



Consumer Federation of America

Testimony of

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

Before the
Subcommittee on Consumer Affairs, Insurance and Automotive
Safety
of the
Senate Committee on Commerce, Science and Transportation

Oversight Hearing of the Consumer Product Safety Commission

Russell Senate Office Building 253

March 21, 2007

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

I. Introduction

CPSC's mission, as set forth in the Consumer Product Safety Act, CPSC's authorizing statute, is to "protect the public against unreasonable risks of injury associated with consumer products."¹ CPSC is charged with protecting the public from hazards associated with over 15,000 different consumer products. Its statutes give the Commission the authority to set safety standards, require labeling, order recalls, ban products, collect death and injury data, inform the public about consumer product safety, and contribute to the voluntary standards setting process.

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. CPSC saves \$700 billion in societal costs each year.² We know from past experience, from survey data, and from consumers who contact us, that safety is an issue that consumers care deeply about and that CPSC is an agency that consumers support and depend upon to protect them and their families.

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

II. CPSC Budget

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

In 1974, when CPSC was created, the agency was appropriated \$34.7 million and 786 FTEs. Now 32 years later, the agency's budget has not kept up with inflation, has not kept up with its deteriorating infrastructure, has not kept up with increasing data collection needs, has not kept up with the fast paced changes occurring in consumer

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

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

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

product development, and has not kept pace with the vast increase in the number of consumer products on the market. CPSC's staff has suffered severe and repeated cuts during the last two decades, falling from a high of 978 employees in 1980 to just 401 for this next fiscal year. This is a loss of almost 60 percent.

While every year an estimated 27,100 Americans die from consumer product related causes, and an additional 33.1 million suffer injuries related to consumer products under the jurisdiction of the CPSC, this agency, with its reduced staff and inadequate funds, is limited in what it can do to protect consumers. Due to these constraints, CPSC cannot even maintain its current level of safety programs, let alone invest in its infrastructure to improve its work in the future.

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

III. 2008 Budget Numbers

In September of 2006, Acting Chairman Nord and Commissioner Moore voted unanimously to approve the Executive Director's recommendations as proposed in her memorandum.⁴ The memorandum included a budget request of \$66,838,000 which is a \$4,468,000 increase over the President's 2007 budget request. This request would maintain current staff levels at 420 FTE and cover the costs of information technology. Both the staffing and information technology are necessary to maintain CPSC's current level of program activities.⁵

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

⁴ This document is not publicly available.

⁵ Record of Commission Action, Commissioners Voting by Ballot, Fiscal Year 2008 Performance Budget Request, September 7, 2006. Available on the web at <http://www.cpsc.gov/LIBRARY/FOIA/ballot/ballot06/FY08.pdf>

Funding for the CPSC has remained essentially flat for the past two years, forcing staff decreases of 31 FTEs in 2006 and 20 FTEs in 2007. Since 2000, the CPSC has lost 79 FTEs, a loss of 16 percent. This loss in staff is particularly significant because “CPSC is a staff intensive organization with nearly 90 percent of its recent funding absorbed by staff compensation and staff related space rental costs.”⁶ CPSC estimates that to maintain its current staffing level of 420 FTEs, which already require limiting CPSC’s programs; CPSC would need an additional \$2,167,000. CPSC is required by various federal rules to increase costs for staff such as a projected 3 percent Federal pay raise, increased Federal Employee Retirement System contributions and two additional paid work days.

CPSC faces additional cost increases of \$50,000 for rental space, though it is off-setting that by saving \$500,000 in returning unused space, as a result of the reduced number of staff, which is currently causing a lot of commotion at the agency. In addition, “annual costs for service contracts are growing faster than CPSC is able to find off-setting savings.”⁷ These costs include required system enhancements for payroll and accounting that cost \$250,000.

CPSC estimates that it needs an addition \$1,000,000 to update CPSC’s operating systems but admits that this amount is a minimum amount that will not allow them to implement new software systems. Improvements in the CPSC’s information technology are critical. The Commission has requested funds for improving their information systems for many years and the needs are growing exponentially. Especially with such reduced staffing, CPSC needs mechanisms to increase efficiency at every level and IT is the best way to facilitate those efficiencies. IT is critical to what staff at CPSC do every day. In practically every aspect of CPSC’s work, “CPSC relies on IT in our related technical, compliance, outreach and operational areas.”⁸

IV. Consequences of the 2008 Budget Request

“CPSC has maximized staff efficiencies and cannot absorb further reductions without having an impact on its product safety activities.”⁹ Below are just a few examples of how this limited budget affects CPSC.

A. Laboratory will not be Modernized

Much of CPSC’s equipment, particularly at the Commission’s laboratory, is old and outdated. However, the 2008 performance Budget document does not even request any funds to improve the laboratory. This exemplifies how limited this budget is. CPSC’s testing laboratory serves a crucial role in CPSC’s compliance investigations and safety

⁶ U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page v. On the web at <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>

⁷ U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page v. On the web at <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>

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

⁹ U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page vi. On the web at <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>

standards activities. In spite of the laboratory's critical importance, no major improvements have been made in the past 32 years. Rather, CPSC and GSA have made only slight modifications to its infrastructure, which was originally designed for military use not laboratory use. Currently, CPSC staff working at the lab are working under merely adequate conditions. If the laboratory were to be modernized, the CPSC would increase productivity and efficiency. For example, each time the CPSC must conduct a test on a baby walker, due to a compliance investigation such as a recall or a standard setting activity, the specialized equipment must be rebuilt due to limited space and limited existing equipment. Therefore, each test takes up more time than it would if the equipment existed permanently and prevents CPSC engineers from working on other projects. Moreover, with increasingly more complex products under CPSC's jurisdiction, the facilities at the laboratory are becoming more outdated every year.

B. CPSC will not be Able to Regulate Effectively

CPSC's funding directly affects its ability to regulate effectively. Most of the recalls brought about by the agency are the result of voluntary agreements reached between CPSC and manufacturers and/or distributors. However, in every recall matter it considers, the Commission must be prepared with research evidence to convince the company of the need for action. In cases where the agency must file a complaint and litigate the matter, the agency may require even more extensive testing and research data for use as evidence at trial. This testing and research, whether leading to a recall or trial, may need to be contracted out and is very costly. This contingency is one with enormous ramifications. In effect, not having sufficient resources puts the CPSC in a terrible position as an enforcement agency. It can't put its money where its mouth is – so to speak – because it can't be sure it will have the money needed to follow through on its enforcement actions.

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

This concern is further exacerbated as new products and new technologies come on to the market. Sophisticated, high tech products, such as Segway devices, which CPSC engineers may have never seen, much less have expertise with, pose particularly resource intensive challenges. Products such as computer lithium batteries that have recently been subject to recall as well as products involving nanotechnology challenge the Commission's limited resources. For the CPSC to live up to its safety mandate, it must be able to keep pace with the ever-changing development of technology. The 2008 Performance Budget does not seem to provide funds or an opportunity for CPSC staff to adequately study these and other emerging technologies in the consumer product market.

Another aspect of the changing consumer product market is that every year, more and more consumer products are imported into the United States. According to CPSC, two thirds of all recalls involved products manufactured overseas. CPSC has two programs dealing specifically with this issue. The first is its program with the U.S. Customs and Border Protection. In 2006, CPSC field staff and U.S. Customs staff prevented about 2.9

million non-compliant cigarette lighters and fireworks from entering the United States¹⁰ and also prevented 434,000 units of toys and other children's products from entering the country.¹¹ The 2008 Performance Budget includes a goal of import surveillance for one product for which fire safety standards are in effect and one product for which safety standards are in effect. These are limited goals due to limited resources.

The second is the relatively new Office of International Programs and Government Affairs which seeks to have signed Memorandums of Understanding with seventeen countries by the end of 2008. These memoranda establish closer working relationships and set up frameworks for exchanging safety information with CPSC's counterparts in other countries. CFA hopes that these memoranda lead to concrete efforts to prevent unsafe products from entering the United States and we believe that to achieve this, the CPSC must work with other countries to prohibit the export of products that don't meet voluntary or mandatory safety guidelines. Specifically, compliance with safety standards should be made a necessary condition of receiving an export license for certain products which have had pervasive safety problems. Further, products should be required to be tested/certified by an independent third party laboratory to determine if products meet safety standards. If they do not, products cannot be exported to United States. This protects the marketplace before products enter the stream of commerce. Critically, this will not rely on the customs program which has many other competing homeland security priorities. Ultimately the responsibility falls on the manufacturers, many of which are based in the United States and they must be more fully engaged in policing their products.

D. Freedom of Information Act

CPSC had an internal policy of responding to Freedom of Information Act (FOIA) requests within 20 days. Recently, there has been a large backlog and many responses now take considerably longer than 20 days. This is due in large part to the staff allocated to work on FOIA requests. At the end of 2004, CPSC had 15 FTEs devoted to responding to FOIA requests. As of March of 2006, CPSC had 8 FTEs devoted to the same efforts. These staff reductions like many in the Commission were achieved through attrition and retirement buyouts. As of December 31, 2005, the FOIA backlog was 145 requests. At that time the commission anticipated that it would have a backlog of 90 requests at the end of 2006.¹² A recent Associated Press article included a telling example:

Tom Curley, president and CEO of The Associated Press and a member of the Sunshine in Government Initiative, a media coalition, related how it took a year for an AP reporter to get lab reports on lead levels in lunch boxes that the Consumer Product Safety Commission had deemed safe. The tests revealed that

¹⁰ U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 21. On the web at <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>

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

¹² See <http://www.cpsc.gov/library/foia/foia061406.pdf>.

one lunch box in five contained lead levels that some medical experts considered unsafe. “Why did it take a year for the commission to respond to a relatively simple request that FOIA says it was supposed to answer in 20 working days?” Curley said.¹³

Responding to requests for information from the public is a critically important function of the agency and one that ultimately leads to improved products and a safer public, yet under this budget proposal CPSC is limited in how they can respond and fulfill the public’s request for information.

V. Substantive Issue Areas of Concern

A. All Terrain Vehicles (ATVs)

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

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

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

¹³ Associated Press, “Democrats push for open government agenda: ‘Sunshine Week’ bills in Congress to counter Bush administration secrecy,” March 14, 2007. available on the web at: <http://www.msnbc.msn.com/id/11203718/>.

concerned that the Commission has neglected researching critical aspects of this issue, partly because it simply cannot afford to do so.

For example, 45 percent of ATV incidents involve an ATV tipping over, thus raising the issue of an ATVs inherent stability. However, CPSC has not conducted stability tests or research. When Commissioner Moore asked CPSC staff about this lack of information, CPSC staff responded, “CPSC staff has not had the resources to perform the necessary tests and evaluations to develop a comparative analysis of the current market of ATVs for steering, pitch stability, lateral stability, braking, and other handling features.”¹⁴

This is unfathomable- the factors that staff are not studying comprise those aspects of ATVs that are most involved in ATV incidents leading to death and injury. Failures of these systems are critical to ATV crashes and tip-overs. However, the Commission is moving forward on an ill advised rule without studying these issues due, at least to a significant degree, to a lack of resources. We fear that not only will this rule not save lives, but that it may lead to younger children riding larger, faster and potentially more dangerous machines.

B. Recall Effectiveness

The ability of the CPSC to conduct effective recalls of unsafe products is critical to protecting the public from unreasonable risks associated with consumer products. However, the 2008 Performance Budget does not describe any efforts to improve recall effectiveness. In 2001, CFA filed a petition with CPSC urging them, among other things, to issue a rule that would require that manufacturers (or distributors, retailers, or importers) of products intended for children provide along with every product a Consumer Safety Registration Card that allows the purchaser to register information, through the mail or electronically. Such information will allow the manufacturer to contact the purchaser in the event of a recall or potential product safety hazard.

The Commission denied CFA’s petition in March of 2003 and has not undertaken any concrete efforts to broadly increase recall effectiveness other than the creation of a web site dedicated to recalls. Unfortunately, the web site requires a consumer to take proactive steps to obtain recall information, even though research indicated that direct-to-consumer notification is the best method for informing consumers about recalls. Direct ways to inform consumers who purchased the recalled product exist and would be more effective than the current approach which relies upon the media to convey the news of the recall.

When consumers do not hear of product recalls, their lack of information can lead to tragic consequences, including death or injury. By relying solely upon the media and manufacturers to broadly communicate notification of recalls to the public, CPSC and the companies involved are missing an opportunity to communicate with the most critical population--those who purchased the potentially dangerous product. Product registration

¹⁴ CPSC Staff Response Regarding Follow Up Questions from Commissioner Moore after June 15, 2006, ATV Safety Briefing, July 11, 2006.

cards or a similar electronic system provide consumers the opportunity to send manufacturers their contact information enabling manufacturers to directly notify consumers about a product recall. The 2008 budget does not provide any funds for the Commission to study this issue or to consider better more effective alternatives.

C. Mattress Rule – Preemption

The Commission promulgated a rule on mattress flammability on March 15, 2006 that purports to preempt state common law remedies. According to CPSC’s own data, annual national fire loss estimates for 1999-2002 indicate that mattresses or mattress bedding were the first item to ignite in 15,300 residential fires resulting in property loss of \$295 million, and causing 350 deaths and 1,750 injuries. Mattress flammability poses a significant threat to lives and property and compels a federal response to eliminate these injuries. However, insofar as the new CPSC Rule seeks to preempt a consumers’ ability to hold mattress manufacturers accountable in state court, the Rule could undermine public safety and consumers’ right of redress for harms caused by unreasonably dangerous products in state courts.

First, the proposed preemption of state common law remedies by a CPSC final rule is unprecedented. Second, state common law claims resulting from dangerous products compensate consumers who have been harmed by the negligence of others. Third, while CPSC rules sometimes include preemption of state safety standards, the language in the Draft Final Rule would also, for the first time, claim to preempt state common law tort claims. Finally, the preemption language was added to the rule’s preamble after the notice and comment period closed, providing no opportunity for review or evaluation by the public.

The U.S. Consumer Product Safety Commission’s main duty to Congress and the public is to protect the public from unreasonable risks of injury associated with consumer products. Since liability law enhances safety by providing continual incentives to improve product design, the inclusion of a preemption provision in a final rule would violate the CPSC’s core mission.

D. Magnet Toy Recalls

A recent emerging hazard necessitating CPSC action involves numerous toy manufacturers’ use of strong, small magnets in toys. The ingestion of more than one of these magnets poses serious risks of death or injury to children. The magnets can link together and siphon off the intestines, creating a deadly blockage. According to a December 2006 Centers for Disease Control article, since 2003, CPSC staff members have identified one death resulting from ingestion of these magnets and 19 other cases of injuries requiring gastrointestinal surgery.¹⁵ CPSC has conducted four recalls¹⁶ of these

¹⁵ *J Midgett, PhD, Div of Human Factors; S Inkster, PhD, Div of Health Sciences; R Rauchschalbe, MS, M Gillice, Office of Compliance, Consumer Product Safety Commission. J Gilchrist, MD, Div of Unintentional Injury Prevention, National Center for Injury Prevention and Control, CDC.*
“Gastrointestinal Injuries from Magnet Ingestion in Children --- United States, 2003—2006,” MMWR,

products; however, given the seriousness of the consequences of the ingestion of these products, some of these recalls were questionable and unacceptably weak.

In March, 2006, Rose Art Industries conducted a “Replacement Program” for their Magnetix Magnetic Building Sets. The term “replacement program” is ambiguous to consumers and fails to alert them to the seriousness of this issue. Further, it was never made clear that products put back on the shelf after the recall were substantively different from the recalled products, thus not necessarily reducing the risk. In addition, a January 18, 2007 recall of Geometix International LLC’s MagneBlocks™ Toys, included a surprisingly weak recommendation for what consumers should do. The press release stated that, “CPSC recommends children under 6 years of age not play with toys containing magnets. If a magnet comes out of one of the blocks in these sets, immediately remove the block from the set and send it to Geometix International for a free replacement block.”¹⁷

Thus, only after it is visibly clear that the harm may have occurred should action be taken to protect a child. Recalls are already a response to the knowledge of a potential risk. This recall is doubly weak because it does not give consumers the opportunity to prevent a documented likely harm. Sadly, the response by some in the toy industry has been to shift responsibility from manufacturers to parents. However, it is clear, that magnets come out so frequently from some of these toys and are so small, that no amount of parental supervision could have prevented many of these incidents. We urge this Committee to look into why some of these recalls have been so weak.

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

On July 13, 2006, the Commission issued Final Interpretative Guidance on section 15(b) of the Consumer Product Safety Act. Section 15(b) requires that every manufacturer, distributor, or retailer must immediately inform the CPSC if it “obtains information that reasonably supports the conclusion that its product either: (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard . . . ; (2) contains a defect which could create a substantial product hazard . . . ; or (3) creates an unreasonable risk of serious injury or death.”¹⁸ The CPSC guidance purported to clarify the current law by adding factors to be considered when evaluating the duty to report: the definition of defect will be amended to include the role of consumer misuse, adequacy of warnings, and obviousness of the risk; the number of defective products on the market will be considered; and compliance with product safety

December 8, 2006 / 55(48);1296-1300, available on the web at www.cdc.gov/mmwr/preview/mmwrhtml/mm5548a3.htm.

¹⁶ These recalls include: Rose Art Industries, Magnetix, March 31, 2006, <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml06/06127.html>; Mattel, Poly Pockets, November 21, 2006, <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml07/07039.html>; Geometix International LLC MagneBlocks™ Toys, January 18, 2007, <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml07/07085.html>; and Jazwares Inc., Link-N-Lite™ Magnetic Puzzles, February 15, 2007, <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml07/07106.html>.

¹⁷ See Geometix press release at <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml07/07085.htm>.

¹⁸ 15 U.S.C. §2064(b)(1), (b)(2), and (b)(3).

standards will be evaluated. We fear that these factors could cloud the interpretation of the law and the obligation to report under this section.

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

F. Other Areas No Longer Addressed

CPSC's Performance Budget Document does not include a number of incredibly important programs or activities that it has had in the past. For example, the Commission has no plans for in depth studies on playgrounds or ATVs. These in depth studies provide incredibly important information about the way injuries and deaths occur. These studies are invaluable to people working on solutions to prevent these incidents.

Significantly, the Commission no longer includes reducing child drowning deaths as one of its results- oriented hazard reduction strategic goals. The Commission, in the 2008 Performance Budget document states, "We continue our work in reducing child drowning deaths at the annual project level including expanding our public information efforts. Staff, however, proposes that we no longer address this area at the level of a strategic goal because of resource limitations and the limited ability to develop further technical remedies to address the behavioral aspects of child drowning."¹⁹ Drowning continues to be the second leading cause of accidental injury-related death among children ages one to fourteen and the leading cause of accidental injury- related death among children one to four. Thus, even though a leading cause of death among children, the Commission can no longer prioritize its work on reducing child drowning as a result of reduced funding.

VI. Positive Commission Activity

While we have grave concerns about numerous issues before the Commission, there are also some activities worthy of praise. First, as I already mentioned, CFA has deep respect for CPSC staff who have continued to work effectively and diligently throughout the Commission's budget cuts, loss of experienced senior level staff, and loss of a quorum. It is due to their commitment to product safety that the Commission is able to uphold its mission.

Second, CPSC's National Electronic Injury Surveillance System (NEISS) is working effectively. NEISS is a national probability sample of hospitals in the United States. Patient information is collected from approximately 100 NEISS hospitals for every emergency visit involving an injury associated with consumer products. From this

¹⁹U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 8. On the web at <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>

sample, the total number of product-related injuries treated in hospital emergency rooms nationwide can be estimated.²⁰ In this era of significant patient privacy concerns, it can be extremely difficult and expensive to recruit a hospital for participation in the NEISS sample. Yet the Directorate for Epidemiology has not only maintained the NEISS sample of hospitals but has also ensured the statistical integrity of CPSC's estimates of product-related injuries. This is critical for CPSC to produce trends from year to year. It is the ability to produce trends that is most fragile in a political, budget-driven environment, since one party's budget can destroy another party's trend. NEISS must remain unaffected by the tumultuousness of the budget process, and in recent years, the Directorate for Epidemiology has successfully shielded it from that in part by entering into inter-agency agreements with other government agencies that use NEISS data, including the Centers for Disease Control, the National Institute for Occupational Safety and Health, and the Food and Drug Administration. While CPSC's Directorate for Epidemiology has not been completely unaffected by the changes at CPSC they have managed to keep the NEISS system running.

VII. Lack of a Quorum

Section 4 (d) of the Consumer Product Safety Act provides that three members serving at the Commission constitute a quorum, which is necessary for the transaction of business. If there are only two Commissioners because of a vacancy, two members shall constitute a quorum for six months after the vacancy was created.²¹ Chairman Stratton left the CPSC in July and thus, the quorum expired in January. The ability of the Commission to transact business is thwarted significantly: the Commission can not conduct any business requiring a vote including voting on rulemakings or civil or criminal penalties. The Commission cannot have public hearings. While the Commission staff can continue to work on programs, even those related to rulemakings or penalties, no final action can be taken. The lack of a quorum is severely hindering the Commission's ability to protect the public from unreasonable risks associated with consumer products and signals to all of the industries that CPSC regulates, that it does not have its full power. This must affect CPSC's bargaining power as well as manufacturer or retailer decisions regarding CPSC compliance, rulemakings and other issues before the Commission. Significantly, this lack of a quorum as well as the limited CPSC budget indicates that the Administration does not place a high priority on product safety or the work of the Commission. CFA supports legislative efforts to extend the quorum.

VIII. Improvements to CPSC's Statutes

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

First, CFA suggests that Congress eliminate the cap on the amount of civil penalties that CPSC can assess, as spelled out in section 20 (a) of the Consumer Product Safety Act (CPSA), against an entity in **knowing** violation of CPSC's statutes. The current civil

²⁰ <http://www.cpsc.gov/LIBRARY/neiss.html>

²¹ Consumer Product Safety Act, 15 U.S.C. 2051, section 4(d).

penalty is capped at \$7,000 for each violation up to \$1.83 million. A “knowing violation” occurs when the manufacturer, distributor or retailer has actual knowledge or is presumed to have knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Knowing violations often involve a company’s awareness of serious injury or death associated with their product. Eliminating the cap will encourage manufactures to recall products faster and comply with CPSC’s statutes in a more aggressive way. Importantly, the elimination of the cap will act as a deterrent to non-compliance with CPSC’s regulations. Eliminating the cap will also strengthen CPSC’s bargaining power when negotiating with many companies to take a particular action.

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

Third, to improve recall effectiveness, CFA recommends that section 15 of CPSA be amended to require manufacturers to provide a means of directly communicating information of recalls to consumers- either through a registration card, electronically or other means of technology. Manufacturers, retailers or importers should be required to report the existence of the recall to retailers and all commercial customers within 24 hours after issuing the recall or warning. All entities within the stream of commerce should be required to post the recall to web sites, if in existence, within 24 hours of issuance of recall. We suggest that manufacturers, retailer, distributors or importers should be required to communicate notice of the recall with all known consumers. Retailers, after receiving notice of the recall, must remove the recalled product from their shelves and web site within three business days and retailers must post notice of the recall in their stores for 120 days after issuance of the recall.

Fourth, CFA encourages Congress to restore CPSC’s authority over fixed-site amusement parks. According to the CPSC, as of 2003, serious injuries on theme park rides have soared 96 percent in the last five years. Federal oversight is crucial to the prevention of any future deaths and injuries associated with fixed-site amusement parks due to the vast variation in state laws and the absence of any regulation in some states. CPSC has illustrated its ability to identify and prevent injuries from many consumer products, including mobile amusement park rides. CPSC should be granted the same scope of authority to protect against unreasonable risks of harm on fixed-site rides that it currently retains for carnival rides that are moved from site to site. However, with this additional authority, CPSC should be authorized more money to take on this important role.

Fifth, we ask Congress to require businesses selling toys on the Internet to provide on their website the same cautionary labeling that is required on toy packaging. Currently, Section 24 of the Federal Hazardous Substances Act (FHSA) requires cautionary labeling on small balls, marbles and toys that contain small parts for children three years of age and younger. This labeling must be apparent to consumers at the point of purchase so consumers are able to make informed decisions about potential safety hazards associated with the toys. Online retailers should be required to post the cautionary warnings on their website so that consumers could be aware of the potential safety issues before actually purchasing the product.

IX. Conclusion

In conclusion, this Subcommittee must make sure that the federal government lives up to the commitment it made to protect consumers from product- related deaths and injuries when it created the Consumer Product Safety Commission. CFA urges more funds to be appropriated to the Consumer Product Safety Commission so that the Commission can grow to incorporate a changing and more complex marketplace. Sadly, this 2008 Budget Proposal fails to give the Commission's that opportunity. Thank you.

Appendix 1

CPSC Resources

<u>Year</u>	<u>Budget Authority</u>	<u>FTEs²²</u>
1974	\$34,776,000	786
1975	\$36,954,000	890
1976	\$39,564,000	890
1977	\$39,759,000	914
1978	\$40,461,000	900
1979	\$42,940,000	881
1980	\$41,350,000	978
1981	\$42,140,000	891
1982	\$32,164,000	649
1983	\$34,038,000	636
1984	\$35,250,000	595
1985	\$36,500,000	587
1986	\$34,452,000	568
1987	\$34,600,000	527
1988	\$32,696,000	513
1989	\$34,500,000	529
1990	\$35,147,000	526
1991	\$37,109,000	514
1992	\$40,200,000	515
1993	\$48,400,000	515
1994	\$42,286,000	518
1995	\$42,431,000	487
1996	\$39,947,000	487
1997	\$42,500,000	480
1998	\$45,000,000	480
1999	\$46,949,000	480
2000	\$48,814,000	480
2001	\$52,384,000	480
2002	\$55,200,000	480
2003	\$56,767,000	471
2004	\$59,604,000	471
2005	\$62,149,000	471
2006	\$62,370,000	446
2007	\$62,370,000	420
2008 (proposed)	\$63,250,000	401

²² This column represents the staffing ceiling established for the agency in each year. The term FTE or full time employee has been used since 1980. From 1974-1979 the figures in this column represent positions or people. One FTE is equivalent to 2080 hours per year.