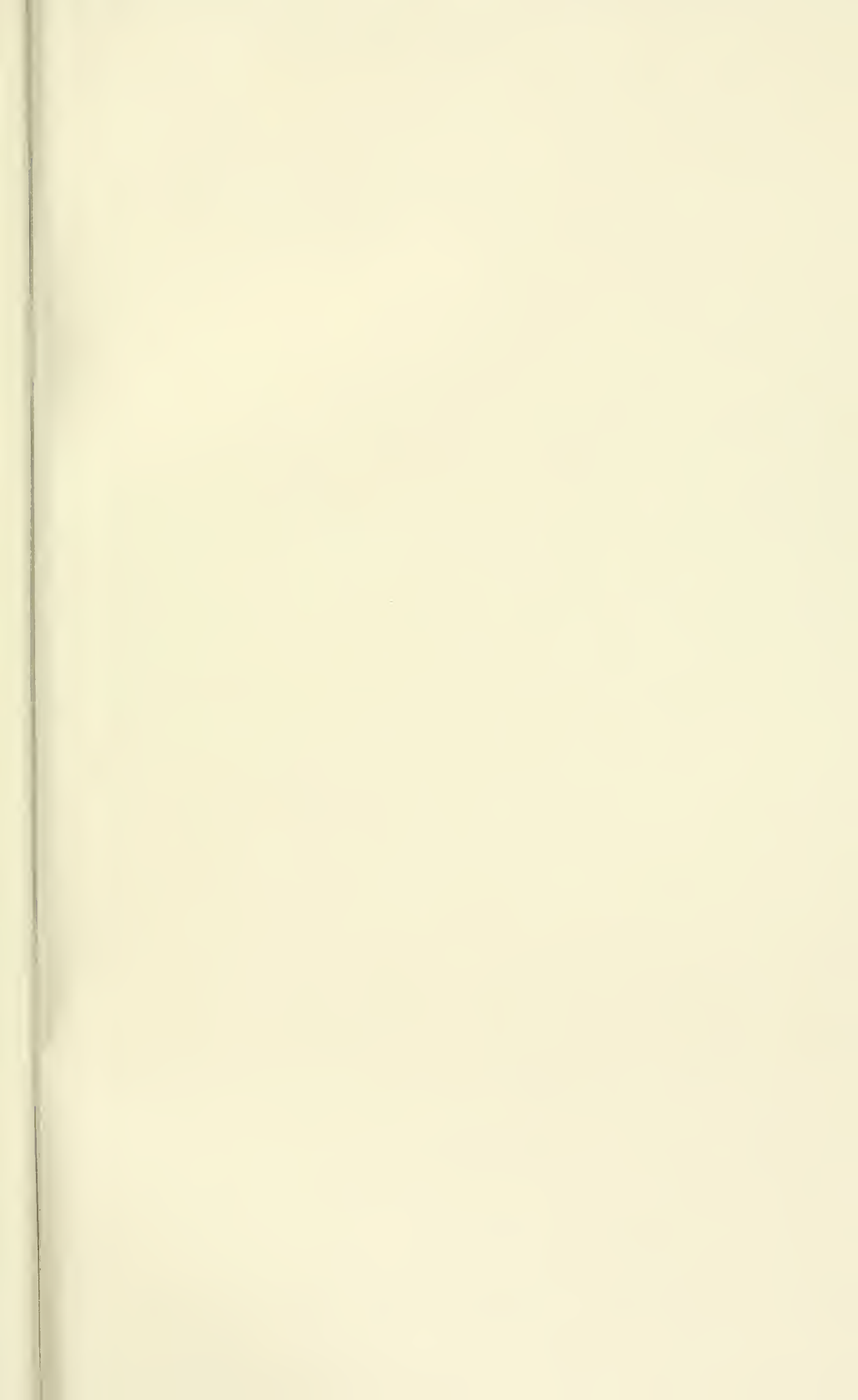
Mr. Charles A. Samuels  
AHAM Government Relations Counsel

Ms. Tracey A. Moorhead  
AHAM Government Relations Director

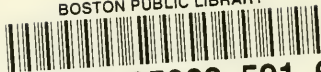
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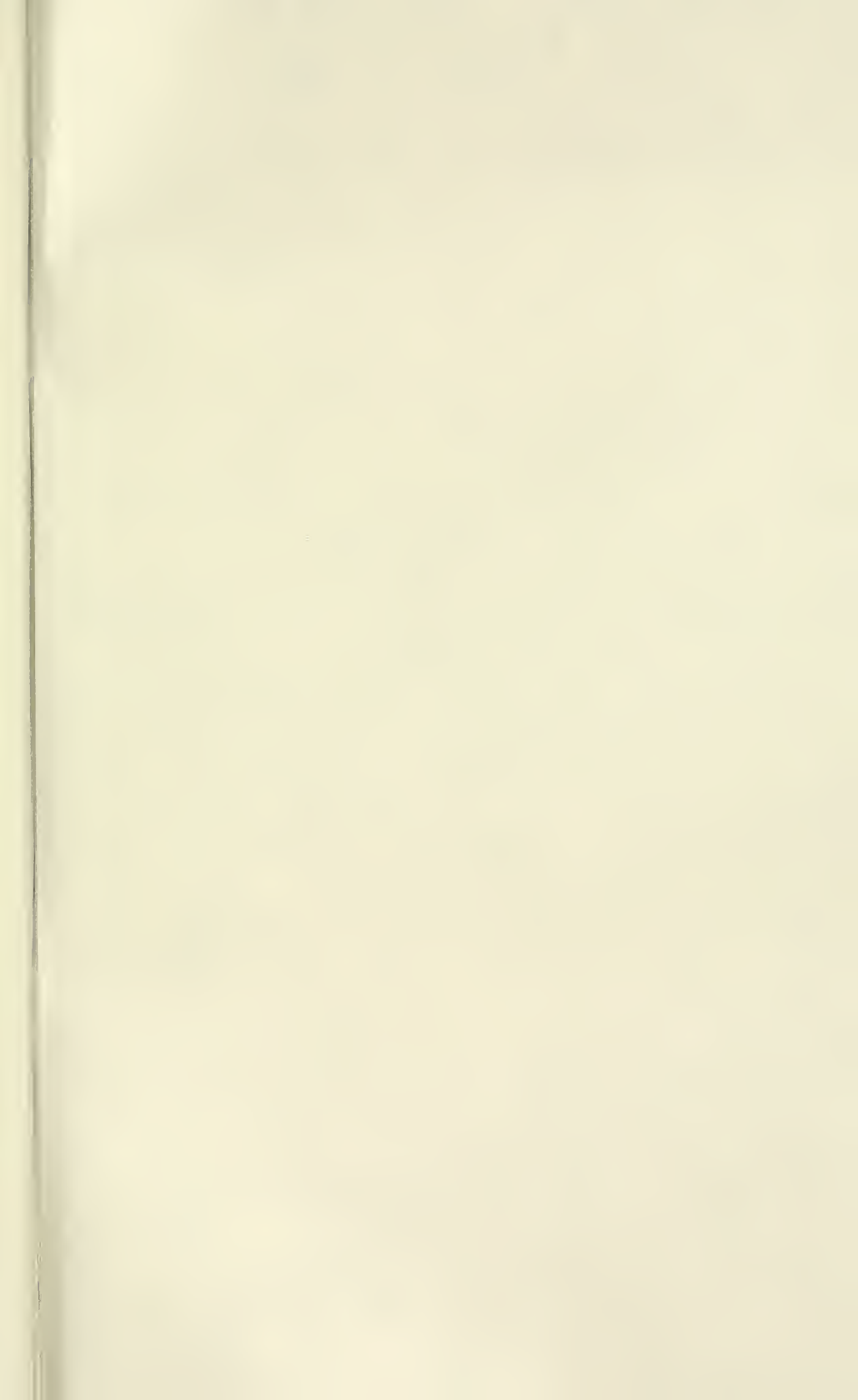


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