



Consumer Federation of America

Testimony of

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before the

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**SUBCOMMITTEE ON
CONSUMER AFFAIRS AND PRODUCT SAFETY ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

on

**REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY
COMMISSION**

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

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

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

Yet, with jurisdiction of over many different products, this small agency has a monstrous task. This challenge is heightened by the fact that, over the past two decades, CPSC has suffered the deepest cuts to its budget and staff of any health and safety agency. Today, CPSC's budget is \$56.7 million with 471 full time employees.

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

In 1974, when CPSC was created, the agency was appropriated \$34.7 million and 786 FTEs. Now 28 years later, the agency's budget has not kept up with inflation, has not kept up with its deteriorating infrastructure, has not kept up with increasing data collection needs, has not kept up with the fast paced changes occurring in consumer product development, and has not kept pace with the vast increase in the number of consumer products on the market. CPSC's staff has suffered severe and repeated cuts during the last two decades, falling from a high of 978 employees in 1980 to just 471 for the coming fiscal year.

While every year an estimated 23,900 American consumers die, and an additional 32.7 million suffer injuries related to consumer products under the jurisdiction of the CPSC, this agency, with its reduced staff and inadequate funds, is limited in what it can do to protect consumers. Because of these constraints, CPSC cannot maintain its current level of safety programs, nor can it invest in its infrastructure to improve its work in the future.

In addition to giving CPSC the tools it needs to comply with its mandate, an increase in authorized funding will help to reduce the enormous costs to society caused by unsafe products, estimated at \$700 billion annually.

Because of this historically bleak resource picture, CFA is extremely concerned about the agency's ability to operate effectively to reduce consumer deaths and injuries from unsafe products. It is for this reason that CFA believes that the most important thing that this Subcommittee can do in reauthorizing the CPSC is to assure that sufficient reauthorization funding levels are approved. We believe that the amounts sought by CPSC have been overly conservative and should be expanded by at least 10%.

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

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

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

This concern is further exacerbated as new products and new technologies come on to the market. Sophisticated, high tech products, such as Segway devices, which CPSC engineers may have never seen, much less have expertise with, pose particularly resource intensive challenges. For CPSC to live up to its safety mandate, it must be able to keep pace with the ever-changing development of technology.

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

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

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

First, CFA suggests that Congress eliminate the cap on the amount of civil penalties that CPSC can assess, as spelled out in section 20 (a) of the Consumer Product Safety Act (CPSA), against an entity in **knowing** violation of CPSC's statutes. The current civil penalty is capped at \$7,000 for each violation up to \$1.65 million. A "knowing violation" occurs when the manufacturer, distributor or retailer has actual knowledge or is presumed to have knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Knowing violations often involve a company's awareness of serious injury or death associated with their product. Eliminating the cap will encourage manufactures to recall products faster and comply with CPSC's statutes in a more aggressive way. Importantly, the elimination of the cap will act as a deterrent to non-compliance with CPSC's regulations.

Eliminating the cap will also strengthen CPSC's bargaining power when negotiating with many companies to take a particular action. For example, consider a situation that came to light just last week concerning a company regulated by another health and safety agency, the Food and Drug Administration (FDA). The recent guilty plea to 10 felonies by Guidant, a division of one of the country's largest makers of medical devices, and its admission that it lied to the FDA and hid thousands of serious health problems, including 12 deaths, caused by one of its products, shows how important the role of civil penalties play in not only preventing but punishing manufacturers for wrong doing. According to a June 13, 2003 New York Times article, the case against Guidant resulted in \$92.4 million in criminal and civil penalties, the largest ever imposed against a maker of medical devices for failing to report problems to the government. Unfortunately, CPSC has companies under its jurisdiction that have made products that have caused many deaths and injuries. For example, CPSC fined Cosco, a Canadian company, which is the largest children's product manufacturer and distributor in the United States, \$725,000 in September 1996 for failing to report 96 known toddler bed and guardrail entrapments and one death associated with its toddler beds. In 2001 CPSC again fined Cosco and Safety 1st a record fine of \$1.75 million after failing to report two deaths and 303 injuries to CPSC. However, these companies never admitted wrongdoing and obviously the penalty did not deter non-compliance with the reporting requirements.

Second, CFA urges Congress to restore CPSC's authority over fixed-site amusement parks. Fifty-five fatalities have occurred on amusement park rides in the last fifteen years. According to the CPSC, serious injuries on theme park rides have soared 96 percent in the last 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.

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

Fourth, we urge Congress to require businesses selling toys on the Internet to provide on their website the same cautionary labeling that is required on toy packaging. Currently, Section 24 of the Federal Hazardous Substances Act (FHSA) requires cautionary labeling on small balls, marbles and toys that contain small parts for children 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.

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

*** Recall Effectiveness:**

CFA filed a petition with CPSC in June 2001 requesting that CPSC initiate rulemaking to require all manufacturers, (or distributors, retailers or importers) of products intended for children to provide along with every product, a Consumer Registration Card that allows the purchaser to register information through the mail or electronically, require recall remedies to be indefinite and require manufacturer identification and contact information on each product. CPSC agreed to consider only the issue of product registration cards, a requirement that the National Highway Transportation Safety Administration (NHTSA) currently has for child car seats. Unfortunately, on March 7 by a vote of 2 to 1, CPSC denied our petition. We were very disappointed with this decision and continue to believe that product registration cards are an essential component of any effort to improve recall effectiveness.

Our current system of recall notification is failing. By relying upon the media and manufacturers to broadly communicate notification of recalls to the public, CPSC and the companies involved are missing an opportunity to communicate with the most critical population-- those who purchased the potentially dangerous product.

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

- 1) First, return rates for CPSC- recalled products are extremely low. In Fiscal Year 1996, CPSC recalls experienced an 18% return rate. In FY 1997, the most recent year for which data is available, the return rate fell slightly to 16%.
- 2) Second, many CPSC recalls involve products for children. In fiscal year 2002, CPSC instituted recall actions involving 84 toy and children's products, involving more than 11 million product units.
- 3) Third, children are a vulnerable population who deserve additional protections.
- 4) Fourth, the risks of death or serious injury associated with children's product recalls are substantial. These recalls often occur because of choking, strangulation, suffocation, burns or serious fall hazards. All of these too often result in the death of a child or serious injury. Children have no capacity to prevent any of these hazards.

The effective recall of hazardous products is an important purpose of the Consumer Product Safety Commission and should be the priority of any company that puts a consumer product into the market place. While CPSC denied the petition based primarily upon industry's assessment that these cards would be too expensive and may not work, we continue to believe that the costs involved are reasonable considering the benefit of the lives that may be saved. In addition, efforts by NHTSA to require registration cards for child car seats have been successful. Because child restraints are used in automobiles, NHTSA has jurisdiction over this product and has required that manufacturers provide cards to consumers. In a new study released January 6, 2003, NHTSA evaluated its child safety seat registration program. The study found that child safety seat registration was successful in notifying purchasers of recalls. Specifically the NHTSA study found:

- 1) Increased registration rates increased recall compliance rates: the repair rate on recalled seats is now 21.5% vs. 13.8% in 1993- a statistically significant 56% increase.
- 2) The indirect cost to consumers of the mandatory standard is 43 cents for each car seat sold.
- 3) Return rates for registration cards are now at 27% vs. 3% before the rule was implemented.

NHTSA's experience with registration cards over the last decade provides an important model for CPSC to emulate. NHTSA's recent study evaluating their product registration card proves that the cards are not only effective in increasing consumer compliance with recalls but also achieve a successful result at a low cost to consumers. We urge CPSC to consider product registration cards as an important part of their current "broader look" at recall effectiveness. In addition, we urge Congress to require CPSC to submit a report within one year, on the steps it will take to increase recall return rates including an evaluation of product registration cards as one alternative.

*** All- Terrain Vehicles**

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

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

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

*** Baby Bath Seats**

Since 1981, when baby bath seats came on to the market, approximately 96 children have drowned to death and 153 were injured while using the product. One study of caregivers who use bath seats found that: they are likely to fill the bathtub with more water, increasing the chance of drowning, and they are more likely to willfully leave a child in the bathtub alone when a bath seat is in use believing that the device provides an added measure of safety. Furthermore, there are mechanical problems with baby bath seats that make it more likely that a child will drown if a caregiver leaves the child unattended. There are no mandatory safety standards for these products. CFA petitioned CPSC to ban baby bath seats in July, 2000. CPSC ruled in favor of an Advanced Notice of Proposed Rulemaking in 2001 and just recently announced a meeting for the end of July on CPSC staff's recommendations for a notice of proposed rulemaking. Ten of the deaths occurred since the Commission voted to initiate an ANPR in May of 2001. CPSC should not wait for more deaths and injuries to occur before they take action on this hazardous product. Congress should carefully track CPSC's progress on this issue.

In conclusion, this Subcommittee must step in and exercise its duty to make sure that the federal government lives up to the commitment it made to protect consumers from product-related deaths and injuries when it created the Consumer Product Safety Commission. CFA supports the multi-year reauthorization of CPSC and urges more funds to be appropriated to the agency so that more people will have the benefit of CPSC's efforts to protect consumers from unsafe products. Thank you.