



**Consumer Federation of America**

Testimony of

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Before the

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Government  
Committee on Appropriations  
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Hearing on Consumer Protection Issues

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Chairman Serrano, Ranking Member Regula 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**

“Death by a thousand cuts” is the phrase that seems most appropriate to describe the recent past and current budget appropriations of the U.S. Consumer Product Safety Commission (CPSC or Commission). While the phrase, “death by a thousand cuts” originally derives from an outlawed form of Chinese torture<sup>1</sup> it also aptly describes the numerous cuts to full time employees, structural improvements and programmatic goals that CPSC’s budget has endured. While seemingly appropriating slight increases to CPSC’s budget, the most recent and current budget proposals are really a decrease given CPSC’s mandatory expenses. For example, this years request is \$880,000 over last year’s but this is actually a considerable decrease considering the increase in the CPSC’s mandatory costs. This allocation forces CPSC to decrease its staff and limit its programmatic goals.

CPSC’s 2008 Performance Budget document paints a very bleak picture of the CPSC’s work for the future. The budget document is full of statements such as, “While the CPSC has thus far been successful at facing these new and evolving challenges with diminishing resources, the 2008 funding level will challenge the Commission’s ability to maintain its existing level of standards development, enforcement, public information, and international activities.”<sup>2</sup> The 2008 Performance Budget document is replete with staffing cuts, limitations to programmatic goals and the absence of previous goals and projects.

CPSC’s efforts to reduce product hazards to children and families will be hindered by the forced reductions in full time employees (FTEs). One of the CPSC’s results oriented hazard reduction strategic goals is to reduce the death rate from fires by 20 percent. However, the CPSC will cut 6 employees from its fire team. Significantly, the CPSC will cut 8 employees from its staff who work on children’s and other hazards. The CPSC will have 9 staff working on emerging hazards, losing one FTE, given the changing product safety market, is significant.

## **II. Critical Role of CPSC**

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

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<sup>1</sup> The practice was called lingchi. More information about this practice is available at [http://en.wikipedia.org/wiki/Death\\_by\\_a\\_thousand\\_cuts](http://en.wikipedia.org/wiki/Death_by_a_thousand_cuts).

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

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 goals. 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 a quorum.

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."<sup>3</sup> 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. 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.

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.

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 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%.

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

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<sup>3</sup> Consumer Product Safety Act, 15 U.S.C. 2051, section 2(b)(1).

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% of the agency's appropriation. The remaining 10% 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.<sup>4</sup> 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.<sup>5</sup>

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.

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%. This loss in staff is particularly significant because "CPSC is a staff intensive organization with nearly 90% of its recent funding absorbed by staff compensation and staff related space rental costs."<sup>6</sup> CPSC estimates that to maintain its current staffing level of 420 FTEs, which already required 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% 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. In addition, "annual costs for service contracts are growing faster than CPSC is

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<sup>4</sup> This document is not publicly available.

<sup>5</sup> 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>

<sup>6</sup> 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>

able to find off-setting savings.”<sup>7</sup> 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.”<sup>8</sup>

#### **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.”<sup>9</sup> 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 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 even more outdated.

##### **B. CPSC will not be able to Regulate Effectively**

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<sup>7</sup> 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>

<sup>8</sup> 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>

<sup>9</sup>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>

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 have been 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 States<sup>10</sup> and also prevented 434,000 units of toys and other children's products from entering the country.<sup>11</sup> 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 product from entering the United States and we believe that to achieve this, the

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<sup>10</sup> 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>

<sup>11</sup> 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>

CPSC must work with other countries to prohibit the export of products that don't meet voluntary or mandatory safety guidelines. 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.<sup>12</sup> 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% 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% 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.

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

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

For example, 45% of ATV incidents involve an ATV tipping over, thus raising the issue of an ATVs inherent stability. However, CPSC has not conducted and 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."<sup>13</sup>

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 relies upon a consumer to take proactive steps to obtain the 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

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<sup>13</sup> CPSC Staff Response Regarding Follow Up Questions from Commissioner Moore after June 15, 2006, ATV Safety Briefing, July 11, 2006.



effective than the current approach which relies upon the media to convey the news of the recall. Thus, no improvements to the way consumers find out about recalls are likely.

When consumers do not hear of product recalls, their lack of information can lead to tragic consequences, including death or injury. 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. Product registration 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 consider better more effective alternatives.

### **C. 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."<sup>14</sup> 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 their work on reducing child drowning.

## **VI. 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.<sup>15</sup> 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 can not have public hearings. While the Commission staff can continue to

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<sup>14</sup>U.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>

<sup>15</sup> Consumer Product Safety Act, 15 U.S.C. 2051, section 4(d).

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.

## **VII. 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 is a continuation of the Commission's death by a thousand cuts. Thank you.