

# CHILD PRODUCT SAFETY: DO CURRENT STANDARDS PROVIDE ENOUGH PROTECTION?

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## HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

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## **CHILD PRODUCT SAFETY: DO CURRENT STANDARDS PROVIDE ENOUGH PROTECTION?**

**WEDNESDAY, OCTOBER 6, 2004**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Shimkus, Terry, Issa, Schakowsky, and Green.

Staff present: David Cavicke, majority counsel; Chris Leahy, policy coordinator; Shannon Jacquot, majority counsel; Billy Harvard, legislative clerk; Jonathan Cordone, minority counsel; Turney Hall, staff assistant; and Ashley Groesbeck, minority research assistant.

Mr. STEARNS. Good morning. The subcommittee will come to order.

The business of commerce is always a serious matter, and when the business involves protection of our most valuable citizens, our children, there is indeed added significance. Children are a treasure for all of us, obviously, and when they are harmed accidentally we are all emotionally affected. Especially when these accidents occur involving products provided obviously with the best intentions, the parents, the families, and the caregivers all give great concern.

I would like to commend my colleague, the ranking member of the subcommittee, Ms. Schakowsky, for focusing us today on child product safety issues and the effectiveness of this current regulation that we have. These issues are extremely important to all of us as lawmakers, caregivers, parents, and, for some who shall remain anonymous, as grandparents.

Again, I would like to commend the ranking member and her staff for their work on this important area, and I am interested to hear from the diverse panel of witnesses today what is working and obviously what is not working.

The jurisdiction over child product safety rests with the Consumer Product Safety Commission, or the CPSC as we use the term. They enforce specific child product safety regulations, including regulations related to paint and coating materials, pacifiers, rattlers, sharp edges and points, and small parts that could be swallowed or inhaled. The CPSC can initiate investigations that ultimately lead to recalls for items that present a substantial risk of

injury to the public or if they violate specific safety standards issued by this Commission.

Regardless of the regulatory mechanism, we hear buzz words like sharp and small objects. They can create immediate anxiety for any parent or caregiver, because children always seem to find trouble very quickly when a parent or caregiver's watchful eyes are distracted or unable to supervise.

In terms of statistics, the U.S. toy industry is a very large business. The industry had sales of \$20.7 billion in 2003, and during that same year the CPSC recalled 96 toys and children's products involving almost 14 million separate products. Sadly, there were 11 toys related to deaths in 2003 and approximately 206,500 injuries.

I would note that the toy sales figures do not include other children's products or consumer products affecting children.

The protection of our children and child product safety is as important as any issue this subcommittee will ever consider, and I intend to give these issues a thorough hearing today.

First, I would like to understand in statistical terms how the CPSC is doing—what it is doing to address unsafe children's products that are already on the market and on the secondary used market.

Second, I would like to examine how we can improve these numbers, including getting a better idea of where and how money is deployed at the CPSC as well as how industry is working with the regulators to improve child product safety.

And last, my colleagues, providing parents and caregivers with the proper information to protect their children from unnecessary risk is also an important element of safety. I would like to learn more about what the CPSC provides publicly and what the toy manufacturers are offering to consumers regarding child product safety. As we all know, generous consumer information that leads to well-informed consumers can go a long way, a long way in helping to prevent needless accidents.

Some of the most important questions this subcommittee is interested in are as follows: Are current standards providing enough protection for children? What are the most significant product safety risks today for children? What does the data show regarding how effective recalls are in removing unsafe children products from the market, including these used items? What is the industry doing to improve the safety of children's products? And what is the actual data, including recalls and accidents, for the last 5 or 10 years? You know, in general, are things improving?

I commend those who are working so hard to improve child product safety in the public and private sectors, including efforts to make children's products safer and better so that potential problems can be identified before they become much worse. The regulatory system likewise can be improved and made better to ensure even safer children's products today, products that provide so much fun and enjoyment for our children.

I would like to thank Chairman Stratton in particular for being here today. He was scheduled to be in Los Angeles to inspect the port and rearranged that visit to testify on our committee this morning, and I appreciate his taking that time to do so. So he will be leaving directly from this hearing, so I wish him the best on

that trip and I encourage him to continue his good work on the Commission.

With that, I will yield to the ranking member, Ms. Schakowsky.

Ms. SCHAKOWSKY. I sincerely thank you, Chairman Stearns, for holding this hearing today on what I consider to be one of the most important issues under our subcommittee's jurisdiction, child product safety standards and whether they provide enough protections for our most vulnerable consumers.

I am also pleased to welcome the witnesses, including Consumer Product Safety Commission Chairman Stratton, whose Commission, in my view, is grossly underfunded and understaffed, and the three tireless child product safety advocates that are here from Chicago as well as the other witnesses.

I would like to welcome Lisa Lipin, a constituent from my district, whose son was nearly strangled by a seemingly harmless toy, a yo-yo ball. And I would also like to thank Linda Ginzel for joining us today. Linda lost her son Danny when a portable crib collapsed around his neck. These women are here today as examples of how people can turn tragedies or near tragedies into action. Ms. Ginzel and her husband Boris Keysar co-founded an advocacy group, Kids in Danger, to educate about and advocate for safer products.

Ms. Lipin has single handedly brought the yo-yo ball danger to the attention of parents, reporters, and elected and appointed government officials; and because of her efforts six major chain stores have agreed to pull the yo-yo balls off their shelves.

Unfortunately, the experiences which prompted their advocacy are not unique. Parents across the country buy toys and other products for their children assuming, because they are on the shelves, they are safe. A 1999 Coalition For Consumer Rights survey in Illinois found that 75 percent of adults believe that the government oversees premarket testing for children's products; 79 percent believe that manufacturers are required to test the safety of those products before they are sold. For most products, neither is true. In fact, there are no mandatory safety standards for the majority of the children's products being sold today.

Congress passed legislation in 1981 that prohibits the Consumer Product Safety Commission, the agency that oversees product safety, from establishing mandatory standards in most cases. The few standards that are in place are set by the very industries looking to make profits, and they are also expected to police themselves.

Let me stress what that means. Although there may be voluntary standards in place, there are no requirements that all potential hazards are addressed in those standards, no requirement that products be tested in the field, no consequences for the manufacturer if the standards are not met, and no requirement for products to be tested to see if the standards are met.

This is true even for baby carriers, cradles, play pens, high chairs, and other items bought specifically for use by infants and children.

Although the CPSC requires no testing and manufacturers may or may not perform their own tests, do not be mistaken. Children's products are tested. They are tested in our own homes with our own children and grandchildren as test dummies. The costs of

those tests can be a panicked child, bruised fingers, fractured skulls, or a dead child.

In 2001, an estimated 69,500 children under the age of 5 were treated in U.S. Hospital rooms for injuries associated with nursery products. According to the CPSC, an average of 65 children under the age of 5 die each year in incidents associated with nursery products. Unintended injuries are the leading cause of death for children under the age of 4. But as Marla Felcher's book reveals, many of these deaths are because of unsafe products. And, as the title of her book says, it is no accident. Too many unsafe children's products are on the shelves in homes and in day care centers.

CPSC's primary means for responding to a dangerous product is to issue a recall. However, as Ms. Lipin's story will tell you, the Commission is hesitant to issue recalls or even to recommend that stores voluntarily take dangerous products off their shelves. In the case of yo-yo balls, although the CPSC has received at least 392 incident reports of strangulation, eye injuries, and skin irritations due to yo-yo balls, the toys are still on the store shelves.

Instead of a culture of consumer production, it seems there is a culture of caution and delay. Is the CPSC waiting for a child to die? Even when a product is recalled, it remains a danger to too many children for too many years.

A recent report by Kids in Danger shows that in 2002, yet another child was killed by a crib that had been recalled in 1997. Unfortunately, once a recall is issued, only 10 to 30 percent of consumers respond to it because of inadequate notification, inadequate notification, inspection, and enforcement activities. The crib that killed Danny had been recalled in the day care center that was inspected 8 days earlier.

I believe that we must work to keep dangerous products from ever making it onto store shelves or into nurseries, child care centers, or homes. That is why I introduced legislation, The Infant and Toddler Durable Product Safety Act, H.R. 2911, that would require infant and toddler products to receive a Federal seal of approval before they are sold. This seal would demonstrate that those products have been independently tested and have met required national safety standards.

I hope that when we return next year that we will be able to consider my bill and other potential solutions to the problems we will hear about today.

Additionally, I believe we need to look for better ways to inform the public about dangerous products already on the market to make sure that not one more child or family has to experience a preventable tragedy.

For those reasons, I truly appreciate today's hearing. I look forward to hearing from our witnesses and about their ideas on how to prevent what we know are no accidents.

Mr. STEARNS. I thank the gentlelady.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I want to thank you for the hearing, and I want to recognize my colleague from Illinois. She has really been on this issue long before she even came to Congress, I know she did in the general assembly in Illinois, and



it is an interest of great concern for her. So I applaud her passion and her resolve.

I am going to pull up on the site there, our kids.us site. And we have numerous hearings that deal with kids, and I am amazed that every time we have groups that are supposed to be or are working hard to protect kids or shield kids, they don't know about this site or they are not actively engaged in putting information on this site. So this is my 2 minutes and 19 seconds of advertising and encouraging both panels to get up on the site.

Jan mentioned kids 5 and under who have been harmed. My sister is taking classes to become a teacher at night, and I went to her Technology in the Classroom class. It was in the evening and I brought my 4-year-old son to explain kids.us. And it is great, and I have—the teacher put pictures and an explanation on the Web associated with Greenville College in Greenville, Illinois. And my 4-year-old is sitting there on a safe site for kids. So if we have problems with toys, you know, for young kids—and my 4-year-old will go to that site, it is his default site so he doesn't know any difference, he gets on the Internet and this pops up. And then you can't get out because it is—there is no hyper links, there is no chat rooms. It is an education information site only. And the stuff that is placed on here is approved through the NTIA and through a third party group.

So those of you who are fighting for kids, I am fighting for you to get on the kids.us site. There is no excuse not to be on here. If we want to educate kids, if we want to make sure they are safe, there is a lot of venues through which we can attack the problem. This is one of them. I am not saying it is exclusionary, but what I am saying is, look at it, research. If you go to www.kids.us—and you can look up there—my son directly goes to games, and his favorite is Nick Junior, and that is where he hangs out. But there is also how to register information, what are the safeguards. All that stuff is on there. Please, please, if you are in this battle, whether you are the industry or you are the consumer rights folks protecting kids, both of you ought to be on this site doing what you can to help educate kids. Not only kids, because once kids get on this site, sometimes the parents are going to look and see what is on there also.

So with that, Mr. Chairman, thank you for this time, and I look forward to hearing the testimony.

Mr. STEARNS. I thank the gentleman, and I thank him for his presentation.

The gentleman from Nebraska.

Mr. TERRY. Waive.

Mr. STEARNS. All right. The gentleman waives.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. ED TOWNS, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF NEW YORK

Thank you Mr. Chairman for holding this important hearing today. The Consumer Product Safety Commission plays a critical role in protecting American consumers, especially our young children. Thus, it is critical that the agency has the funding and regulatory powers to effectively carry out its mission. Unfortunately, much of the testimony submitted today indicated that the commission needs help to better protect our children.

An issue under the Commission's jurisdiction that has been of concern to me for a long time is the regulatory treatment of toy guns. When toy guns look real, in the eyes of law enforcement, they are real. Police officers have to make split second decisions and often do not have the opportunity to distinguish a real gun from a toy.

Nearly one year ago today, a toy gun closed the offices on Capitol Hill for two hours. This was another reminder of how real toy guns can appear, and the problems that this can cause. The fact that a toy gun could close down one of the most heavily guarded buildings in the country shows how much trouble one toy gun can cause. In fact, according to press reports at the time, the police described the supposed intruder as a white male with a .38 caliber gun. While this misunderstanding was resolved without anyone losing his or her life, toy guns can and have resulted in fatal shootings.

In Brooklyn alone, three kids and one adult have been killed over the confusion of a toy gun. Additionally, one young Brooklyn child was shot 17 times and critically wounded by two officers while riding his bike—WHILE RIDING HIS BIKE—because he had a toy gun that looked real. In fact, the last time data was collected, local police agencies reported during a five-year period more than 5,800 robberies or assaults were committed involving toy guns.

Obviously, it is the person not the toy that commits the crime. But toy guns make it easier for youngsters to commit the crime and only serve to wet young kids appetite for a real gun when they get older. Toy guns serve no purpose in society. My legislation, H.R. 211, would ban toys which in size, shape, or overall appearance resemble real handguns. This would eliminate any confusion and prevent needless tragedies from occurring.

I look forward to a discussion of this issue, along with the Commission's overall effectiveness with today's witnesses. Thank you Mr. Chairman.

Mr. STEARNS. And with that, the Honorable Stratton, we welcome your opening statement.

**STATEMENTS OF HON. HAL STRATTON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION; LINDA GINZEL; LISA A. LIPIN; E. MARLA FELCHER; NANCY A. COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER; GARY S. KLEIN, SENIOR VICE PRESIDENT GOVERNMENT, LEGAL AND REGULATORY AFFAIRS, TOY INDUSTRY ASSOCIATION; AND RACHEL WEINTRAUB, ASSISTANT GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA**

Mr. STRATTON. Thank you, Mr. Chairman.

Mr. STEARNS. We just need you to turn the mike on and maybe pull it up to you.

Mr. STRATTON. Is that better?

Mr. STEARNS. That is much better.

Mr. STRATTON. Mr. Chairman, I am pleased to be here today at this very important hearing on child product safety. While the U.S. Consumer Product Safety Commission is concerned about the safety of products for all consumers, we have a special concern about those products that are used by our most vulnerable populations, particularly our children. As the Chairman of the Commission and as the father of two young daughters ages 9 and 5, I appreciate this committee's focus on children's products today.

By way of background, the Consumer Product Safety Commission is a relatively small, independent agency charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products. We work to achieve that mandate with 471 employees and an annual budget of approximately \$59 million. We are a small agency with a big mission, and we are proud of the work that we do to build a safer America.

Because of the committee's interest in our safety standards for children's products, I would like to discuss the procedures, structure and governing statutes that guide us when we are investigating a consumer product hazard, taking enforcement action, or educating the public on the subject.

The Consumer Product Safety Act is our agency's enabling statute. It established the agency in 1973, defines its basic authority, and provides that the CPSC can develop consumer product safety standards to reduce or eliminate any unreasonable risk of injury associated with a consumer product.

The CPSC also administers the Federal Hazardous Substances Act, or the FHSA, which requires that certain household products be labeled to alert consumers to potential hazards. Any toy or other article that is intended for use by children and that contains a hazardous substance is banned under the FHSA if a child can gain access to that substance. The CPSC also administers the Flammable Fabrics Act and the Poison Prevention Packaging Act.

The CPSC's Office of Hazard Identification and Reduction collects information needed to assess product hazards and develop injury reduction strategies. In this regard, I am particularly proud of our new National Burn Center reporting system that focuses on home fire burn injuries to children under the age of 15. These activities lay the groundwork for our safety standards setting activities.

Under our governing statutes, the CPSC must defer to voluntary standards rather than issue mandatory standards whenever compliance with a voluntary standard eliminates or adequately reduces the risk of injury addressed, and whenever it is likely that there will be substantial compliance with that standard by the industry.

With regard to enforcement, the CPSC may initiate an investigation on its own, or an investigation may result from reports from firms that are required by law to report product hazards to the Commission. In addition, the CPSC conducts programs to monitor compliance with mandatory and voluntary standards by conducting field inspections of manufacturing facilities and distribution centers and making purchases at retail establishments or via catalogs and the Internet. The CPSC staff also conducts surveillance at ports of entry and investigates samples of imported products that are a major source of children's toys.

The CPSC is empowered to seek recalls of consumer products that create a substantial product hazard or that violate a safety regulation. The word "recall" is a generic term in this case that refers to a corrective action which can include a repair or replacement of the defective product or a refund to the customer for the product.

The CPSC's Office of Compliance seeks voluntary remedial action whenever possible. The recent recall of 150 million units of toy jewelry was achieved voluntarily. However, if the staff were unable to reach such a resolution, administrative litigation may ensue to force the recall.

The CPSC recalls of children's products have increased 10 percent this year from the previous year and represents 161 million units of recalled children's products. The CPSC also has the authority to assess civil penalties for violations of the Act. In the fis-

cal year that just ended, the agency assessed over \$4 million in civil penalties from companies that failed to comply with the Act, and I might add here prospectively, I think you are going to see that number go up in the next fiscal year.

One area of special concern to me regarding the safety of products is imported children's products. China is now the No. 1 toy producing country in the world, and the United States is the No. 1 toy consuming country in the world. I am proud to have been the first chairman of the Consumer Product Safety Commission to go to China. As a result of this outreach, in April of this year we entered into a formal Memorandum of Understanding with our counterparts in the government in Beijing to establish a formal liaison between our two agencies on product safety.

I might also add, on a subsequent trip I had the opportunity to tour many of the toy producing or manufacturing factories and speak to the IOS, the International Organization for Standardization, Toy Committee in Guangzhou. The main reason for doing this was to impress upon them the need to make sure that toys and products are safe before they come to our shores.

Mr. Chairman, protecting the American public, young and old, from dangerous consumer products is a critical mission, and our professional team at the CPSC takes it very seriously. Thank you again for the opportunity to discuss this important subject, and I am pleased to answer any questions you might have.

[The prepared statement of Hon. Hal Stratton follows:]

PREPARED STATEMENT OF HON. HAL STRATTON, CHAIRMAN, U.S. CONSUMER  
PRODUCT SAFETY COMMISSION

Thank you, Mr. Chairman, and good morning. I am pleased to be with you this morning for this important hearing on child product safety. While the U.S. Consumer Product Safety Commission (CPSC) is concerned about the safety of products for all consumers, we have a special concern about those products that are used by our most vulnerable populations, and those include our nation's children. As the Chairman of the Commission, and as the father of two young daughters ages nine and five, I appreciate the Committee's focus on children's products today.

By way of background, the Consumer Product Safety Commission is a small bipartisan, independent agency charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. We work to achieve that mandate with approximately 470 employees who are located at our headquarters office and laboratory in nearby Maryland and at our field locations across the country. Our annual budget is approximately \$59 million.

Since its inception, the CPSC has delivered critical safety benefits to America's families and has made a significant contribution to the decline in the rate of deaths and injuries related to hazardous consumer products. We are a small agency with a big mission, and we are proud of the work we do to build a safer America.

As noted earlier, children's products are of special concern to the agency and to its mission. Hazards to children are associated with a wide range of consumer products. Examples include strangulation deaths from window blind cords and clothing drawstrings; swimming pool and other at-home drownings; lethal falls from playground equipment; fatal choking incidents related to some children's toys; and various hazards with infant products, such as highchairs, cribs, infant cushions and strollers.

Head injuries in particular are a leading cause of death and disability to children in the United States. Studies have shown that children have a higher risk of head injury than adults and that children's head injuries are often more severe than many other injuries and can have life-altering consequences.

The types of consumer products under the Commission's jurisdiction that are most often associated with head injuries to children include bicycles and playground equipment. Participation in sports is also associated with a high number of children's head injuries.

The Commission is taking aggressive action across the board on these and other identified hazards, with a special emphasis on those that cause death and lasting injuries. One example of the agency's attention to these hazards is our work on crib safety. The Commission has worked on crib safety for more than 30 years on both mandatory and voluntary standards.

CPSC's mandatory standards include requirements for side height, slat spacing, mattress fit, hazardous cut-outs and other aspects of crib performance and construction. The voluntary standards address hazards of entanglement on corner posts, slat performance and structural and mechanical failures.

As a result of these efforts, infant deaths associated with cribs have declined significantly. In 1973 it was estimated that as many as 200 infants died annually from injuries associated with cribs. Our most recent data indicates that the number of deaths has declined to about 20 annually. However, that is still 20 deaths too many, and we continue to work on measures that would reduce this number.

Since most infant deaths now occur in older, previously used cribs that do not meet current safety standards, the CPSC has been active through the media and grassroots organizations in alerting the public to the dangers of used or old cribs. For example, unsafe cribs are highlighted in our annual Recall Roundup Campaign which focused this year on resale outlets such as thrift stores. CPSC joined forces with the National Association of Resale and Thrift Shops and the Danny Foundation to stop resale, consignment and thrift stores from selling previously recalled or banned products and products that do not meet safety standards. Additionally, safety seminars were conducted across the country to educate store employees about CPSC and how to check their stores for hazardous products.

The CPSC also continues to work jointly with eBay to ensure that dangerous products, such as older cribs and recalled products, are not sold on its public auction website. eBay worked with CPSC to develop a "children's product prompt" which is triggered when a seller attempts to register a children's product for auction. The prompt urges the seller to review the CPSC's website to make sure their product has never been recalled. With baby cribs, eBay requires each seller to review a CPSC-developed electronic crib safety information sheet prior to listing their crib for auction. eBay also denies access to its website to persons attempting to sell any product that has been banned by the CPSC. These public outreach and educational efforts will continue as long as there are unsafe children's products being used or sold.

Because of the Committee's interest in our safety standards, I would like to take a moment to discuss the procedures, structure and governing statutes that guide us when we are investigating a product hazard like crib safety, taking enforcement action or educating the public on the subject.

The Consumer Product Safety Act (CPSA) is CPSC's umbrella statute. It established the agency in 1973, defines its basic authority, and provides that the CPSC can develop a standard to reduce or eliminate any unreasonable risk of injury associated with a consumer product. The CPSA also provides the authority to ban a product if there is no feasible standard, and it gives CPSC authority to pursue recalls for products that present a substantial product hazard or violate a safety standard regulation.

The Federal Hazardous Substances Act (FHSA) requires that certain hazardous household products bear cautionary labeling to alert consumers to potential hazards and to inform them of the measures they need to take to protect themselves from those hazards. This Act gives the Commission authority to ban by regulation a hazardous substance if it determines that the cautionary labeling is inadequate to protect the public.

Any toy or other article that is intended for use by children and that contains a hazardous substance is also banned under the FHSA if a child can gain access to the substance. In addition, the Act gives the Commission authority to ban by regulation any toy, or other article intended for use by children which presents a mechanical, electrical or thermal hazard and risk of serious injury.

The CPSC's actions with regard to promulgating, enforcing and publicizing safety standards for children's products and other products are directed by these governing statutes, as well as the Flammable Fabrics Act and the Poison Prevention Packaging Act.

The CPSC's Office of Hazard Identification and Reduction (HIR) collects the information needed to assess product hazards and develop injury reduction strategies. The staff collects data on consumer product related injuries and deaths, as well as hazard exposure information, for those products under our jurisdiction. Along with CPSC's Field Operations Directorate, HIR also investigates specific injury cases to gain additional knowledge about injuries or hazards and how the reported product was involved.

In addition to news reports and consumer complaints, staff collects information about product related injuries treated in hospital emergency rooms through our National Electronic Injury Surveillance System (NEISS). This unique system provides statistically valid national estimates of product-related injuries from a probability sample of hospital emergency rooms across the country and is the foundation for many Commission activities.

CPSC also collects mortality data with the purchase and review of death certificates covering product-related deaths from all 50 states. Our Medical Examiner and Coroner Alert Project collects and reviews additional death reports from participants throughout the country.

We are continuing to strengthen our data collection and analysis process. Recent improvements include the implementation of our National Burn Center Reporting System which focuses on children's clothing and the development of new statistical systems for collecting information on consumer product related fire deaths and injuries. Staff also conducts several types of studies each year, including special investigations and emerging hazard evaluations.

These activities lay the groundwork for our standard setting activities. Under our governing statutes, CPSC must defer to voluntary safety standards rather than issue mandatory standards whenever compliance with a voluntary standard eliminates or adequately reduces the risk of injury addressed and whenever it is likely that there will be substantial compliance with that voluntary standard.

Our governing statutes dictate a unique multi-stage rulemaking process that is initiated with work on studies and findings to prepare an Advance Notice of Proposed Rulemaking or ANPR. Using toys and children's products as an example under the Federal Hazardous Substances Act, a proceeding to adopt a mandatory safety standard must be commenced by publication in the Federal Register of an ANPR that (1) describes the product to be regulated; (2) summarizes other regulatory alternatives being considered by the Commission; (3) notes any existing voluntary standard and why it appears to be inadequate; (4) invites comment on the information published; (5) invites submission of an existing standard as an alternative; and (6) invites commitment to develop a new voluntary standard.

Following the required public comment period, the Commission may determine that a voluntary standard submitted to CPSC in response to the ANPR would adequately reduce risk, and the Commission may proceed to publish it as a proposed standard. If the Commission determines that the voluntary standard would adequately reduce the risk and it is likely that there would be substantial compliance, the Commission must then terminate the formal rulemaking and notify the public of its decision to rely on the voluntary standard. Before relying on the voluntary standard in this manner, the Commission must provide a reasonable opportunity for public comment.

If the Commission instead decides it must proceed with a mandatory rule, the next step in the process is the issuance of a Notice of Proposed Rulemaking or NPR, which must contain the text of the proposed rule. In addition, the Commission must issue a preliminary regulatory analysis which must contain (1) a preliminary description of the potential benefits and costs of the proposed rule; (2) an explanation why any standard submitted to the Commission was rejected; (3) an explanation why any proposal to develop a voluntary standard was not adequate; and (4) a description of any reasonable alternatives to the proposed rule, their potential costs and benefits, and why they would not be proposed.

To then proceed to a Final Rule following the second public comment period, the Commission must publish a final regulatory analysis containing (1) a description of the potential benefits and costs of the regulation; (2) a description of any alternatives that were considered by the Commission and reasons why they were rejected; and (3) a summary of any significant issues raised in the public comments and the Commission's assessment of them.

The final rule must also include specific findings: (1) that the toy (or other article intended for use by children) is a "hazardous substance," that is, it poses an unreasonable risk of injury or illness due to a thermal or mechanical hazard, or otherwise; (2) that any voluntary standard is not likely to adequately reduce the risk or that substantial compliance is unlikely; (3) that the benefits expected from the standard bear a reasonable relationship to its costs; and (4) that the standard imposes the least burdensome requirement which prevents or adequately reduces the risk.

This three-step rulemaking process meets the requirements of our governing statutes.

When a ban or a safety standard is established, it is CPSC's Office of Compliance, working closely with the agency's field staff, that enforces the law. There are two primary types of investigations that the staff conducts. One focuses on identifying products that violate specific safety standards already issued by the Commission.

The other type of investigation is designed to identify defective products that may present a substantial risk of injury to the public but are not subject to specific CPSC standards.

The CPSC may start an investigation on its own initiative or an investigation may result from statutorily required reports from firms. Under Section 15 of the Consumer Product Safety Act, manufacturers, retailers and distributors must report to the Commission when they obtain information that one of their products is defective, fails to comply with a safety standard, or creates an unreasonable risk of serious injury or death. The purpose of the reporting requirements is to provide the Commission with sufficient information to determine whether a product presents a hazard that requires remedial action under one of the statutes that the Commission administers.

The compliance staff may start an investigation based on any of the following types of information: (1) hotline complaints, web communications, newspaper reports or written correspondence from consumers or Freedom of Information Act requesters; (2) reports or inquiries from state and local governments, federal agencies, or Congress; (3) coroner, medical examiner, fire marshal, or police reports; (4) reports from fire investigators and forensic testing laboratories; (5) data from the National Electronic Injury Information System; (6) incident reports in the Commission's data bases; or (7) trade complaints, news clippings and reports from insurers.

In addition, CPSC conducts programs to monitor compliance with mandatory and voluntary standards by conducting field inspections of manufacturing facilities and distribution centers and making purchases at retail establishments or via catalogs or the internet. Numerous sample collections have been conducted over the last several years at a variety of mass merchandise, general department and dollar type stores to monitor compliance with CPSC requirements. Additionally, there have been a number of voluntary recalls involving dollar type stores. CPSC staff has worked with owners of these stores on an individual basis to ensure future compliance with our requirements.

Staff also conducts surveillance and sampling of imported products at ports of entry. The CPSC has conducted 255 seizures and detentions of over 6.7 million units in 2004. This is an increase from 181 seizures and 1.6 million units in the previous year. Some of CPSC's most effective efforts at identifying violative unsafe products have been through working with the U.S. Customs Service identifying these products before their distribution in the United States. With Customs' increased attention on homeland security, the CPSC has adapted to new enforcement tools including internet surveillance and working with Customs' data base systems to identify incoming shipments and collect samples on their arrival at U.S. ports.

Both the Consumer Product Safety Act and the Federal Hazardous Substances Act permit the Commission to seek public notice and corrective action for defective products that create a substantial risk of injury to consumers.

The CPSC uses the generic term "recall" to refer to corrective action plans that are announced to the public; however, by law "recalls" may involve (at the election of the product's manufacturer, distributor or retailer) the repair *or* replacement of the defective product, *or* the refund of its purchase price less a reasonable allowance for use.

The Office of Compliance staff seeks voluntary remedial action, whenever possible. The recent recall of 150 million units of toy jewelry, some of it containing accessible lead, was achieved voluntarily. However, if staff is unable to reach such a resolution, litigation may be necessary.

The Commission may institute an administrative proceeding to require a manufacturer, distributor, or retailer to recall a banned product or a defective product that presents a substantial product hazard. If after a formal hearing before an administrative law judge and any appeal to the Commission, the Commission determines that a product presents a substantial hazard warranting a recall, it can order the firm to give public notice of the hazard and order the firm to repair or replace the product or refund the purchase price of the product less a reasonable allowance for use at the election of the firm.

CPSC recalls have increased significantly this year. In 2004 the agency has conducted 356 recalls which is a 27% increase from the previous year. These recalls cover more than 200 million consumer products as compared to 41 million the previous year.

The CPSC's Office of General Counsel is responsible for working with the Department of Justice in bringing actions in federal court. Once a case is referred to the Department of Justice, the Compliance staff works with the Department and the Office of General Counsel on the case.

The CPSC has the authority to assess civil penalties. In the fiscal year that just ended, CPSC assessed \$4.2 million in civil penalties from companies that violated

federal safety standards. That figure represents an increase over the previous year's figure of \$2 million. CPSC's statutes also authorize criminal penalties in appropriate cases. Only last week, a grand jury in California handed down an indictment against an individual who was caught reselling unsafe toys after a CPSC recall.

One key element of any recall is targeted public notice to inform owners of a recalled product of the hazard and remedies available. Among the tools CPSC's Office of Information and Public Affairs uses to disseminate information about recalls are: joint press releases; video news releases; point of purchase posters; direct mail; paid advertisements; web site notification; and notification to outside organizations, such as pediatricians or day care providers, who in turn provide information to consumers.

Additionally, CPSC continues to be pro-active in improving recall effectiveness. I earlier mentioned our initiative with thrift stores and web-based sales. Recently, we launched the Neighborhood Safety Network. Through this initiative CPSC is partnering with other government agencies and private sector organizations to communicate important safety messages to vulnerable and hard-to-reach populations.

Our goal is to build a network of community leaders and organizations that are in regular contact with people who may not get their news from traditional media outlets or may not have access to computers or may not trust the federal government as the messenger. We are working with the American Academy of Pediatrics, Boys and Girls Clubs of America, Indian Health Services and many others to distribute CPSC's safety messages. Meetings with groups such as the National Safety Council, National Safe Kids Coalition, HHS and others have generated a great deal of support for the project.

Another initiative that I am particularly proud of is Recalls.gov. In conjunction with five other federal agencies, CPSC introduced this new website that will benefit your constituents and provide streamlined, one-stop service in alerting consumers to unsafe, hazardous or defective products. Consumers can now go to one single resource to get information on all government recalls. They no longer have to try to figure out which government agency has jurisdiction for the particular product about which they are concerned.

Additionally, your constituents can register at this site to receive instant e-mail alerts on all product safety recalls, and consumers can use the site to report a problem with a consumer product, motor vehicle, boat, food or environmental product. CPSC has developed a sample press release for Congressional offices to consider using in their home districts.

Before closing, I would like to address one other subject of special concern to me regarding the safety of children's products, and that is importation. As a government regulator, I recognize that given the vast expansion of international trade and increasing safety concerns of consumers about the goods they purchase, such as toys for their children, the need for closer cooperation and coordination between international government authorities is more important now than ever before.

China is now the number one toy producing country in the world, and the United States is the number one toy consuming country in the world. Developing a strong understanding regarding consumer product safety with China is essential. I am proud to be the first Chairman of the Consumer Product Safety Commission to go to China. As a result of this outreach, in April of this year, I signed a formal Memorandum of Understanding with Chinese Minister Li of the General Administration of Quality Supervision, Inspection and Quarantine, to establish a formal liaison between our two agencies on product safety.

I returned to China in June to be the first commissioner to ever address the International Organization for Standardization on toy safety. With homeland security concerns taking precedence at our nation's ports of entry, it is more important than ever to get to the source of these safety problems before they are ever loaded onto a ship bound for America. I can assure the Committee that I will go wherever I have to go to achieve that goal.

In closing, I would be remiss to come before the Committee and not commend to you the outstanding professional staff at the CPSC. Since starting as Chairman two years ago, I have had the opportunity to meet and work with some of the most competent and talented civil servants and professionals that you can imagine. These people have the kind of technical and scientific skills that the private sector would reward handsomely, but they have chosen instead a career of public service and they dedicate themselves to improving product safety for America's families.

Mr. Chairman, thank you again for the opportunity to discuss this important subject, and I am pleased to answer your questions.

Mr. STEARNS. Thank you, Chairman. I will start with my questions. I guess probably the main question you are going to get, I



will ask it from the beginning, do you have enough resources, in your humble opinion, to adequately enforce the standards to provide the necessary manpower to identify the products and the enforcement mechanism to establish a recall? Do you feel that you have the resources to do so?

Mr. STRATTON. Mr. Chairman, I think that you can always do more with more resources. So it depends on what the Congress wants us to do. We carry out our mandate as in the various Acts that I have listed quite well with the resources that we have, and I can tell you that as the numbers of our employees have dropped and frankly as our funds have dropped in real terms, I see people actually working harder to get the job done.

So I think we are doing the job that you contemplate us to do. If you want us to do other things beyond what we are doing or if you want us to do more of what we are doing—

Mr. STEARNS. I understand. But I would say your agency is one of the few that I have seen in government that not necessarily has increased. I mean, I asked the staff of the Budget back 30 years ago and I see the Budget today, and you have less people. But I mean you could also argue that we have technology and we have a lot more resources in terms of technical support that would increase productivity. So that would indicate that maybe your resources are adequate. But I will tell you something that I want to commend you for, and that is going to China. I think all of us know that China is importing a lot of toys, and obviously a lot of these toys might be counterfeit. So maybe you could tell me and to the American people, what assurance do we have that you have a handle on this enormous influx of toys from China? Since you don't have any control over the standards in China, what can you do in terms of reciprocity, and what about the counterfeit toys that are coming in from China?

Mr. STRATTON. Thank you, Mr. Chairman. That is an excellent question and one I like to talk about, because one of the good things about our particular Act, the Consumer Product Safety Act, is that it imposes the obligations of that Act upon not just the manufacturers of the products but also on the distributors, the importers, and the retailers. Therefore, when a company like a big retailer, Wal-Mart, Target, or someone like that sells a defective product, they are just as liable under our Act as are the manufacturers of that particular product. What this means is, it is of great interest to these retailers because they know we are going to go out and seek to fine them if we have to or seek the recalls if we need to. So it is in their interest to make sure that those products coming over are safe, and they have a lot of people over there themselves working to do that.

Now, in our opinion, of course that is not enough. We also look to the importers and the distributors. Frankly, that is who we mainly go after when we have violative products, the importers because they are the persons, they are the entity that is closest to the particular product at the time.

And then, finally, that is what the effort of going to China is for. It was very important, many people thought, to visit China and impress upon the authorities over there how important it was that we not have to rely on these safeguards once they get to the United

States to make sure products are safe, but to make sure that when they are manufactured and when they are shipped over that they are safe. And that is what we have done in our Memorandum of Understanding where we have opened up discussions and lines of communication and exchange of information with China. So we have a threefold way to try to make sure those products are safe.

Now, you talked about counterfeit products. And the one thing we worry about mostly in the counterfeit area are counterfeit certifications, such as an Underwriters Laboratory or an ELT, Electronic Testing Laboratory, fake counterfeit mark on various products coming over. Now, our statute does not grant us any authority over counterfeit articles. Our statute tells us we are supposed to make sure that products are safe, not that they are not counterfeit. So technically, we don't have any real authority to make any kind of determinations based upon whether something is counterfeit or not.

What our policy is, however, at least since I have been there, is if we have a particular product that has a mark on it, like UL, that turns out to be counterfeit, we immediately suspect that it is not as good as it ought to be, and then we tend to investigate it and make the determination as to whether it is safe or not or whether it should be pulled off the market. Now, sometimes we find that—I think most of the time we probably find that they are of lesser standard than a typical one that would have a proper mark, but I have been told by staff at the agency that we have actually found products that were better than the actual noncounterfeited products. So that is where counterfeiting comes into play with us. That is, once again, primarily an FTC and a Customs matter, but we are cooperating with Customs, UL, and others.

We recently had an interdiction of about \$6 million worth of counterfeit marked products, including counterfeit extension cords, that we worked closely with Homeland Security and with UL to do.

Mr. STEARNS. If I can take the liberty to merely—Kolcraft, and on the second panel we are going to have, Ms. Ginzler is going to testify. And is Kolcraft, was this product that she is going to testify about, was this built in the United States? You don't know. Okay.

Mr. STRATTON. Is this a crib?

Mr. STEARNS. It is a crib. But, I mean, you don't know if the crib was built in the United States or did it come from outside the country?

Mr. STRATTON. I am sorry, I don't know that.

Mr. STEARNS. Okay. I guess, does the CPSC have the adequate tools to go after people like a manufacturer of Kolcraft in which this product collapsed? Do you need anything from Congress in terms of more legislation to give you more authority or something like that?

Mr. STRATTON. Well, Mr. Chairman, I don't think we need more authority. If, for instance, that crib was manufactured in China, then there is nothing you can do to give us jurisdiction over the manufacturer in China. If we do have jurisdiction over the product, the question is how do you enforce that against a foreign manufacturer. That is why we enforce those things against the distributors, the importers, and the retailers in the United States.

Mr. STEARNS. I am told it wasn't made in China. So I guess, do you have—so you are saying this morning you have the tools to go after companies that do not implement adequate recall efforts. In other words, what tools does the CPSC have to go after companies that do not implement adequate recall efforts like Kolcraft?

Mr. STRATTON. Well, we have the ability—

Mr. STEARNS. And are the tools sufficient? I guess that is my question.

Mr. STRATTON. Mr. Chairman, I think that they are. I am not sure what happened in that particular case. I believe that was a recalled crib and it had been recalled. Now, we do have a problem in getting back all of the products that we can get back from out there when they have been recalled. It is difficult at times to get the word out to consumers. The Congresswoman mentioned that, and I certainly agree with that. It is a very difficult, big task to get the word about recalls out to every single person who has that particular product. It is also difficult sometimes to get consumers to return the product. Not necessarily in this particular case, but just because you notify people doesn't mean that they are going to comply with the recall. So there are a lot of issues regarding recalls that aren't necessarily susceptible to having better legislation. There are practical problems that we deal with every day, how do you get the word out to 150 million or to 7 million people who have purchased a product around the United States, and then what incentives can you give them to return them.

Mr. STEARNS. My time has expired. Ms. Schakowsky.

Ms. SCHAKOWSKY. Mr. Stratton, I am glad that you are here. I am disappointed that you can't stay, because my hope was that you would be able to hear from the entire panel that follows you. And I certainly hope that you will carefully read all of the testimony of all of the witnesses who at great effort and often emotional expense have come here to tell their stories. So that I hope that you will look at those as well.

I am interested to note that you are neither asking for more money. And I am assuming that, since the agency has not been reauthorized for—CPSC has not been reauthorized since 1990, are you saying that were it to be reauthorized you wouldn't seek any additional or different powers?

Mr. STRATTON. Well, can I answer the first question first? We are seeking more money through the appropriations process.

Ms. SCHAKOWSKY. What is your request?

Mr. STRATTON. \$63 million is our current request. So each year we do seek more money. And, frankly, the Commission over the years has sought a lot more money than has been appropriated. So it is not for want of asking—

Ms. SCHAKOWSKY. But you feel that you have sufficient resources? I just heard you say that.

Mr. STRATTON. Well, I feel like we are doing a good job with the resources that we have. We can always do more with more money.

Ms. SCHAKOWSKY. Let me give you an example. Regarding establishing standards for baby bath seats, comments were due March of 2003. Since then, nothing has happened. In 2003, 14 children died in baby bath seats, and now a total of 119 children have died

in bath seats. Is it reasonable for consumers, for parents to have this lag time? Why haven't you moved on this?

Mr. STRATTON. Congresswoman, I don't think it is reasonable. I think it is too long of a time, and I think it takes too long to move. In this particular case, if you reviewed the record on this, you know that the entire Commission unanimously supported the new regulation on baby bath seats. At the same time, the voluntary standards committee, the third-party standards committee, was working on a voluntary standard which is identical to our particular standard, or substantially identical I am told, and, frankly, they promulgated that standard before we finalized ours. And currently, the staff is reviewing whether that particular standard is going to be substantially complied with. And if it is, as you pointed out in your opening statement, the law requires us to stop the process of going forward.

I personally on this one would prefer the mandatory standard, and I have evidenced that to staff, and we have had long discussions, and I have had discussions with my general counsel on it, but I have been informed that in order to go forward properly we have to determine whether there is going to be substantial compliance with the voluntary standard.

Let me mention one other thing that is of great concern.

Ms. SCHAKOWSKY. And you don't see this as a problem, as an impediment to saving the lives of children that the law requires you to go through these kinds of machinations in order to get to a place where we stop? I mean, how many have died in 2004? How many might die next year if we don't move on this thing?

Mr. STRATTON. I think the process needs to go faster. I think it needs to be faster, and I think our particular statute, as you are well aware, imposes about double the number of steps that you have to take to pass a normal regulation.

Ms. SCHAKOWSKY. Well, maybe we ought to reconsider that in a reauthorization then.

Let me ask another question, because time is limited here. The yo-yo ball, I heard you say on national television that you took that ball away from your children. You don't want them to play with the yo-yo ball. Is that correct?

Mr. STRATTON. I did take it away from my daughter.

Ms. SCHAKOWSKY. And there has been 300-plus incident reports. And in the correspondence that I have had with you and that Lisa Lipin has had with you, you have said that there were no permanent injuries and that there was some risk of strangulation. I am curious why nothing more than a mild warning to parents, since you think it is not suitable for your children—and we are going to hear pretty dramatic testimony about what happened not only to Lisa's son, but she has been in touch with parents all over the country who have been near death and unconscious. How could you say that there is no permanent injuries and that it is not sufficient to recall this product?

Mr. STRATTON. When we first started looking at this particular toy prior to even hearing from any of the people in this room, our compliance staff, our engineering staff, our hazards reduction staff, our human factors staff all got into the act working on—and including the lab, working on this to determine whether we could ac-

tually make the showing that this was a substantial product hazard to recall it. They worked on this about 5 or 6 months. They then came to me with the warning that I think is a strong warning, not just a mild warning, it is a strong warning. But, nevertheless, they came to me and they said, Mr. Chairman, you know, we cannot provide you with the data on this to make the showing under the statute that this particular product needs to be recalled.

Ms. SCHAKOWSKY. What does it take then? Does a child have to die?

Mr. STRATTON. No, a child does not have to die. We hundreds of recalls every year where children do not die, but most of those are voluntary recalls. In fact, almost everything we do is a voluntary recall. Once again, getting back to the procedure in our agency, to do a mandatory recall takes years, virtually years.

Ms. SCHAKOWSKY. Think about what you are saying. Think about that, what you are communicating to parents, that it takes years to have a mandatory recall of a product that poses a serious and real and possibly fatal threat to children in our country. Don't you think that we need to do better?

Mr. STRATTON. We do need to do better. We strive every day to do better. But let me just put the yo-yo ball in perspective. We have—in looking at the data on the yo-yo balls, we have approximately 10 emergency room visits from yo-yo balls. We have in the same time period—this is for 2003—67 emergency room visits for tether balls. This would translate into approximately 1,700 tether ball emergency room visits, 32,000 emergency room visits from softballs, and 99,000 emergency room visits from baseballs. So just because 99,000 people get hurt with baseballs every year, we don't eliminate baseballs from the market. There are things that people consider to be worthy. And it is not the baseball that is causing the problem. Kids are going to play with baseballs.

Ms. SCHAKOWSKY. So let me get it clear. You are equating a yo-yo ball that can easily wrap around a neck with a baseball as a threat?

Mr. STRATTON. Absolutely not. I am telling you that I have 99,000 emergency room visits from baseballs and I have well less than that, I have 10 known emergency room visits from yo-yo balls.

Ms. SCHAKOWSKY. And is that how we do it? That we don't evaluate the possibility of this toy—obviously there is more baseballs than there are yo-yo balls. And it seems like a no-brainer to me, that if you would take this away from your children, if you have well over 300 complaints, if you have children that are blue in the face and passed out, who have eye damage, permanent eye damage because of a yo-yo ball, that it might merit a recall.

I know my time has more than expired. I am hoping we could do another round though, Mr. Chairman. I ask for that.

Mr. STEARNS. I thank the gentlelady.

Mr. SHIMKUS.

Mr. SHIMKUS. Thank you, Mr. Chairman. I am going to just, on a one note Johnny here on this, I want to ask the Chairman, has the Federal Government approached, specifically the Department of Commerce, have they worked with you to try to educate you on the kids.us Web site? Is this the first you heard of that site?

Mr. STRATTON. This is the first I have heard of it, Congressman.

Mr. SHIMKUS. And, Mr. Chairman, I think we need to talk to the Department, because that is one of their requirements under the law, is to not only help advertise it across the country but also to look at relevant Federal agencies that might be involved and engaged in this. You know, and really, the discussion is meritorious because there is an educational aspect that can be done. I have small children, so, you know, I kind of understand what they are dealing with these days. One is 11, one is 9, and one is 4. And the 4-year-old, I asked him just last week, what did you learn in preschool? And he said healthy foods. Like what? Like carrots. And we eat a lot of carrots at home. And I said what else did you learn? And he says junk food. Like—and I was thinking like daddy eats probably is what I was thinking.

But my point is, as we learn that education is the key, kids will push their parents to eliminate things that they are learning in school that are dangerous to them. They will go to parents and say, why are you smoking? We learned in school that smoking is bad.

So I am going to continue to push the aspect of not just for you—and I think I have made my point—but also the consumer groups that will be testifying afterwards to look at this safe site for kids under the age of 13 to help educate. I mean, even if you are the toy industry and you are still going to sell and market this yo-yo ball, you may want to go up on the net and say, hey, you know, just like we do legal, there is concerns. Or, as we are talking about these child seats in the bath tub, which we used for Daniel and I used for Joshua—now, Joshua doesn't ask me to say that because he is 9 now. But Daniel did, and they are very helpful when you are a parent, but you still have to be present. And reiterating that fact that you still have to be present when you are using this child seat in the bath tub could also help save lives.

Mr. Chairman, that is my focus. Again, I applaud the hearing. It is okay that we discuss and debate and talk about child safety. We were successful through this committee doing that with child safety seats, as you know, which we passed and signed into law, and we helped change the way that we have new standards. We had very old standards for car seats for children. Within the last couple of years we changed that; we have created higher standards with industry cooperation. That is another way where the Internet could help educate kids. They are going to see their brother put into a 15-year-old child safety seat and they are going to say, hey, no, that is not good enough, mom, dad. It doesn't have the padding on the left or the right.

So I will—that is kind of my focus. I appreciate it. It is not really a question, it is just I want you all to take advantage of it and look at that site, and let us get up and make good use of it, and I yield back my time.

Mr. STEARNS. The gentleman yields back the balance of his time.

Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and I would like unanimous consent to place my statement into the record.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF TEXAS

I'd like to thank Chairman Stearns for holding this hearing and Ranking Member Schakowsky for bringing light to this important issue.

First, I'd like to thank Ms. Ginzel for being here today to testify. It takes a brave person to come before a body such as this to talk about the tragic loss of a loved one. I hope this committee will address this issue in a way that will make it even less likely that an accident such as Danny's will happen again.

I have 2 children and they're now adults so it's been a while since I have had to make purchases for a child. However, with my daughter and son-in-law expecting, I'm now back in the market for toys and items that will be essential to the development and entertainment of my grandchild.

Given that I'll be a proud grandfather soon, I'd like to think that we've come a long way in toy safety since my children were very young in the 1970's and it seems we have. We have moved from an estimated 200 deaths due to faulty cribs in the early 70's to 20 today. This is evidence of great progress, but as Chairman Stratton mentions in his testimony, that is 20 deaths too many.

Without a doubt, this decrease in deaths and injuries related to faulty products relating to children has a lot to do with the creation of the Consumer Product Safety Commission in the early 70's. The CPSC opened its doors the same year my oldest child was born, and since then has been able to assist in recalling those products that are most dangerous to our children.

However, according to the statistics I've seen in this panel's testimony, recalls only yielded a 16 percent return rate in 1997 and this is the most recent year we have recall data on. It concerns me that millions of recalled products are still in our homes. While I understand the CPSC has made great improvements in making recalls more effective in the last few years, I believe this committee needs to address how the federal government can work with industry to make these recalls more effective.

I'm a co-sponsor of Ms. Schakowsky's legislation that would set safety standards for durable infant and toddler products. The fact that there are no mandatory safety standards for items such as play yards, strollers and high chairs concerns me. I hope this hearing can bring us closer to considering this important legislation.

I look forward to hearing this panel's testimony and learning how we can make our children and grandchildren safer.

Thank you Mr. Chairman. I yield the balance of my time.

Mr. STEARNS. So ordered.

Mr. GREEN. And I want to thank both the Chairman and ranking member for this hearing. Some of us, my kids are long grown.

Mr. SHIMKUS. Grandpa.

Mr. GREEN. Not quite. Almost. Some of my colleagues know my daughter is expecting our first grandchild, so I am getting more interested in things for our children.

One of the things I was noticing over the weekend, because my wife was talking to me about getting a crib for our house. And I said we have that one up in the attic. And my daughter, who explained to me that is probably not sufficient because it was in 1973 when she was born, her crib. So—and I know our district is not a wealthy area and we have a lot of what we call in the auto industry after-market use of products, and I have garage sales that seem like they go on 7 days a week, flea markets and everything else, and that bothers me. So obviously we have a lot of pre-standardization, whether they are voluntary standards or what the CPSC has said is mandatory. And, again, I think public information, whether it is over the Internet, whether it is things you issue, are very important to consumers. Because I know of no parent—a good example from my colleague from Illinois, Mr. Shimkus, is the car seats, because we do an event where we give car seats to people. And we find out that people, you know, they hand these car seats down not only from child to child but also from generation to generation. And

those are not safe by any means. The ones I used in the 1970's are nowhere near adequate for today.

In your testimony, Mr. Chairman, you say that CPSC is not allowed to set mandatory standards for products if the industry establishes voluntary standards that are deemed adequate. And how long does it take to establish, whether it is voluntary standards or the mandatory? I would assume an industry would establish—when I was in business, I always wanted to do it myself instead of having somebody telling me how to do it. How long does it take to get a voluntary standard, for example?

Mr. STRATTON. Well, that depends, Congressman. I think you can maybe—depending upon the product, you can get a voluntary standard in a year or two. I happen to know that the more recent hot water heater standard took about 10 years just to get a voluntary standard.

Mr. GREEN. And your agency participates in that. And I guess you will suggest that to industry, whether it is toys or baby equipment or whatever, that a voluntary standard would be much quicker. And, you know, in all honesty, we hear that lawsuits are so prevalent, and I would think that someone would be more interested in a voluntary standard just because, if a child gets hurt by something, you know, I may not be able to own that Chinese factory but I will sure find out who the retailer of those toys or products are.

How long does it take to get a mandatory standard? You said 10 years for a water heater. How long does it take, for example, for an upgrade, if we find something on the—a good example that was mentioned earlier, the yo-yo ball? What is an example on that? Is there a voluntary standard on that? Of course, I assume it is all produced overseas.

Mr. STRATTON. Congressman, to give you an example. When I came into the Commission 2 years ago, I began to oversee two standards that we were working on. The CPSC has never passed a major rule or regulation under the Federal definition. We have never done that, and we are working on two now. One is on a flammability safety standard for upholstered furniture. The other one is for mattresses. The petition for a flammability standard for furniture was filed in 1994. There was a lot of preliminary work that went on before that. The one for mattresses was filed in 1997. And we are going to have a package, I am happy to say, on the mattresses by the end of this month, and you will have a regulation that the Commission will vote on on a new cutting edge standard for mattresses, and in November we are going to have the furniture flammability standard come out in a package from our staff, and it will be ready to be commented on and then voted on.

Mr. GREEN. Seven years would be, that would be the average?

Mr. STRATTON. I hesitate to say what the average is. But with the procedure and with all of the stakeholders that are involved and all of the legal requirements that are involved, it takes a very long time to pass a standard.

Mr. GREEN. Let me ask another question, because since talking to a lot of retailers most of our toys, for example, are made in China. And I am glad you are aggressively trying to deal with that. We have that problem in lots of manufacturing, the standards



maybe in China are so much different from ours. And are you, for example, if Babies-R-U's imports X number of toys, I assume Babies-R-U's is such a large retailer they would have some interest in making sure that whatever they are importing meets not only your standards or their industry standards, but also that they don't want to be sued by some irate parent or definitely not an irate grandparent. Who inspects those when they come in? Is it just left to the retailer?

Mr. STRATTON. Well, some of them are inspected by U.S. Customs Service, and by our staff. We have staff at the ports, which is where I am going later today to tour and to work with Customs at the Port of Los Angeles, which is the biggest port.

Mr. GREEN. The biggest port for the Far East.

Mr. STRATTON. So it is done there. But, like Customs, we don't do nearly all of them. And that is why we do have to rely upon the importers, holding their feet to the fire, and also holding the retailers' feet to the fire. I believe that the retailers, most all of them, certainly the ones you are talking about, have people right there in the factories, right there in China making sure on a day-to-day basis that these toys are built to standard.

Mr. GREEN. Okay. Mr. Chairman, I appreciate my time. Thank you, again. Thank you for calling this hearing and raising attention to the issue.

Mr. STEARNS. Thank you.

Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman.

Chairman, in your statement, I am—just a couple of trivia type questions here. You had mentioned that in 2004 the agencies conducted 356 recalls, a 27 percent increase from the prior year, covering more than 200 million consumer products compared to 41 the previous year. It sounds like you are doing a pretty decent job here. As another parent of a 10-year-old, a 6-year-old, and a 4-year-old, obviously we have got a lot of toys and one of my favorite places to shop is a store called Nobbies that sells just basically the stuff that you get at little fairs and stuff, and I love it because they are about 50 cents apiece as opposed to the—and break very quickly; they just break a little bit sooner than the more expensive versions is all.

As a parent, I know I have a certain responsibility. But as a parent I am curious; with 200 million consumer products that you have dealt with, that CPSC has dealt with this year, generally what are some of those? Does it fall in one particular category of toys or products.

Second, I am curious as to how those 200 million come to your attention. Is it by consumer complaints? Is it by inspections at the ports? How do you find out about 200 million products that are potentially unsafe?

Mr. STRATTON. The way that we find out about most of the products that result in recalls is reports by the manufacturer or the retailer. They are required by the CPSA, Consumer Product Safety Act, to immediately report any product that has a known product hazard. If they do not, we are able to fine—fine is not the legal term—up to \$1.65 million. I can assure members, nobody likes to be fined by the Consumer Product Safety Commission. It does not

matter how much it is; it is like getting on TV and knowing you have a product that you have been fined for and that you have not reported. That is the way we find out about most of them.

We also find out from consumer complaints and from the media from time to time, and then we do have across the country our staff that goes in and shops the stores. We go in and buy various products in stores. They go in and inspect things, as well, in the stores to see if things are meeting standards.

Frankly, it is mostly the reports that we get from the manufacturers because of the very severe legal requirement they have on them.

Mr. TERRY. Do you feel this severe legal requirement is effective? I call it a self-report. How do you feel; do we catch the vast majority, 100 percent, 90 percent, versus just the percent that stay quiet and let them be distributed throughout our toy stores?

Mr. STRATTON. I don't know the number. I know it is taken very seriously by the industry. Easily the most contentious issue I have had to deal with at the Consumer Product Safety Commission with the industry are these penalties. We are involved with a number of them now, trying to figure out better ways for them to report. There is no doubt in my mind they take it very seriously.

Mr. TERRY. How many fines have you been able to levy to make your point?

Mr. STRATTON. The number was 4.2 million this last year. It will probably be a little more than that in the upcoming year. It was down the previous year, so these fluctuate from time to time. The Commission started taking the penalty situation seriously in the year 2000. Prior to that time penalties were not an issue. As you can see from the graph, they have gone up substantially since that time. We are using it more and more.

Mr. TERRY. And you feel that is effective and getting their attention? Self-reporting is up, and do you feel that is why you have 200 million in 2004 versus 41 million the prior year?

Mr. STRATTON. Based upon what I hear, what people say to me, I know it is effective and I know it is the biggest concern folks have when it comes to having to deal with the Commission from a penalty standpoint.

Mr. TERRY. Getting back to my initial question, is there any particular category that makes up the predominant area of recalls?

Mr. STRATTON. Talking about toys?

Mr. TERRY. Toys. Or child products. And/or.

Mr. STRATTON. Last year we had 11 deaths from toys in the country of children under the age of 15. Almost all of those were choking hazards. Three or four were balloons that children choked on. The others are small balls. So the biggest concern I have always had as a parent—because I go home to the laboratory every night with a 9- and 5-year-old—are things that kids could choke on.

Small parts—we have a small-parts rule that indicates that you cannot have a toy made for children age 3 and under with small parts that can come off with a certain amount of pressure. That, and sharp points; those things that are obvious are the other things that are the biggest things to look for.

Mr. TERRY. Products, any products particularly inherently more dangerous?

Mr. STRATTON. We talked about baseballs. I mean, you see a number of injuries with baseballs.

Bicycles. We have 650,000 emergency room visits a year from bicycles.

Scooters. There are plenty of things out there that injure people.

Mr. TERRY. Thank you. That is all, Mr. Chairman.

Mr. STEARNS. Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I am a very interested observer, although like a lot of us in the Congress, we are in the doughnut hole. My son is 23 and single. I don't know how he got to be 23. He bicycled, he scootered, he surfed, he played baseball and football. Poorly but aggressively. He did the merry-go-round, the monkey bars, the swings, and always came off the swing for that big jump that you can get at the top of the arc. He still loves trees and has not broken anything, amazingly, from a tree. He has other ways.

I guess my concern is I don't think we should take lightly three deaths from a specific toy, or 300 complaints. But if I heard you correctly, the fact is that your ability—government's ability in this case, is to, one, set standards that even if they are voluntary, if they are adhered to, will make safer product; if they are not adhered to, will clearly put companies at risk of product liability claims, higher losses if they are sued and the like.

We can certainly require marking and education on the products, and we have done that. Congress has done that in many areas, cigarettes being the most notable. We can sponsor education with our own money or with industry's money, and we can operate in a prohibition mode of saying thou shall not import, you will not have that. Those are the tools we have in government.

If I understand correctly, the ranking member seems to think that prohibition is an important tool here, and I would like you to respond if I have missed it somewhere, that if we want to save lives and prevent injury, baseball, football, all small balls, balloons, especially at birthday parties where there are multiple young children, and I guess I am throwing in monkey bars and everything else in the way of exercise equipment, including bicycling, should be part of that prohibition and we would save a lot of lives, wouldn't we?

Mr. STRATTON. If you eliminated all of those products?

Mr. ISSA. Yes, sir.

Mr. STRATTON. I suppose you would.

Mr. ISSA. My question is what would kids go to then, under the sink and the Clorox bottle? Isn't there an inevitability if you do not do your best to have well-described, well-regulated, well-regulated toys from quality manufacturers, that the alternative is they will do what we did as kids, made our own toys, most of which were far more lethal?

Mr. STRATTON. I am sure that is correct. I went through the same thing when I was a kid. Frankly, based on what I do with my kids, I am surprised I am here.

Mr. ISSA. I do have one question and I don't want to appear to be making light of this hearing. I think it is very important. I

heard an unconscionably long process that you inherited 2 years ago when you came in, not unlike our ability to move legislation here; 7 years is not considered to be unreasonable for significant actions.

What can we do here in the Congress, possibly even on this committee, to empower you to dramatically increase the speed at which you can operate to point out changes necessary, either voluntarily or in other ways, and what can we do to help you enforce compliance?

Mr. STRATTON. Let me make sure I understand the question. Your question is directed toward compliance or toward promulgation of safety regulations?

Mr. ISSA. First of all, safety regulations. If the pet rock were around for more than 7 years at its heyday, that would be great. But if the pet rock were dangerous, we would quit making and selling them in about 5 years.

Mr. STRATTON. We have a three-step process by which we have to go about promulgating regulations. I am told that other agencies in the Federal Government only have to do this process when it is a major regulation, yet we have to do it on all regulations. I have the staff here, and many of our people have been at this agency 30 years and know this better than I do.

Mr. ISSA. They have seen 2 or 3 regulations concluded.

Mr. STRATTON. There are not that many regulations, but I think that doubles the time that it takes us to promulgate the regulation. When you take a situation right now that we are in where we have a consensus amongst all of our stakeholders regarding a new mattress flammability regulation, yet we have to proceed through what I think are unnecessary steps, I think some improvement could be made in our enabling legislation maybe to put us on the same footing as other agencies in the Federal Government as far as going forward with regulations.

Mr. ISSA. I would look forward with my staff to helping author such legislation. I am also quite certain that the chairman and ranking member would look forward to assisting in that, and that could be the greatest benefit of today's hearing. Thank you.

Mr. STEARNS. The ranking member has requested another round. I had suggested she could ask one more question. I know you have a flight at Dulles a little after noon.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

We talked about voluntary standards. My understanding is that the process for setting voluntary standards ends with a vote among the stakeholders; is that correct?

Mr. STRATTON. It is a vote on the voluntary standard committee. You could call them stakeholders. I have not heard them referred to like that, but it is whoever is on that particular voluntary committee.

Ms. SCHAKOWSKY. I am going to quote from Marla Felcher who is one of her witnesses, her book. "As a final step the group as a whole, the manufacturers, engineers, testing labs, recall consultants and the consumer advocates will vote to accept or reject the new voluntary standard for carriers." Each organization gets one vote. That is, each manufacturer, testing lab, consultant, and consumer group, except the CPSC. The agency is required to partici-

pate in the discussions, but it is not allowed to vote. "Outnumbered by the manufacturers and their service providers, the consumer advocates rarely win."

It seems to me that a process where the people who stand to profit from the sale of a product, that they are the ones who establish a voluntary standard so they can comply or not comply because it is voluntary, and they get to vote and in a way stack the vote by having the larger number, how can that be in the public interest?

Mr. STRATTON. Well, I can tell you what we do that is a check on that process. We do not acknowledge the voluntary standard until it has been reviewed by our technical staff and they determine that it adequately meets the risk to be remedied. Second, that it is able to be complied with.

So CPSC professional staff make a determination before CPSC acknowledges that standard. It doesn't really matter who has voted on it or who has not voted on it, it is whether CPSC staff has made that determination on behalf of the agency and the government.

Ms. SCHAKOWSKY. But they are not making an independent judgment just given the facts. They have to examine what the vote is. I am just saying it seems to me that by the very nature of the process, it is skewed toward the interest of the manufacturers and those who stand to profit, rather than just an objective analysis, which I think is what is required.

Mr. STRATTON. I understand your point of view, but I will quarrel with whether they are making an independent judgment. When they look at these, it does not matter who participated in it. It could have been all consumer groups or all industry. They look at it to determine from an engineering standpoint, human factors standpoint, consumer products safety standpoint, if it meets the risk that is to be remedied.

Mr. STEARNS. Chairman Stratton, thank you very much for your time. Obviously some day we hope to reauthorize your agency. We have put in for it. It is not as high priority as it should be, we on this committee think it is. We appreciate your time, and we thank all of those people who have served so many years in the agency for all of their hard work. I think the American public appreciates their efforts, too.

Mr. STRATTON. Thank you. We are completely at the committee's service when it comes to reauthorization because we understand that process, and we are happy to cooperate however we can be of help.

Mr. STEARNS. We have had other agencies we have not done either, and you might think in terms of what you would like to see. We have an election, God willing I come back, and I would like to sit down and see what you would like to see, including more funding. Funding over the last 30 years has not kept up, certainly, compared to other government agencies. You are doing an important job with a lot less money, inflationary-wise than other agencies.

With that, we will bring up the second panel, and we appreciate your patience for waiting.

Mr. STEARNS. Ms. Ginzel, we will start with you.

**STATEMENT OF LINDA GINZEL**

Ms. GINZEL. Good morning, Chairman Stearns and Ranking Member Schakowsky. It is a privilege to be here today. My name is Linda Ginzel. I am on the faculty at the University of Chicago Business School. I live in Chicago, Illinois with my husband and three sons.

I would like to start by telling you about my son, Danny. Danny was a healthy, happy, and beautiful kid. He had this amazing ability to engage anyone he met. When he was about a year old, I took him to New York to visit my sister. The passenger in the seat in the plane next to me played with him, and the flight attendants took turns holding him. Four months after that trip to New York, Danny was dead. Among the condolences my family received, there was an e-mail from one of the passengers on that flight. She had heard about Danny's death on the local news, remembered his name, remembered I told her I taught at the university, and she realized he was that sweet baby she played with on the airplane.

She wrote, "I remember what a wonderful baby he was on that flight and how others were amazed as well." She was also mourning his death.

I am here to testify today because 6 years ago on May 12, 1998, my 16-month-old son Danny was strangled at his licensed day care in my Chicago neighborhood, Lincoln Park. I am here to testify because there is absolutely no reason for this to happen to anyone ever again. Danny's death was completely preventable.

My beautiful little boy was killed by a defective children's product, a crib, the Playskool Travel-Lite portable crib. It was where he napped in the afternoon at his child care home. This particular crib has hinges in the top rail that allow it to fold flat for storage. This crib is defective because it can collapse unexpectedly with a child still inside, and this is what happened to my son. The top rails collapsed into a V-shape around his neck, and, like an animal trap, his own weight caused the V-shape to close tighter and tighter around his neck. It cutoff the oxygen to his brain. This crib collapsed without falling over, without making a sound, and within minutes my son was dead.

At first we thought it was a freak accident. No one to be blamed, it was no one's fault. It was a loving child care provider, there was no rhyme or reason; bad luck, bad timing. But the day after we buried our son we learned that it was not an accident. We read in the Chicago Tribune that the Playskool Travel-Lite crib had been recalled 5 years ago. The recall was in 1993 and Danny died in 1998. We discovered to our horror that he was the fifth baby whose neck was caught between the top rails of that crib, that brand of crib.

The first baby, Arnold from Commerce, California, died in 1991.

Elisa from Solon Springs, Arkansas died in 1992.

The third baby, Elizabeth from Agoura, California, died in the crib on January 5, 1993.

It was only after three dead children that the Playskool Travel-Lite crib was recalled with a press release issued on March 10, 1993.

Two years after the recall, the fourth baby, William from Indianapolis, Indiana, died in that Playskool crib, and my beautiful Danny was the fifth child to be strangled to death.

We read in the newspaper that morning, we learned it was not a freak accident. Danny was dead because the Playskool crib is a death trap. We could not understand why babies were still dying after a recall. What exactly was involved in a recall we did not know. We later discovered that the recall was a half-hearted effort and less than 9,000 of the 12,000 original cribs were still unaccounted for when the CPSC closed its books on the recall in June 1996.

Remember, the great majority of these cribs were still out there, and we did everything we could to notify other parents, word of mouth, e-mail, media. Our family felt an enormous sense of responsibility because we had the information, we knew how many of those deadly cribs were out there. We believed they would kill again, and they did.

Although my family worked with all of the strength that we could muster in those weeks and months after Danny was killed, just 3 months after my son died, another baby in New Jersey died exactly the same way, the sixth victim of the Playskool Travel-Lite crib.

I am sure you are asking the question, how is it three children died after this product was recalled? My husband and I have spent 6 agonizing years trying to find the answers to this question.

The most agonizing thing that we learned is that Danny did not have to die. I hope that during the question and answer, you ask me about the steps that could have been taken that would have prevented his death.

Danny was caught between commerce and politics. Danny is dead because the system of juvenile product safety is broken. Congress bears a major responsibility and you have the power to fix it. The case of the Playskool Travel-Lite crib that killed my son exemplifies all of the elements of this broken system. I came to Washington today to help you understand what can be done. I beg you to use your power to act on behalf of all children.

But there is an even more profound point. What the CPSC should do, what the American public should do, what Congress should do, is to ask the real question: Why are there so many recalls to begin with? Why are there so many defective children's products on the market? Why is anybody, from fly by-night operations to trusted giants like Hasbro, allowed to sell deadly products?

Danny did not die because of a woefully ineffective recall alone; he died like too many other children, because children's products are not required to be tested before they are sold.

If I may say something about the product that killed my son, in the case of the product that killed my son, Hasbro put its trusted Playskool name on the product that killed him. They did not perform a single safety test or find out whether the manufacturer, Kolcraft, did any safety testing. There is no documentation to be found anywhere that this crib was ever tested. What is the result? Less than 12,000 Playskool Travel-Lite cribs were sold, and six babies died. That is one dead baby for every 2,000 cribs sold. Let me

say that again. One dead baby for every 2,000 cribs sold. Your son or daughter has much higher odds of surviving a tour of duty in Iraq than being placed in a Playskool Travel-Lite crib.

My Danny did not have to die. He died because the system is broken. You have the power to fix it and I sincerely hope you have the will to do so. I am not asking you to create a children's product safety system that completely prevents death and injury. All I am asking is that you not allow other children to die like my son did. No one's child should die in an untested, dangerous children's product, and no one should die because manufacturers refuse to take responsibility for their deadly products.

We hope that other families will not suffer a tragedy as senseless as the one we have had to endure since the death of our beloved son. Without Danny, our family is forever incomplete. We hope that the work we do in his loving memory will protect the children you love, and we hope that you have the courage to help us.

Mr. STEARNS. Ms. Ginzel, thank you. We understand CPSC's general counsel is in the audience, and we have some of the employees. Even though the Chairman has left, they are kind enough to have their people stay to hear you, and we appreciate your advocacy and you have come to the right place.

[The prepared statement of Linda Ginzel follows:]

PREPARED STATEMENT OF LINDA GINZEL

My name is Linda Ginzel. I am a mother. I am also a professor at the University of Chicago. My husband, Boaz Keysar, is also a professor. This means that like many parents we rely on childcare.

Six years ago, on May 12, 1998, my 16½ month-old son Danny was strangled at his licensed childcare facility in our Chicago neighborhood. There is absolutely no reason for this to ever happen again. Danny's death was completely preventable.

My little boy was killed by a defective children's product—a crib—the Playskool Travel-Lite portable crib—where he napped in the afternoons at his childcare home.

This crib has hinges in the top rails that allow it to collapse and fold flat for storage. This type of crib is defective because it can collapse unexpectedly while the product is in use.

According to the U.S. Consumer Product Safety Commission (CPSC), Danny was not the first baby to die in the Playskool Travel-Lite, he was not the second, he was not the third, and he was not even the fourth child to die. My son, Daniel, was the fifth baby whose neck was caught between the top rails of this crib when it collapsed and strangled him to death. On August 19, 1998—three months after Danny died—10-month old William Curran of Fair Haven, New Jersey became this crib's sixth victim.

After we buried our son, my husband and I learned that 1.5 million portable cribs of similar collapsing, top-rail design by five manufacturers have been recalled, but according to the *Chicago Tribune* (June 15, 1998) over one million may still be in use. As of today, the official death count from these portable cribs stands at 16 children. The most recent victim was killed in March 2004 in rural Wisconsin.

How is it possible that my son died in this way? How can such a deadly crib be found in a licensed childcare facility? You should know that just eight days before this crib collapsed and killed my son, his childcare home passed a routine inspection conducted by the Illinois Department of Children and Family Services.

Since Danny died, my husband and I have learned a lot about the factors that contributed to our son's death: ineffective recall and failure to test. Unfortunately, the problem goes far beyond collapsing portable cribs. The CPSC recalls children's products at a rate of two per week. In 2004 alone, this amounted to over 23 million individual units, not including car seats. Because the CPSC relies largely on asking the media to inform the public, many people remain unaware of the dangers.

In the case of the Playskool Travel-lite crib that killed my son, here is what we learned about the ineffective recall and failure to warn the public about this deadly product:

- It was only after three children died that Kolcraft recalled the Playskool crib.



- Though the crib was proven deadly, Kolcraft and Hasbro sought to minimize the publicity surrounding the recall and resisted the efforts of the US Consumer Product Safety Commission (CPSC) to make the public aware of the hazards.
- In a 1993 letter, the CPSC reprimanded Kolcraft for failing to provide adequate notice to the public: “The [...] thin stock ‘poster’ went to retailers had many serious shortcomings, in our view. It did not even have the Playskool name on the crib.” The letter lists additional shortcomings of Kolcraft’s minimal recall efforts and concludes, “This was a very disappointing effort and it is not likely to be an effective public notice mechanism.”
- Despite such failings, Kolcraft continued to resist the CPSC’s attempts to warn parents.
- Kolcraft then sought to conceal the issue by asking the CPSC to purge its files of the CPSC’s letter that detailed their egregious conduct.
- Less than one month after the recall, Kolcraft tried to reduce publicity. They questioned the need for distribution of a video, and tried to justify putting an end to the publicity on the basis of low recall rates being common in the industry.
- They also objected to the number of videotapes suggested by the CPSC saying that they “did not want the message replayed.”
- By including confidentiality provisions in settlements with other Playskool Travelite victims, they further suppressed information about the deadly crib.
- Hasbro was not involved in the recall. For years, Hasbro did nothing to inform the public, despite its multi billion-dollar ability to reach the public when they want to sell their products.
- Only after the sixth baby died in August of 1998, and after we sent a letter to Hasbro CEO Alan Hassenfeld asking them to inform registered child care facilities of the recall, did they do so. This is, of course, too little, too late.
- Hasbro and Kolcraft continue to have the moral and ethical obligation to warn their trusting customers. Yet, eight years after the recall, six babies are dead and thousands of these deadly cribs are still unaccounted for. Hasbro and Kolcraft have failed this ethical test miserably.

There is absolutely no reason for another child to die due to the lack of information about unsafe, recalled products. Manufacturers use advertising to reach into our homes everyday when they want to sell us their new products, why can’t they could do the same to retrieve their recalled products?

But beyond informing parents and caregivers about recalls, we learned that recalls are only a symptom of the real problem: a lack of adequate pre-market safety testing. Here’s what we learned about the crib that killed our son:

- The Playskool crib was originally designed by Ed Johnson, a draftsman with a high school education.
- Kolcraft could not produce documents to show that any safety tests were actually performed.
- There was no evidence that any safety engineer tested the crib before it was sold.
- Hasbro did not verify that any testing was conducted. They asked Kolcraft to provide test data but they never received any.
- Despite putting their Playskool brand name on the crib, Hasbro never tested the product.

As a result, Boaz and I founded a nonprofit organization called Kids In Danger dedicated to improving children’s product safety ([www.KidsInDanger.org](http://www.KidsInDanger.org)). The immediate focus of our efforts was on educating the public about dangerous children’s products. We believe that people have the right to know that their children could be in danger. This is an area where there is so much to be done that even small efforts can make a big difference in getting the word out to the public and saving lives. Our long-term goal is to convince manufacturers to design safer children’s products and to do pre-market safety tests on their products instead of using our homes and childcare facilities as their testing grounds.

We hope that other families will not suffer a tragedy as senseless as the one we have had to endure since the death of our beloved son. We hope that the work we do in Danny’s loving memory will protect the children you love and we hope that you have the will and the courage to help us. Thank you.

Mr. STEARNS. Ms. Lipin.

#### STATEMENT OF LISA A. LIPIN

Ms. LIPIN. Chairman Stearns and Ranking Member Schakowsky and members of the subcommittee, my name is Lisa Lipin and I thank you for the opportunity to address you today.

I am a Chicago mother who started a grassroots campaign to get the Yo-Yo Water Ball banned for sale, not recalled, in the United States after my then 5-year-old son Andrew was strangled by the cord, this toy, when I was home. Thankfully I was there to save Andrew from what I believe could have been a fatal incident. These toys are being imported from overseas without any government regulation as to the safety of the product. Yo-Yo Water Balls were included in the 2003 list of dangerous toys released by both the U.S. Pirg and World Against Toys Causing Harm.

I am concerned about the way that CPSC has addressed the safety concerns of this toy. I contacted the CPSC on July 23, 2003 to file an incident report. I was dumbfounded to find out that the CPSC was aware of the potential strangulation hazard. I asked when the CPSC planned to make the public aware of the dangers of the toy, and was told that a public statement would not be released until their investigation was complete. I expressed my dissatisfaction with the CPSC's decision to not make this important child safety information public. I feared that a child was going to be seriously if not fatally injured. Thus, I decided that I would take action by bringing this issue to the public.

I contacted the media of various retailers, consumer advocates, and politicians. I spoke with parents around the country whose children had been injured. One parent, Tina Schreffler, a New Jersey mother, recently testified before the New Jersey Assembly Consumer Affair Committee regarding a proposed State ban. Together, Tina and I have designed a dedicated Web site to show parents the dangers of this toy.

I contacted CEOs of major corporations to ask them to remove the toy from their inventory. Most told me that they rely heavily on the CPSC to determine the safety of the toy. Some companies were unaware there was a safety issue related to this toy at all. Because of the limited action taken by the CPSC, these companies considered this toy safe. I provided companies with documentation of the severity and true nature of injuries which is from information gleaned from documents I had received from the CPSC myself. My efforts persuaded 7-Eleven Corporation to issue an advisory to 5,300 stores around the country that this toy could not be sold. eBay, which initially told me they that they relied on the CPSC for direction, and therefore would not prohibit the sale of the toy, reversed their decision just 2 days later after they received my document and the letter from Congresswoman Schakowsky.

Kmart has recently agreed to stop selling the toys, and KB Toys has agreed to cancel all future orders. However, these toys are still available because there are companies, such as Oriental Trading Company in Nebraska, who continue to sell the toy despite the information I have provided.

I contacted Congresswoman Schakowsky about my concerns and to ask for congressional assistance. She promptly got involved in this issue by writing letters to Chairman Stratton about our shared concerns. Most recently she spearheaded a letter to retailers urging them to remove the toy from store shelves.

My son Andrew and I also testified in front of the Illinois Health and Human Services Committee earlier this year. At my urging,

there has been a bipartisan effort in the State of Illinois and the writing of a resolution which urged the CPSC to ban the toy.

I receive monthly updates from the CPSC on injuries pertaining to Yo-Yo Water Balls. The CPSC has been very cooperative in providing the information I have requested. To date, there have been 392 reported injuries, 279 of those were strangulations. The CPSC issued a mild advisory stating there were no lasting injuries, and 7 cases had reported broken blood vessels and the toy posed only a low but potential risk of strangulation. This advisory failed to mention the true nature of reported injuries. Parents that I have spoken to have reported that they found their children unconscious, lifeless, gasping for air, foaming at the mouth, red, blue and purple in color. Some children have been hospitalized for strangulation. One child that passed out in Ohio, a 4-year old, suffered a skull fracture. Some children have sustained permanent eye injuries, requiring them to have lens implants and glaucoma surgeries.

I have tried to get the CPSC to ban the toy and issue a new advisory stating the true nature of injuries, both of which the CPSC has refused to do. While Mr. Stratton mentioned there are only 10 emergency room visits pertaining to this toy, that is only those emergency rooms that are part of the NEIS System, the National Emergency Injury Surveillance System; but what about the ERs in this country that are not part of this system?

A major concern with the CPSC is the manner in which important safety information is disseminated to the public. Many parents I spoke to told me while the CPSC investigator who originally came to their home promised there would be follow-up, there was none. It appears to me the response of the CPSC is perfunctory. They do not seem to look past their statutory mandate to expose real dangers that they know exist. The consumer believes that when they call and report an incident, that it will be counted as an actual occurrence. What they are not told is if they do not return a signed copy of the report, it is considered unconfirmed by the CPSC, and no follow-up happens.

Another problem is with the reporting system. When new incidents about the Yo-Yo Water Balls have come up recently, the CPSC just sends a letter to the parents and tells them that they will look into the matter and these parents believe their incident is isolated.

Another administrative concern is the CPSC's inability to have all of the data collected in one place. When I requested a summary of all incident reports, my own report was not included due to the way it was coded. How many other reports have been misplaced in the data base?

Last, the CPSC has a tendency to minimize the severity of the reported injuries by using the term "partially strangled." This issue is one of being strangled. The fact that death did not occur does not lessen that injury. It must be remembered that children have been injured, not partially injured, some even permanently injured.

It appears, whether true or not, that the CPSC attempts to minimize the risks of at least this toy, the Yo-Yo Water Ball. This seems more apparent as other countries have banned the toy with far less injuries.

The CPSC claims that a proposed ban does not meet congressionally mandated standards. I believe the CPSC should itself be bringing this concern to Congress. A product is not any less dangerous to children just because it is perceived to have not met the congressional standard. This country needs to change the guidelines for determining the safety of all children's products, including toys. Thank you.

[The prepared statement of Lisa A. Lipin follows:]

PREPARED STATEMENT OF LISA A. LIPIN, KIDS IN DANGER

Chairman Stearns and Ranking Member Schakowsky and members of this committee, I want to thank you for the opportunity to address you today. My name is Lisa Lipin. I am a Chicago mother who started a grass roots campaign to get the Yo-Yo Water Ball banned for sale in the United States after my then, 5 year old son, Andrew was strangled by the cord. Thankfully, I was home to save Andrew from what I believe could have been a fatal incident.

These toys are being imported from overseas without any government regulation as to the safety of the product. Yo-Yo Water Balls were included in the 2003 lists of dangerous toys released by both U.S. PIRG and W.A.T.C.H. (World Against Toys Causing Harm). The toy is a rubber type liquid filled ball attached to a stretchy rubber cord. The toy is inexpensive selling for \$1-\$2. Most often the toy is packaged in a clear plastic bag without any warning label. The cord of the toy can stretch several feet posing a strangulation risk to children. The liquid inside the ball has also been proven by some to be toxic and flammable. This toy has been banned for sale in countries around the world. But in the United States it is still available.

I am concerned about the way in which the CPSC has addressed the safety concerns of this toy. I contacted the CPSC on 7/23/03 to file an incident report. I was dumbfounded to find out that the CPSC was aware of the potential strangulation hazard. I asked when the CPSC planned on making the public aware of the dangers of the toy and was told that a public statement would not be made until their investigation was complete. I expressed my dissatisfaction with the CPSC's decision to not make this important child safety information available to the public. I feared that a child was going to be seriously if not fatally injured. Thus, I decided that I would take action by bringing this issue to the public. I contacted the media, various retailers, consumer advocates and politicians. I spoke with parents around the country whose children had been injured. One parent, Tina Schreffler, a NJ mother, recently testified for the NJ Assembly Consumer Affairs Committee regarding a proposed state ban. Together, Tina & I have worked to bring this issue to parents around the country by designing a dedicated website to the Dangers of the Yo-Yo Water Ball.

I contacted CEO's of major corporations to ask them to remove the toy from their inventory. Most told me they rely heavily on the CPSC to determine the safety of a toy. Some companies were unaware there was a safety issue related to the toy. Because of the limited action taken by the CPSC these companies considered the toy safe. I provided these companies with documentation of the severity and true number of injuries. This was information that was gleaned from documents that I had received from the CPSC. My efforts persuaded 7-Eleven Corp. to issue an advisory to 5300 stores that this toy could not be sold. eBay, which initially told me that they relied on the CPSC for direction and therefore would not prohibit the sale of the toy, reversed their decision 2 days later after receiving my documentation. K-mart has recently agreed to stop selling the toy. KB Toys has agreed to cancel all future orders.

I contacted my Congresswoman, Jan Schakowsky, about my concerns and to ask for congressional assistance. She promptly got involved with this issue by writing letters to Chairman Stratton about our shared concerns. Most recently, she spearheaded a letter to retailers urging them to remove the toy from store shelves.

My son, Andrew and I testified in front of the Illinois Senate's Health & Human Services Committee earlier this year. At my urging, there has been a bipartisan effort in the state of Illinois in the writing of a Resolution urging the CPSC to ban the toy. Democratic State Senator Jeffrey Schoenberg and Republican State Representative Elizabeth Coulson sponsored this Resolution.

I receive monthly updates from the CPSC on injuries pertaining to this toy. The CPSC has been very cooperative in providing the information that I've requested. To date, there have been 392 reported injuries, 279 of those were strangulations. The CPSC issued a mild advisory stating that there were no lasting injuries and

seven cases had reported broken blood vessels and that the toy posed only a “low but potential risk of strangulation”. This advisory failed to mention the true nature of reported injuries. Parents have reported that they have found their children unconscious, lifeless, gasping for air, foaming at the mouth, red, blue, and purple in color. Children have gone to emergency rooms and some hospitalized for strangulation. One child that passed out suffered a skull fracture. Some children have sustained permanent eye injuries requiring them to have lens implant and glaucoma surgery. I have continuously tried to get the CPSC to ban the toy and issue a new advisory stating the true nature of injuries, both of which the CPSC has refused to do.

A major concern with the CPSC is the manner in which important safety information is disseminated to the public. The parents that I contacted were not aware of the CPSC Advisory. Parents told me that while a CPSC investigator was sent to their home, there was no additional follow-up as promised.

It appears to me that the response of the CPSC is perfunctory. They don’t seem to look past their statutory mandate to expose real dangers that they know exist. The consumer believes that when they call and report an incident that it will be counted as an actual occurrence. They are not told that they must return a signed copy of their report if it is to be considered “confirmed” by the CPSC. If the report is not returned there is no follow-up. Then the CPSC acts as if the incident did not occur. Another problem is with the CPSC’s current reporting system. When new incidents about the Yo-Yo Water Ball have been reported the consumer receives a generic form letter stating that the CPSC will look into the matter leading the consumer to believe that their incident may be isolated.

Another administrative concern is seemingly the CPSC’s inability to have all of the data collected about a particular product in one place. When I requested a summary of all incidents reports, my own report was not included due to the way it was coded. How many other reports are misplaced in the data base?

Lastly, the CPSC has a tendency to minimize the severity of the reported injuries by using the term “partially strangled”. The issue is one of being strangled; the fact that death did not occur does not lessen the injury. It must be remembered that children have been injured, not partially injured, some even permanently injured. It appears, whether true or not, that the CPSC attempts to minimize the risks of at least this toy. This seems more apparent as other countries have banned the toy with far less injuries.

The CPSC claims that a proposed “ban” does not meet congressionally mandated standards. I believe that the CPSC should itself be bringing this concern to congress. A product is not any less dangerous to children just because it does not meet the current congressional standard. This country needs to change the guidelines for determining the safety of all children’s products including toys.

Thank you for your time.

Mr. STEARNS. Ms. Felcher, welcome.

#### **STATEMENT OF E. MARLA FELCHER**

Ms. FELCHER. Good morning. I would like to thank the Chairman for inviting me to participate in this important hearing. I am going to talk briefly today about how I got into children’s product safety, but mostly what I am going to talk about is what I have not been able to learn. I am going to talk about censorship at the agency.

The Chairman mentioned that information can go a long way toward improving safety, and I agree 100 percent with that statement. I am here today to talk about why and how information parents need is not getting to them.

First, a little background. For 20 years I spent most of my waking hours thinking about and doing marketing. I was a marketing professor at the Kellogg Graduate School of Management at Northwestern University, and I worked at various corporate marketing jobs at Gillette, Nabisco, and various packaged-goods companies. Yet the first I ever heard of recalls was when my friend’s son, Danny Keysar, was killed by a recalled crib in 1998. I had a Ph.D. in marketing from one of the top business schools in the world, I had an MBA, I knew a lot about how to get products into homes

through creative advertising and sales and distribution strategies, but I had never in 20 years thought about or been taught how to get those products out of homes when they proved to be dangerous. This is not what marketers do. They decide what color and how plush to make a car seat or carrier cushion, whether it will be sold in Babies R Us or Wal-Mart, and how much it will cost. Decisions regarding product recalls fall to the corporate lawyers.

It is CPSC's job to look out for our children's interests while the lawyers are looking out for corporate financial interests. Yet the agency does not have the tools it needs, and lately, it seems, sometimes does not have the motivation to carry out their congressional mandate.

There are more dangerous and defective children's products on the market today than there were 10 years ago, and the problem is only going to get worse.

Why? Three reasons:

No. 1, demand for children's products is at an all-time high. We seem to want and need more stuff for our kids than ever before.

Second, manufacturers are under an enormous amount of pressure from retailers like Wal-Mart to keep their costs low. Parents want cheap prices. Many times they have no idea they are sacrificing or having to make a tradeoff between safety and cost. Sometimes retailers provide a hard-to-resist temptation to manufacturers to scrimp on safety features.

Third, manufacturers have gotten very savvy about keeping negative information about their products away from the public. We are bombarded with ads every day about how great these products are, how they can improve our lives. What we do not hear is the other side of that equation.

It is no accident then when a child is injured or killed by a product, most people do not hear about it. This is not, as some manufacturers would like us to believe and as I have heard them say, because parents are stupid or lazy or because they are not doing their research. It is because protective orders and secret settlements have become the norm in the courts, and because manufacturers have the power to gag CPSC regulators from telling the public all they know about a dangerous product. I would like to spend a couple of minutes to tell you how they do this.

There is a little known statute in the Consumer Product Safety Act called 6(b). It prohibits anyone—it prohibits CPSC from telling anyone, a consumer reports researcher, a mother, a day care provider, whether a specific product is dangerous or safe unless the manufacturer gives their permission to the CPSC to reveal this information.

If a company does not want the public to know a brand safety record, the CPSC is required to keep the secret. While it may be in a consumer's best interest to know that almost 200 babies were injured in a Costco infant swing or more than 400 were injured in a Costco stationary entertainer, it is certainly not in Costco's best interest for the public to know this. Yet manufacturers and CPSC routinely rely on 6(b) to keep life-and-death safety information away from the public.

What effect does CPSC's 6(b) policy have on child safety? In 1998 I started research on what eventually became a couple of magazine

articles and a book on baby product safety. In 2000, after working on this product for more than a year—and I think it is fair to say I know more about baby product safety than most people—my sister got pregnant and had a baby, Liam. My family deemed me Liam’s purchasing agent; I was the expert. My sister did not like her big sister being in this role, but I did it. It was my job to choose the safest high chair, stroller, and crib for Liam. Even though at this point I had written most of this book, I had no idea what brands to buy. The secrecy imposed on CPSC by the 6(b) statute kept me in the dark, just like it keeps millions of other families in the dark. I could tell my sister which products had been recalled, I could do that by looking at the Web site, but I could not tell her which products that were currently on the shelf at Babies R Us would be recalled the day after I bought it. Lacking reliable safety information, I fell back on that old price/quality relationship. I figured the more expensive the product, the safer it would be.

I bought Liam a Peg-Perego high chair. It cost \$180. A few weeks later it was recalled after 51 children had been entrapped by their heads and arms. Nothing more than sheer luck prevented Liam from being one of those unlucky children.

Manufacturers and the CPSC will tell you that they warn consumers about dangerous products each time they issue a recall press release, but what they do not tell you is how these press releases get written. Every word that goes out to the public is negotiated in highly secretive meetings between CPSC staff and the manufacturer’s lawyers.

The president of Baby Bjorn, a company that makes baby carriers, once gave me insight as to what goes on in these meetings when he confessed that, of course it is the manufacturer’s to play down the hazard in the press release. They do not want parents to be alarmed. A member of CPSC’s own recall staff once told me that many companies balk at even using the word “recall” in the recall press release because parents would think they have to return the product. It is no wonder when it comes to recalls so many parents are confused, and they have no idea what to do.

In a few weeks I am going to China with my sister where she is going to adopt an 18-month-old baby girl. It has been 6 years since my friend’s son Danny was killed. My nephew Liam is 5 years old. After all this time has passed, I still do not know which high chair, stroller, or crib to buy for my new niece. This is the legacy of 6(b) and CPSC’s secrecy. Thank you.

[The prepared statement of E. Marla Felcher follows:]

PREPARED STATEMENT OF E. MARLA FELCHER, FREELANCE WRITER AND LECTURER,  
J.F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Good morning. I’d like to thank the committee for inviting me to participate in this important hearing. I’m going to talk briefly today about how I got into the world of children’s product safety, and what I have not been able to learn. I’m going to talk today about censorship.

For 20 years, I spent most of my waking hours thinking about and doing marketing.

I was a marketing professor at the Kellogg Graduate School of Management in Northwestern University, and I worked in various corporate marketing jobs, at Gillette, Talbots, and as a consultant to Nabisco, M&M Mars, Burlington Industries and Lederle Labs.

Yet, the first I ever heard of recalls was when my friends’ son Danny Keysar was killed by a recalled Playskool crib in 1998. I had a Ph.D. in marketing from one

of the top business schools in the world, and I had an M.B.A. I knew a lot about how to get products into homes, through creative advertising, sales and distribution techniques, but I had never, in twenty years, thought about how to get those products out of homes when they proved to be dangerous. This is not what marketers do. They decide what color and how plush to make a car seat or carrier cushion, whether it will be sold in Babies "R" Us or Wal-Mart and how much it will cost. Decisions regarding product recalls fall to corporate lawyers. It is CPSC's job to look out for our children's interests, while the lawyers are looking out for corporate financial interests. Yet, the agency does not have the tools, and lately it seems, the motivation, to carry out their Congressional mandate.

There are more dangerous and defective children's products on the market today than there were ten years ago, and the problem is likely to get worse. Why? There are three reasons: First, the demand for children's products is at an all-time high and projected to increase. Second: Manufacturers are under enormous pressure from retailers like Wal-Mart to keep their prices low, providing a sometimes hard-to-resist temptation to scrimp on safety features. Third: Manufacturers have gotten very savvy at keeping negative information about their products away from the public. It's no accident that when a child is injured or killed by a product, most people don't hear about it. This is not, as some manufacturers would like us to believe, because parents are stupid or lazy, or don't do their research. It's because protective orders and secret settlements have become the norm in the courts, and because manufacturers have the power to gag CPSC regulators from telling the public all that they know about a dangerous product. I'd like to spend what remains of my time here today discussing how they do this.

There is a statute in the Consumer Product Safety Act, called 6(b), which prohibits CPSC from telling anyone—a Consumer Reports researcher, a mother or daycare provider—whether a specific product is dangerous or safe, unless the manufacturer gives the agency permission to do so. If a company doesn't want the public to know a brand's safety record, CPSC is required to keep the secret. While it may be in a consumer's best interest to know that almost two-hundred babies were injured in a Cosco infant swing or more than four-hundred injured in the company's stationary entertainer, it is not in Cosco's best interest for the public to know this. Yet, manufacturers and CPSC routinely rely on 6(b) to keep life-and-death safety information out of the public eye.

What effect does CPSC's 6(b) policy have on child safety? In 1998 I started research on what eventually became a couple of magazine articles and a book on baby product safety. In 2000, after I had been working on the project for more than a year, and subsequently knew more than most people know about children's products, my sister had a baby, Liam. My family deemed me Liam's purchasing agent—it was my job to choose the safest high chair and stroller and crib and carrier and all of the other stuff parents buy. But you know what? I had no idea which brands to buy. The secrecy imposed on CPSC by the 6(b) statute kept me in the dark, just as it keeps millions of other families in the dark each day. I could tell my sister which products had been recalled, but I could not tell her which products currently on the shelf at Babies "R" Us would be recalled the day after I bought it. Lacking reliable safety information, I fell back on the old price-quality relationship, deciding that the more expensive products would be the safest. I bought Liam a Peg Perego high chair that cost \$180. A few weeks later it was indeed recalled—after 51 children had been entrapped by their heads or arms. Nothing more than sheer luck prevented Liam from being one of those children.

Manufacturers and the CPSC will tell you that they warn consumers about dangerous products each time they issue a recall press release. But what they don't tell you is how these press releases get written. Every word that goes out to the public is negotiated in highly secretive meetings between CPSC staff and the manufacturers' lawyers. The president of Baby Bjorn once gave me insight into what goes on in these meetings, when he confessed that it is the manufacturer's goal to play down the hazard in the press release. They don't want parents to be alarmed. A member of CPSC's recall staff once told me that many companies balk at even using the word recall in the recall press release, because they fear that parents will think the product must be returned. It's no wonder that, when it comes to recalls, so many parents are confused.

In a few weeks I am going to China with my sister, where she is going to adopt an 18-month old baby girl. It's been more than six years since my friends' son Danny was killed by a recalled portable crib. My nephew Liam is almost five years old. After all of this time has passed, I still don't know which high chair or stroller or crib to buy for my new niece. This is the legacy of 6(b).

Mr. STEARNS. Thank you.



Ms. Cowles.

**STATEMENT OF NANCY A. COWLES**

Ms. COWLES. Good morning, Chairman Stearns, Ranking Member Schakowsky, and committee members. Mr. Chairman, thank you for this opportunity to present our views on the children's product safety system and ways to better protect children.

Kids in Danger is a nonprofit organization that is dedicated to protecting children by improving children's product safety. Our mission is to promote the development of safer children's products, advocate for children, and educate the general public. We have worked with States to implement the Children's Product Safety Act which prohibits the sale or lease of recalled or dangerous children's products or their use in licensed child care, something not prohibited by Federal law.

Seven states currently have such a law. We provided educational materials to child care providers, health care professionals, and parents. We work with engineering programs to increase the knowledge of safety and standards that tomorrow's designers will bring to children's products. We are doing all we can to protect children, and welcome this opportunity to speak to you about the problem and solution.

As Congresswoman Schakowsky mentioned, a survey in Illinois showed that most voters believe that manufacturers are required to test children's products for safety before they are sold and that the government oversees that testing.

I predict any poll of Americans would show a similar disconnect from the real situation. Most parents, care givers, health professionals I meet, believe that if they buy a stroller, a high chair, a baby swing, a playpen, especially one with a brand name they recognize, that someone, somewhere, has made sure that product is safe. After all, this is America, right, the land of regulations and testing and liability. They are shocked to learn that we have no law requiring safety testing and that government only takes action after a product is manufactured, sold, and proved to be unsafe, a very backwards approach in most people's eyes.

Subsequent surveys by the group that did the original one show that super majorities, 97 percent, support a requirement for pre-market safety testing, yet it is not required; and many products make it to store shelves that do not meet standards or whose design put children at risk. There are many flaws in the current recall system.

Manufacturers, as Marla mentioned, have editorial veto power over the press release announcing the recall, allowing them to try and downplay the danger. The only requirement of the recall is the press release. Many companies do nothing further to publicize the recall and millions of potential users never hear of the danger. An effective recall, according to CPSC, retrieves or accounts for only 10 to 30 percent of the recalled products that are already in consumer hands.

But simply improving the recall system will not prevent injuries and death in unsafe products. Look at just one product type, the rotating top rail-style portable cribs that were made and recalled in the 1990's. Linda lost her son in the first of these cribs, the

Playskool Travel-Lite, but four other companies picked up on this untested design and used it in their own products. These portable cribs and play areas contained a deadly flaw that allowed the sides to collapse strangling at least 16 children. The names of these children and some of their stories can be found at our Web site in our Family Voices section.

Of the deaths that we know of, nine took place before the product was ever recalled and seven took place afterwards. So even the most effective recall will not prevent these deaths. We believe the answer lies in the simple solution that most parents already believe is the case: All children's products should be tested by independent laboratories to strict safety standards before they are placed on store shelves. Voluntary standards, self-reporting have not worked.

H.R. 2911, the Infant and Toddler Durable Product Safety Act, introduced by Congresswoman Schakowsky, supported by 34 co-sponsors, provides a mechanism for strong mandatory standards and independent safety testing before products are sold. The legislation would require the CPSC to set up a commission to set mandatory standards for durable infant and toddler products, those products used to care for a baby, high chairs, strollers, cribs, portable cribs, about 16 products in all.

Unlike the ASTM international committee that sets voluntary standards, this commission must be balanced between consumers, testing labs, government and manufacturers. In addition to developing the standards or adopting current standards as mandatory, the commission would also develop a certification program for independent testing laboratories and the seal that would indicate that a product has been tested to these strict standards. Then manufacturers will contract with testing labs to certify their products and only products with safety seals can be sold in the United States. It is the only way to be sure that the products meant for our most vulnerable consumers are as safe as we can possibly make them.

In addition, we would urge this committee and Congress to increase its oversight of the CPSC. While companies are required to file monthly reports on the effectiveness of each of their recalls until the recall is closed, this information is hidden from view, if kept at all. Congress should request an annual report of all recall efforts that detail the number of products in consumer use that are returned or accounted for and the efforts made to reach likely users. Perhaps if the woeful number shown by most manufacturers were subject to public scrutiny, they might make more of an effort to retrieve the products.

The Consumer Product Safety Commission, with a smaller budget than the FDA has to oversee animal medications, has an enormous responsibility to keep the public safe from dangerous products. That responsibility is vital to the health and safety of our children. We urge you to give the agency the tools they need to do an effective job and to require them to fulfill their responsibility.

[The prepared statement of Nancy A. Cowles follows:]

PREPARED STATEMENT OF NANCY A. COWLES, KIDS IN DANGER

Good Morning Chairman Stern and Ranking Member Schakowsky and Committee members. Thank you for this opportunity to present our views on the children's product safety system and ways to better protect children.

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. We were founded in 1998 by Linda Ginzel and Boaz Keysar, after the death of their son Danny Keysar in a poorly designed, inadequately tested and finally recalled portable crib. Our mission is to promote the development of safer children's products, advocate for children and educate the general public, especially parents and caregivers, about children's product safety.

We have worked with states to implement the children's Product Safety Act which prohibits the sale or lease of recalled or dangerous children's products or their use in licensed childcare. Currently 7 states have such a law. We provide educational materials on children's product safety to childcare providers, health care professionals, parents and caregivers to alert them to the minefield of dangers facing children. We are working with engineering programs at universities to increase the knowledge of safety and standards that tomorrow's designers will bring to children's products. We are doing all we can to protect children and welcome this opportunity to speak to you about the problem and solutions.

In 1999, a survey in Illinois<sup>1</sup> showed that 79% of voters believed that manufacturers were required to test children's products for safety before they were sold and 67% erroneously believed that the government oversaw that testing. I predict that any poll of Americans would show a similar disconnect from the real situation. Most parents, caregivers and health professionals I meet believe that if they buy a stroller, high chair, baby swing, or playpen, especially a name brand they recognize, that someone, somewhere has made sure it is safe for their baby. After all, this is America, the land of regulations and testing and liability. They are shocked to learn that we have no law requiring safety testing and that the government only takes action after a product is manufactured, sold, and proved to be unsafe—a very backwards approach in most people's eyes. Subsequent surveys by the Coalition for Consumer Rights show that super majorities—97%—support a requirement for premarket safety testing. Yet it is still not required and many products make it to store shelves that do not meet standards or whose design puts children at risk.

There are many flaws in the current recall system. Manufacturers have editorial veto power over the press release announcing the recall, allowing them to try to downplay the danger. The only requirement is the press release. Many companies do nothing further to publicize the recall and millions of potential users never hear of the danger. An effective recall retrieves or accounts for only 10-30% of the recalled items already in consumer hands. But simply improving the recall system will not prevent injuries and deaths in unsafe products.

Look just at one product type—the rotating top rail style portable cribs that were made *and* recalled in the 1990's. Linda Ginzel lost her son in the first of these cribs, the Playskool Travel Lite. But four other companies picked up on this untested design and used it in their own products. These portable cribs and play yards contained a deadly flaw that allowed the sides to collapse, strangling at least 16 children that we are aware of. The names of these children and some of their stories can be found at our website [www.kidsindanger.org](http://www.kidsindanger.org) in the Family Voices section. Of the deaths we are aware of, nine took place before the recall and seven afterwards. So even the most effective recall will not prevent all deaths from unsafe products.

We believe the answer lies in the simple solution that most parents already believe is the case—all children's products should be tested, by independent laboratories, to strict safety standards, before they can be placed on store shelves. Voluntary standards and self-reporting have not worked.

HR 2911, the Infant and Toddler Durable Product Safety Act, introduced by Representative Schakowsky and supported by 34 co-sponsors provides a mechanism for strong mandatory standards and independent safety testing before products are sold. The legislation would require the CPSC to set up a commission to set mandatory standards for durable infant and toddler products, those products we use to care for a baby—high chair, stroller, crib, portable crib, etc. a total of about 16 products. Unlike the ASTM International committee that sets the voluntary standards, this commission must be balanced between consumers, testing laboratories, government and manufacturers. In addition to developing the standards, or adopting current standards as mandatory, the commission will also develop a certification program for independent testing laboratories and the seal that will indicate a product has been independently tested to these strict standards. Then manufacturers will contract with testing labs to certify their products and only products with the safety seal can be sold in the United States. This is the only way to be sure that products meant for our most vulnerable consumers are as safe as we can possibly make them.

In addition, we would urge this committee and Congress to increase its oversight of the CPSC. While companies are required to file monthly reports on the effective-

<sup>1</sup>*Annual Survey of Illinois Voters*, Coalition for Consumer Rights, Chicago, Illinois 1999.

ness of the recall, this information is hidden from view. Congress should request an annual report of all recalls efforts that detail the number of products in consumer use that are returned or accounted for and the efforts made to reach likely users. Perhaps if the woeful numbers shown by most manufacturers were subject to public scrutiny, they might make more of an effort to retrieve the products.

The Committee should review repeat offenders—companies with multiple recalls of children’s products. In a 2003 report, Kids In Danger found that several companies had as many as 12 recalls in a decade as well as fines for not reporting consumer injuries. While any company can have a recall, those that continue to rack up recalls each year clearly need more scrutiny to determine if they are capable of making safe products for children.

We also believe that the cap on penalties should be removed. If penalties become a budgeted item, just the cost of doing business, they will never be an effective deterrent to attempts to hide injuries and continue to sell unsafe products.

The US Consumer Product Safety Commission, with a smaller budget than the FDA has to oversee animal medications, has enormous responsibility to keep the public safe from dangerous products. That responsibility is vital to the health and safety of children. We urge Congress to give the agency the tools they need to do an effective job and to require them to fulfill their responsibility to us all.

Mr. STEARNS. Thank you.

Mr. Klein. You have a formidable task here.

#### STATEMENT OF GARY S. KLEIN

Mr. KLEIN. Yes. I am Gary Klein with the Toy Industry Association, and I am pleased to be here, and I want to thank you, Mr. Chairman, and you, Congresswoman Schakowsky, for the opportunity.

It is hard to respond to some of what I have heard. I have two kids. They managed to reach teenagehood, somehow. Nevertheless, we are all parents and we all share in the tragedy when something like that happens. It makes it difficult to go through what I have to say, but I am going to give it a shot.

TIA is a New York-based, not-for-profit trade association representing approximately 400 manufacturers, toy testing labs, product safety consultants, and others. Our members account for 85 percent of the domestic toy sales, and, being global in character, approximately 50 percent of all toys sold worldwide.

TIA emphasizes the importance that play has on all children’s lives, but to ensure that all children have a positive play experience, our primary concern and the primary concern of all of our members is safety.

Together with the U.S. Government and with consumer groups, TIA and its members have led the world in the development of toy safety standards by investing heavily in child development research, dynamic safety testing, quality assurance testing, risk analysis, and basic anthropometric studies of children. Moreover, since the 1930’s, TIA has established a tradition of working with others to ensure the manufacture and distribution of safe toys.

We are proud of our record of significant accomplishments in the area of toy safety, working with groups such as the National Safety Council, the National Bureau of Standards, ANSI, ASTM, and other groups like the International Consumer Product Health Safety Organization and National Safe Kids Campaign to advocate the need for product safety initiatives in both the U.S. and internationally. And, I would add, the U.S. standards are the model for the rest of the world in toy safety.

The commitment that we have to toy safety continues today. In 1999, TIA launched the first year-round toy industry consumer Web site to assist consumers with questions and concerns about toy safety. Comprehensive and accurate information is available any time of day through a specially designed area on our TIA Web site.

Under the auspices of the NBS, we led in the development of the first comprehensive safety standard in 1976, and in 1986 the standard was revised and designated under ASTM international. The current standard is the ASTM F963-03 Standard Consumer Safety Specification For Toy Safety. The newest revision was published in January 2004.

All Federal toy safety regulations which appear in the CFR title 16 are referenced, and additional requirements and test methods are included. The standard is reviewed and revised every 5 years, at a minimum, and on an ad hoc basis to address newly identified hazards.

ASTM is one of the largest voluntary standard development organizations in the world, and, while technically, as we have heard time and again, the standards are termed voluntary, that is a misnomer. Not only is adherence to the standard required for membership in TIA, every retailer requires a separate test. A manufacturer of a toy can have it tested by a certified lab and try to get it to a retailer, and that retailer will demand that it be tested by its own lab again. Try to get a toy on a retailer's shelf without having it tested. You cannot. Wal-Mart requires testing in its own lab. Toys R Us requires their testing. They all have their own labs, and it is regardless whether it has already been tested by a certified lab. And many of our members have state-of-the-art, up-to-date labs that go through these tests.

I invite any Member of Congress to come visit one of these labs and at one of these factories. Visit the Mattel lab out in California and see the tests that those products go through.

We also put on seminars in China. Last October we conducted roughly a week-long safety seminar for Chinese manufacturers of toys, going over the revised ASTM standards. That was attended by several hundred representatives from Chinese factories. They were all translated into Chinese and we had members of the CPSC over there to engage in discussions as well as senior safety executives from all of our members.

I would like to talk a little about age appropriateness. We have heard about toys. Any product, toy or not, can pose a potential hazard in the hands of a child for whom it is not intended. For this reason almost all toy packages include a suggested age range for use. To help manufacturers reach a greater degree of consistency in age-grading practices and age labeling on toy packages, CPSC publishes a guide for age-labeling toys.

Additionally, specific cautionary labeling requirements specified by the ASTM standard and by the CPSC regulations cover products such as crib gyms, electrically operated toys, chemistry sets, and such toy features as functional points and edges. The standard also contains cautionary labeling requirements as mandated by CPSC relating to potential choking hazards, as we have heard, to children under 3 years of age, from toys or games intended for children over 3 years of age through age 6, which contain any small part, marble,

or balloon. We supported this legislation in 1994. Regardless of labeling, however, there is no substitute at any age for appropriate adult supervision.

We try to make toys among the safest consumer products in the home and we think the statistics establish that. If you look at the CPSC statistics, among the 15 most recognized hazards in the home toys are not even on the list. They rank below most every other product.

I am going to skip to the end of my statement.

We are here today to address the question of child safety, child product safety, and do the current standards provide enough protection? If by enough protection we are talking about perfect, zero-risk protection, the answer is no. They do not, nor could they ever. The data tells us clearly that standards alone are not enough. Tragically, children are still injured or killed in traffic accidents despite tough car seat and seat belt laws and state-of-the-art car seat technology.

Backyard pools continue to pose a danger. Children ride bikes. We have heard about the bike accidents. Children ride bikes and trikes into traffic. They fall over. Things happen. Standards and legislation can only do so much. While we may never get to zero risk for children, we must continue to try to look for zero risk, to look for new ways to address the true threats to the safety of our children.

We believe that education holds the key, and my association has already recognized the importance of education and product safety. We have to focus on the true hazards and use our resources accordingly to get the message out. There is no substitute, ever, for adult supervision; and it should be the shared role of industry, consumer associations, and the CPSC to educate consumers as to the risks out there and appropriate behavior to protect our children. In doing so, we will have provided parents with the necessary tools to protect the safety of our most cherished resource, our kids.

[The prepared statement of Gary S. Klein follows:]

PREPARED STATEMENT OF GARY S. KLEIN ON BEHALF OF TOY INDUSTRY  
ASSOCIATION, INC. (TIA)

Mr. Chairman and members of the Committee, I'm Gary Klein, Senior Vice President, Government, Legal and Regulatory Affairs, for the Toy Industry Association, Inc. (TIA). Thank you for providing TIA an opportunity to testify in this hearing on Child Product Safety: Do Current Standards Provide Enough Protection?

TIA

The Toy Industry Association, Inc. is a New York City-based not-for-profit trade association composed of more than 400 members, including manufacturers whose aggregate sales at the retail level exceed \$24 billion annually (regular members), as well as product design firms, toy testing labs, product safety consultants, and others (associate members). The U.S. Toy Industry leads the world in the innovative, cost-effective design and sale of toy products. We are in the business of developing fun, innovative products with which children can play and learn. TIA members account for 85% of domestic toy sales and, global in character, approximately 50% of all toys sold worldwide.

TIA emphasizes the importance play has in all children's lives. Not only is it fun and educational, but a necessary part of growing up. However, to ensure that all children have a positive play experience, TIA's primary concern is that play is safe. Together with the U.S. government, TIA and its members have led the world in the development of toy safety standards by investing heavily in child development research, dynamic safety testing, quality assurance testing, risk analysis and basic an-

thropometric studies of children. Moreover, since the 1930's, TIA has established a tradition of working with others to ensure the manufacture and distribution of safe toys.

TIA is proud of its record of significant accomplishments in the area of toy safety over many decades through relationships with the National Safety Council (NSC), National Bureau of Standards (NBS), American National Standards Institute (ANSI), ASTM International (formerly American Society for Testing and Materials, ASTM), International Organization for Standardization (ISO), and, of course, with the U.S. Consumer Product Safety Commission. We have also worked in collaboration with consumer organizations and other not-for-profits to promote the well-being of children. This includes among others, the International Consumer Product Health and Safety Organization (ICPHSO) and National SAFE KIDS Campaign, to advocate the need for product safety initiatives in both the U.S. and internationally.

This commitment to toy safety continues today, and in 1999, TIA launched the first, year-round, toy industry consumer website to assist consumers with questions and concerns about toy safety. Comprehensive and accurate information is available any time of day, through a specially-designed area on the TIA website: [http://www.toytia.org/Content/NavigationMenu/Parents/Toy\\_Safety/Toy\\_Safety.htm](http://www.toytia.org/Content/NavigationMenu/Parents/Toy_Safety/Toy_Safety.htm)

#### VOLUNTARY ASTM CONSUMER SAFETY SPECIFICATION ON TOY SAFETY IS THE "GOLD" STANDARD

Under the auspices of NBS, TIA led in the development of the first comprehensive safety standard in 1976, and in 1986, the standard was revised and designated under ASTM International. The current standard is the *ASTM F963-03 Standard Consumer Safety Specification for Toy Safety*, published in January 2004. All of the federal toy safety regulations, which appear in the Code of Federal Regulations Title 16-Commercial Practices, are referenced in ASTM F963, and additional requirements and test methods are included. The standard is reviewed and revised every five years, at a minimum, and on an ad hoc basis to address newly identified hazards. ASTM is one of the largest voluntary standards development organizations in the world. And while, technically, ASTM F963 is a "voluntary" standard, that really is a misnomer. Not only is adherence to the standard required for TIA membership; toy manufacturers know that compliance with the ASTM standard is essential to consumer safety, required by virtually all toy retailers, and enforced by the Consumer Product Safety Commission. Further, it serves as a model for other standards worldwide.

In addition, TIA works regularly with the CPSC to review voluntary standards and to monitor and address, as necessary, any potential hazards associated with toys already on the market. The standards are an example of the various ways TIA works to ensure the safety of its consumers.

#### AGE APPROPRIATENESS

Any product, toy or not, can pose a potential hazard in the hands of a child for whom it was not intended. For this reason, almost all toy packages include a suggested age range for use. A child's actual age, physical size, skill level and maturity, as well as safety, are all taken into consideration when developing age labels for different types of toys. To help manufacturers reach a greater degree of consistency in age grading practices and age labeling toy packages, CPSC publishes a guide for age labeling toys.

Since children develop at different rates and vary in their interests and skills, age labeling on packages is intended to give the consumer a general guideline on which to base toy selections. Typical designations might be "Recommended for children from eighteen months to three years" or "Not recommended for children under three years of age." Additional specific cautionary labeling requirements specified by ASTM F963 or by CPSC regulations cover products such as crib gyms, electrically operated toys, chemistry sets, swim-aids and such toy features as functional points and edges (i.e. paper doll scissors and toy sewing kit needles).

The standard also contains cautionary labeling requirements, as mandated by the U.S. Consumer Safety Protection Act relating to potential choking hazards to children under three years of age from toys or games *intended* for children ages three through under six years, which contain a small part, any small ball, marble or balloon. TIA supported this 1994 legislation. Regardless of labeling, however, there is simply no substitute, at any age, for appropriate adult supervision.

The toy industry's active participation in these efforts helps make toys among the safest consumer products in the home.

## HOW THE INDUSTRY TESTS ITS TOYS FOR SAFETY

There are more than 100 separate tests and design specifications included in ASTM F963 and the federal regulations to reduce or eliminate hazards with the potential to cause injury under conditions of normal use or reasonably foreseeable abuse. These tests and design specifications include use-and-abuse tests, testing for accessible sharp points and edges, and measuring for small parts, wheel-pull resistance and projectiles. There are also tests for flammability, toxicity, electrical and thermal requirements, and acoustics. Several manufacturers, especially larger ones, have their own in-house testing laboratories sophisticated enough to ensure that products meet standards for safety. Those without safety facilities on site use independent testing laboratories. Manufacturers producing toys overseas test them before shipping, and then sample production lots again once they arrive in the United States. TIA and its members are vitally interested in developing reputations as “safety conscious” companies.

## TOY INDUSTRY PRIORITY IS THE SAFETY OF ITS YOUNG CONSUMERS

TIA and its members recognize that standards, alone, are not enough and take additional measures to ensure the safety of their products in young consumers’ hands. For years, TIA has had in place an extensive, multi-faceted Safety Assurance Program. Under this program, TIA informs consumers on how to select age appropriate toys and the importance of adult supervision through its *Fun Play, Safe Play* guide (distributed free of charge, in both English and Spanish, upon request, and on the TIA website); publishes a guide to play for children with special needs, and conducts regular educational seminars for industry to keep them abreast of standards, testing and potential issues.

## CHILDHOOD RISKS DEFINED

To consider the question of whether current standards appropriately protect consumers, it is necessary to first identify the risks to which children are exposed. In spite of remarkable progress that dramatically improved the length and quality of children’s lives in the U.S. over the past century, today’s children still face significant, *real* risks. For example, often-avoidable unintentional injuries take the lives of more than 1 out of every 10,000 children in the U.S. annually.

**Estimated Annual Mortality Risk for Children Under Age 10 (Number of deaths per million children):**<sup>1</sup> Motor vehicles, 46; Guns, 5; Drowning, 20; Poisoning, 2; Suffocation, 17; Bicycles, 2; Fire, 16; and Medical care, 2.

In addition, statistics that show other significant risks to young people include:<sup>2</sup>

- 16% of American children under the age of 18 live in families with incomes below the poverty level
- 4% live in households experiencing food insecurity with moderate to severe hunger
- 69% live in two-parent families, down from 77% in 1980
- Birth rate for females (age 15-17) around 26 per 1000
- Substance use rates are high
- 21% of 12th graders smoke daily
- 30% of 12th graders have at least 5 drinks in a row at least once in the previous 2 weeks
- 25% of 12th graders report illicit drug usage in past 30 days
- 14% of young adults age 18-24 have not completed high school
- 8% of youths age 16-19 are not in school or working

Clearly, our young people are at risk. But, as you can see, toys do not figure prominently in much of the data. The actual rates for toys when compared to other incidents relating to children demonstrate that such toy related incidents are extremely rare!<sup>1</sup> Important work in creating tools to benchmark and catalogue risk is being undertaken and should be supported by this Committee, CPSC, industry and others concerned with the safety of our children.

Compare these childhood risks with the handful of “toy-related” deaths per year of children from birth to approximately age 13 (primarily balloons and ride-on toys like scooters), or to CPSC’s own annual report that indicates that of fifteen com-

<sup>1</sup> Harvard University School of Public Health, Kids Risk Symposium, March 26-27, 2003 (Kimberly Thompson, M.S. SCP, Assoc. Professor of Risk Analysis and Decision Science, Children’s Hospital Boston, Harvard Medical School Co-Founder/Director of Research Center on Media and Child Health; Director HSPH Kids Risk Project.

<sup>2</sup> Based on 1997 data from: (1) the National Center for Injury Prevention & Control, Centers for Disease Control and Prevention and population estimates from Statistical Abstract of the United States for 1997.



monly used household products, toys had among the lowest number of incidences of injuries and deaths. Although there are risks associated with some toys, they are clearly very small by comparison, and it is remarkable that media attention continues to focus on the small risks associated with toys while some very *big risks* remain underappreciated and unaddressed. In a world where perception is reality, where misinformation often drives perception, and where *some* advocacy groups and the media focus on uncertain hazards, frightening without providing context, it is no wonder that policy makers and parents lack context for understanding and managing children's risks. Unfortunately, the net result is that we often collectively waste scarce financial resources on hypothetical hazards at the expense of allocating them efficiently to make children's lives measurably safer. Further, this perpetuates a lack of coordination between groups that are all arguably committed to helping children; focuses on individual issues and agendas instead of *children themselves*; and competition rather than cooperation for the resources to truly protect children. This is true at all levels, and anecdotal evidence includes a scenario in which, despite years of safe use with no real, measurable effects on children, a commonly used chemical in plastic toys became the focus of major new stories, needlessly frightening parents and politicians worldwide. The wealth of independent, scientific research conducted both here and abroad determined that vinyl toys were safe.<sup>3</sup>

CPSC's extensive NEISS injury data (National Electronic Injury Surveillance System) do not usually give the details of the circumstances in which the injury took place. Therefore, when examining the data it's not always possible to determine whether the particular toy-associated injury was the result of the accident (e.g., a child tripping over toys left on the stairs), unintended misuse of the toy, or a fault in the toy's design, material content, construction or performance. Studies of NEISS data by the CPSC have shown that most toy-related injuries appeared to be minor, with hospitalization occurring less than half as frequently as the overall average for injuries. Again, as illustrated by the CPSC data, the industry's commitment to designing and producing safe toys and emphasizing the importance of adult supervision and appropriate selection of playthings has made toys one of the safest products in the home.

#### CHILD PRODUCT SAFETY: DO CURRENT STANDARDS PROVIDE ENOUGH PROTECTION?

We are gathered here today to address the question of "Child Product Safety: Do Current Standards Provide Enough Protection?" If by "enough protection" one means "perfect, zero risk protection," I would suggest that when viewed from that perspective, they *do not, nor could they*. The data tells us that clearly standards, alone, are not enough. Tragically, children are still injured and killed in traffic accidents, despite tough car seat and seatbelt laws and state-of-the-art car seat technology. Children drown in backyard pools and riding their trikes into traffic. Standards—and legislation—can only do so much. And while we may never get to zero risk for children—we must continue to try; to look for new ways to address the true threats to the safety of our children. I believe that education holds the key and TIA has long recognized the importance of education in product safety. We must focus on the *true hazards* and use our resources accordingly to get the message out. There is no substitute, ever, for adult supervision and it is the shared role of industry, consumer organizations and CPSC to educate consumers as to the real risks out there and appropriate behavior to protect children. In doing so, we will have provided parents with the necessary *tools* to effect change and ensure the safety of our most cherished resource—our nation's children.

Mr. STEARNS. Ms. Weintraub.

#### STATEMENT OF RACHEL WEINTRAUB

Ms. WEINTRAUB. Thank you, Mr. Chairman and Ranking Member Schakowsky. I am Rachel Weintraub, Assistant General Counsel with Consumer Federation of America. CFA is a nonprofit association of approximately 300 pro-consumer groups with a combined membership of over 50 million people that was founded in 1968 to advance consumer interest through consumer advocacy and edu-

<sup>3</sup>The American Council on Science and Health (ACSH), a panel headed by former Surgeon General Dr. C. Everett Koop stated that, "Consumers can be confident that vinyl toys...are safe." This same conclusion was reached this year by the Consumer Product Safety Commission after considering a report of the Chronic Hazard Advisory Panel (CHAP), a body of experts nominated by the American National Academy of Sciences.

cation. CFA appreciates the opportunity to testify here today on the issue of child product safety, specifically whether current standards provide enough protection.

The overriding issue here today is that the deaths and injuries that some of us have suffered here today are not merely accidents. They are not things that just happen, they are preventable, and many of us here today have proposed realistic solutions. Unfortunately, there seems to be a lack of will to implement these realistic solutions.

The Consumer Product Safety Commission is a small agency with a monstrous task. This challenge is heightened by the fact that over the last two decades CPSC has suffered deep cuts to its budget and its staff. 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. It is for this reason that CFA believes that one of the most important things that this subcommittee can do is ensure that sufficient funding levels are approved.

CPSC's funding level directly affects its ability to regulate effectively. For example, in every recall matter it considers, the Commission must be prepared with research evidence to convince the company of the need for action. This is very costly. Not having sufficient resources puts CPSC in a terrible position as an enforcement agency because it cannot be sure it will have the money needed to follow through.

CFA also suggests that Congress eliminate the cap of \$1.56 million on the amount of civil penalties that CPSC can assess. Chairman Stratton just stated he does not think there needs to be an increase in the cap and just the cap itself is enough of a deterrent. We very much disagree.

Eliminating the cap will encourage manufacturers to recall products faster, will act as a deterrent to noncompliance with CPSC's regulations, and will strengthen CPSC's bargaining power when negotiating with companies.

The Senate approved an increase in this cap to \$20 million about a year ago. Unfortunately, the House has failed to act, thus continuing the status quo which fails to create a meaningful deterrent for violation of product safety laws.

CFA also encourages Congress to eliminate section 6(b) of the Consumer Product Safety Act. As Marla said, this provision, which no other health and safety regulatory agency must adhere to, requires that CPSC must check with the relevant company before it can give out information to the public.

This has the obvious affect of delaying or in many cases denying access to critical safety information.

There are currently a number of issues before the Agency which illustrate the dire need for not only mandatory safety standards, but which also compel congressional involvement. The first issue is recall effectiveness, which has been touched upon briefly so far this morning. Manufacturers of certain products should be required to accompany their products with product registration cards, because our current system of recall notification is failing. By product registration card, I mean a card that accompanies certain products which clearly indicates that it is for safety purpose and would re-

quire a minimum amount of information that the consumer would then send back to the company in case of a product safety recall.

Most consumers never, ever hear about a recall, and many, many children have died from products that have been recalled. Due to this problem, CFA filed a petition with CPSC in June of 2000 requesting that CPSC initiate rulemaking to require all child product manufacturers to provide a product registration card with every product. By a vote of 2 to 1, CPSC denied our petition and has failed to take any steps to directly notify consumers about a product recall. Congress should act quickly to institute product registration cards, and there is legislation that would propose such cards, and that is H.R. 1197 and S. 584.

Unfortunately, the almost 20-year saga of baby bath seats points out the necessity for mandatory law banning these deadly products. As of September 15, 2004, just a few weeks ago, approximately 119 children have drowned to death, and at least 163 were injured while using the product. Caregivers who use baby bath seats are more likely to take riskier behaviors because they believe the device provides an added measure of safety. Furthermore, mechanical problems with the bath seats make it more likely that a child will drown if unattended.

CFA again petitioned CPSC to ban baby bath seats in July of 2000. CPSC ruled in favor of an advanced notice of proposed rulemaking in 2001, held a meeting in July of 2003, and on October 16th, as Chairman Stratton said, unanimously voted to issue a notice of proposed rulemaking. At that time there were comments that the public could make which were due on March 15, 2004. It has been 7 months; unbelievably, nothing more has happened at CPSC. In 2003 alone, 14 children have died while being bathed in bath seats.

And a few clarifications. The voluntary standard, which has been mentioned, has not yet been implemented. The voluntary standard is not equal to the mandatory standard. And there has been no recall of the baby bath seats that are on the market, millions of them. The Commission agrees that there needs to be a complete change in how these products are designed, and yet all of these products are still on the market creating exposure to millions of children every single day.

Another issue that CFA has long been concerned about is all-terrain vehicles. All-terrain vehicles have been so-called regulated by a voluntary approach to safety which relies upon warning labels and education, and this system is failing American consumers miserably. Serious injuries requiring emergency room treatment increased from 110,100 in 2001 to 113,900 in 2002. The estimated number of ATV-related fatalities increased 11 percent in the same period. Children under 16 received more serious injuries than any other age group. In addition, between 1985 and 2002, children under 16 accounted for 37 percent of all injuries and 33 percent of all deaths; yet CPSC has not taken action to curb this rise. Through a petition we filed with CPSC in August of 2002, we have urged CPSC to ban the sale of adult-type ATVs for use for children. It has been over 2 years, and nothing has happened.

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. CPSC urges more funds to be appropriated to the Agency. We suggest that a number of changes be made to CPSC's authorizing statute, and we urge Congress to work with CPSC to institute a number of mandatory safety standards. Thank you.

[The prepared statement of Rachel Weintraub follows:]

PREPARED STATEMENT OF RACHEL WEINTRAUB, ASSISTANT GENERAL COUNSEL,  
CONSUMER FEDERATION OF AMERICA

Chairman Stearns, Ranking Member Schakowsky 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 issue of Child Product Safety, specifically whether current standards provide enough protection. Our short answer is, "no," that the current safety standards which tend to be voluntary are inadequate and that a number of mandatory safety standards are needed to truly protect children from unsafe products. In addition, there are other changes to CPSC's statutes and funding level that must be made to adequately protect consumers from unsafe products.

First, a bit of background is necessary. The Consumer Product Safety Commission (CPSC), the federal agency with jurisdiction over consumer products 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 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. 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 past 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.

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 a sufficient funding. 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 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.

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 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.

In addition to increasing CPSC's budget, CPSC could do more to protect children and 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. 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 guard-rail 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.

Unfortunately, while the Senate approved CPSC's reauthorization including increasing the cap on civil penalties from \$1.65 million to \$20 million about a year ago, the House of Representatives has failed to act, thus continuing the status quo which fails to create a meaningful deterrent for violation of product safety laws.

Second, CFA urges Congress to eliminate section 6(b) of the Consumer Product Safety Act. 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 company 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.

There are a number of issues currently before the agency which illustrate the dire need for mandatory safety standards. In each of the following instances there are voluntary safety standards that are failing to adequately protect children from unsafe products.

## 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. Due to this failure, 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, 2003 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. We continue to be dissatisfied with CPSC's inaction on this issue.

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:

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%.

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.

Third, children are a vulnerable population who deserve additional protections.

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 arguments 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 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. Currently, all that is clear is that CPSC has not done enough to improve the way in which consumers are notified of recalls.

## BABY BATH SEATS

Unfortunately, the almost 20 year saga of baby bath seats points out the necessity for a mandatory law banning these deadly products. As of October 2003, Since 1981, when baby bath seats came on to the market, approximately 106 children have drowned to death and 163 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. However, 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 held a meeting in July of 2003 on CPSC staff's recommendations for a notice of proposed rulemaking. On October 16, 2003, the Commission voted to issue a notice of proposed rulemaking (NPR) proposing mandatory standards for bath seats. On December 29, 2003, the Commission published a notice of the NPR and solicited comments from the public that were to be received by March 15, 2004. Unbelievably, nothing more has happened at CPSC regarding baby bath seats. It has been almost 7 months. CPSC should not wait for more deaths and injuries to occur before they take action on this hazardous product. A ban of baby bath seats is necessary, as is a recall of all bath seats currently on the market. A mandatory standard is needed to fundamentally alter the way these products are designed.

#### ALL-TERRAIN VEHICLES

CFA has long been concerned about all-terrain vehicle (ATV) safety. ATVs have been "regulated" by voluntary standards since the 1980s. Unfortunately our concern with this voluntary approach 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. According to the most recent data, released by CPSC almost a year ago: serious injuries requiring emergency room treatment increased from 110,100 in 2001 to 113,900 in 2002; the estimated number of ATV-related fatalities increased 11 percent from 569 in 2000 to 634 in 2001; children under 16 suffered 37,100 injuries in 2002 up from 34,300 in 2001. This age group received more serious injuries than any other; between 1985 and 2002, children under 16 accounted for 37 percent of all injuries and 33 percent of all deaths. The CPSC continues to make clear that the increase in injuries is not explained by rising ATV sales.

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 in August 2002, to ban the sale of adult size ATVs for the use of children under 16. CPSC must act soon to ensure that these trends are reversed. Unfortunately, after three field hearings held about a year ago, CPSC has not done anything to reverse the trend of increasing deaths and injuries caused by ATVs. 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.

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 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, we suggest that a number of changes be made to CPSC's authorizing statute, and we urge Congress to work with CPSC to institute a number of mandatory safety standards including those related to recall effectiveness, baby bath seats and ATVs. Mandatory safety standards are necessary where the current voluntary approach to safety has failed to curb deaths and injuries.

Thank you.

Mr. STEARNS. I thank you.

I will start with the opening, my questions. I think I will start out by saying, Ms. Ginzler, that we appreciate your presentation, and I think I share it with all my colleagues how sorry we are for the loss of your son Danny. And I think it is more poignant than ever when people who testify like yourselves speak in such a heartfelt way and speak from such personal tragedy that it makes the hearing much more significant and much more current on our

things we have to do in a day to think about this and think what can be done.

And I guess I would give you the floor to say, you say the system is broken, we have the power to fix it, and I can tell you how to fix it. Now, we have heard from others here. Ms. Weintraub has indicated there are other serious problems besides this Playskool Travel-Lite portable crib, and you indicated there are 9,000 still unaccounted for, I think you said. And we can hear these horror stories throughout.

And obviously this Commission probably has not been reauthorized, and probably there are things we should update with, and it is not just a case of money, but obviously this 6(b) regulatory should be looked at. I mean, I don't think after all these years, with the change in scope and all these imports and everything, it is possible that there is a whole new presentation that needs to be done. So let me give you the floor and ask you what you think we should do as a subcommittee membership.

Ms. GINZEL. Thank you, Chairman Stearns. I am very grateful for your kind words. It is not easy for me to sit here and to list the ways that—all the reasons why my son should still be alive today. When I prepared to be in front of you today, I had the task of trying to tell my story, but then also maybe trying to say what could have changed, and what I am focusing on is just my own son's case. The other panelists have done, I think, a great job talking about the fact that this is way beyond the Playskool Travel-Lite crib. Many other products are involved. But I wanted to tell you how my son's life could have been saved specifically, three categories or three ways. One is called reverse marketing. The other is child care notification. The other is product registration.

Now, Marla talked about her career in marketing prior to being an advocate. These companies are able—for example, take the crib that killed my son. When this crib was recalled, Hasbro the company that licensed its trusted Playskool name to Kolcraft, did nothing. Kolcraft negotiated with the CPSC, and the recall basically amounted to a press release. They had some posters, they sent out some videos with these press releases, but essentially a press release. Now, does this make any sense to you? I mean, when my son hurt—my son, who, when his brother was killed, was at the time was 5 years old. And he said, well, what if you don't turn on the TV that night? He is 5 years old.

Hasbro spends millions of dollars a year on marketing. They reach into our home every day when they want to sell us one of their new products. What is so hard about reaching into our home when they need to retrieve a deadly product? This is a time bomb. The Playskool Travel-Lite was a time bomb disguised as a crib.

I have people testifying that, well, baseballs are dangerous, and traffic accidents and bicycles and scooters. Well, those are all risky behaviors. We know that when we engage in a sport, a child might be hit by a baseball. We know when we get into a car that we are engaging in a risky behavior. We assess that risk. You put your child in a crib, you don't think it is a time bomb. You don't think that the crib, the very product that is supposed to keep your child safe, is going to strangle him. So I think there is a difference in these types of products.



So my son would be alive today if companies would take responsibility for their products and try to retrieve them from our homes as—maybe not as much, but a little bit more than they—

Mr. STEARNS. And that is the reverse marketing.

Ms. GINZEL. That is what I would call—well, what has been referred to as reverse marketing.

Mr. STEARNS. Okay.

Ms. GINZEL. Child care notification. Okay. So companies aren't required to use reverse marketing to reach us, but what about child care facilities? The fact is that half the children who died in the Playskool Travel-Lite crib died in child care settings. Hasbro knew this. Why weren't they notified? After the sixth child was killed, my husband and I wrote a letter to Alan Hassenfeld, the CEO of Hasbro, and we asked him to notify registered day cares. You know what? He did. Now, does this make any sense to you? Why do the parents of a dead child have to ask a manufacturer to notify registered day cares? How expensive is that? How obvious is that? Why isn't that part of a recall process? Why isn't that a default part of a recall process? My son would be alive today if they had notified that day care. So that is child care notification.

Product registration. I want to say one thing. I want everyone to understand that my son had quality child care. This is not about dangerous day care, this is about dangerous children's products. The particular crib that killed my son was given to the home by the parent of a child who was still in the day care. She was in touch with the original owner of that crib. After my son died, people said, oh, it is just too bad that that person didn't send in the warranty card. I mean, why didn't she do that? That would at least allow the company to notify her.

There was no warranty card with this product. It didn't have one. If it did, my son would be alive today.

Mr. STEARNS. A lot of people don't fill out the product registration cards.

Ms. GINZEL. But she didn't even have the opportunity to fill out the product registration card. A lot of people do a lot of things, but we need to have opportunity and choice, and we don't have that as parents. We are walking through a minefield, and we don't even know it.

Mr. STEARNS. Well, I think you have made some good points. I think what we will do is do a second round here. It is just you and I. So, with that, my time has expired.

Ms. Schakowsky.

Ms. SCHAKOWSKY. Ms. Lipin, I wanted to—the suggestion or actually the mandate, if there was one, from the CPSC or the reaction was that there were no permanent injuries, and there was this low risk of strangulation. But you have taken it upon yourself—let me first just congratulate you. It seems to me that your efforts were probably more successful than CPSC almost undoubtedly in getting this product off the shelf and getting these retailers to remove it from their stores. But could you give us some examples of some of the cases that you heard about?

Ms. LIPIN. Certainly. Thank you.

Missy Mason, son Austin, age 4, they live in Ohio, got hit with the cord of this. The end, okay, snapped him in the eye, and Austin

had to have a lens implant. He had two to three surgeries. He uses drops every day for the rest of his life for glaucoma. He goes to doctors all the time. He has to wear glasses for the rest of his life.

Ms. SCHAKOWSKY. So the CPSC is aware of this?

Ms. LIPIN. Yes, they are. Missy has written to them. Her story is on my Web site. They are well aware of my Web site. Missy has contacted them. No response.

Ms. SCHAKOWSKY. So, actually, worse than no response. So there is a permanent injury.

Ms. LIPIN. Permanent.

That is not the only permanent injury. There is another child, Gavin Fann, who lives in Indiana also, the same thing, he got hit in the eye. He got hit with the ball, though. Okay? He also had surgery, lens implants. These are little kids, they are 4-years-old, who had perfect vision, nothing wrong with them until this toy entered their home. Okay? A toy which, I would like to add, had no warnings labels. I have one here right now, and it says, "Made in China." It is in a plastic bag. This is one of those 50-cent toys probably that this gentleman who was sitting here before mentioned. Okay? So these parents had no opportunity to know that this toy could be dangerous.

There is another child who was age 13, okay; who was at junior high 1 day, and Mom got a call, he got hit in the eye with a yo-yo ball. He spent 2 nights and 3 days in the hospital. Okay? He, too, has to go for follow-up procedures all the time to make sure his vision—he was actually left like temporarily blind for like 2 days, and the vision did return. But still, Jacob Wilcox in Ohio also was injured by this toy.

But more serious—I mean, these permanent injuries are very serious, but the things about children being found unconscious. There was just recently, 10 weeks ago, a child from Kansas who was camping with his parents in a campground in Minnesota, and the child was found—okay, Nicholas Clancy, he is 4—face down by Mom and Dad, turn him over, unconscious, gushing blood; not just bleeding a little bloody nose, gushing blood from his mouth and his nose, okay, because his carotid artery was cutoff because this cord was wrapped so tightly around his neck. First, it took Dad a few minutes to get it off of his neck. They got him to an ER where the doctors again said, you know, luckily he was okay. Now, he was taken to an emergency room, one of which I don't believe that is part of this NEISS system. Okay? So there are emergency visits that have not been recorded through CPSC's system.

There is a little boy in Ohio also who suffered a skull fracture, okay, when he fell and hit the concrete. Parents have told me that they have found their children lifeless, laying there not breathing, Okay? There is—a part of my testimony is from a woman Evie Dale, whose daughter Mary recently about I think it was also 10 weeks ago was found with the toy around her neck. There was pictures attached to this letter she sent me, and I included her letter as part of my testimony. Her question is, why did her child get hurt 15 months later after I have been doing this? And I started it—injuries came in almost a year prior to my son Andrew almost being strangled to death. So I don't understand the system.

Ms. SCHAKOWSKY. If I could ask Ms. Felcher, you heard some testimony from Mr. Klein about the testing process and how rigorous it is. I am wondering if you would make any comments about what we know to be the law and what we know to be in practice about testing.

Ms. FELCHER. Right. Well, I am sure that Mattel has a good lab or an interesting lab. I have asked to go see it, but it is proprietary. What I witnessed in—I went to many of the ASTM meetings where the voluntary standards were hashed out and debated, and I was shocked. I mean, you have to understand that I was not in this world at all. I mean, I was teaching MBA students at the time, and someone suggested that I go watch this process to understand it. And it was—three-quarters of the committee were industry people. They even have the same—the meetings take place, I think, this week or next week. The trade organization, the Juvenile Products Manufacturers Association, have their meetings back to back with ASTM, the voluntary standard-setting group, because it is all the same people.

And so what happens is they say, okay—I was there for many of the baby bath seat standards, and everyone sits around, and the head of the committee when I was there was the person representing Safety First, which was the leading manufacturer of baby bath seats. So he did have an economic incentive tied up with this standard. And they would just hash out what one manufacturer wanted as part of the standard and, more likely than not, what the manufacturers did not want as part of the standard. And this would go on for years and years and years, while at the same time CPSC was tallying the deaths due to these standards.

So it just, the standards-setting process right now, No. 1, are voluntary. And, No. 2, it is—there is—the conflict of interest is there. I mean, there is no way. It is a classic situation of the fox guarding the hen house.

And, you know, and another issue involved there is that there are a couple of consumer groups there at these meetings fighting for kids and fighting for tougher standards, but these consumers get to run their own dollar. I mean, these consumers have to quit, stop their jobs, take off a couple days from their jobs, pay for a few days in Orlando or wherever these meetings are. And so, of course, there are not going to be as many consumer advocates looking out for the interests of kids there. So—and, you know—and again, I didn't go into this process expecting to see that, and it took me a while to figure it out. And it is a sham. It is totally a sham, in my mind.

Mr. STEARNS. The gentelady's time has expired. I think we will go one more round, if you have the patience.

Mr. Klein, this toy they are mentioning here that they have shown and that the ranking member has in her palm of her hand, are you aware of this toy?

Mr. KLEIN. Yeah, I have seen it.

Mr. STEARNS. I mean, that company is probably not a member of the Toy Industry Association.

Mr. KLEIN. I don't believe they are.

Mr. STEARNS. No. So, I mean, there is no way that you would have any type of regulatory on this particular toy. So it is pretty

much out there, and whoever buys it is caveat emptor. Isn't that what you would probably say?

Mr. KLEIN. Well, when you say whoever buys it, I mean, I hear about these incidents with 4-year-olds. Would I buy it for a 4-year-old? No. Chairman Stratton said he took it away from his. Again, it makes me sound callous, and I am not.

Mr. STEARNS. You are just saying a certain amount of personal responsibility is due here.

Mr. KLEIN. Yeah. And when I hear a 13-year-old who got hit in the eye, I mean, was he playing with it, or was it thrown at him? I mean, if it was thrown at him and it hit him in the eye, that gets put down as a toy-related incident. Is that the way the toy was intended to be used? Probably not. It is no different than getting a baseball thrown at you. If you weren't looking for it, it is going to hit you in the head.

Mr. STEARNS. And looking at the package that they have shown us, it says, "Made in China." But there is no directions, there is no product registration card, there is no child care notification. So there is really nothing there, so it is sort of just fly—

Mr. KLEIN. Well, and there are a lot of products like that. You know, there is lots of them that you see in bins when you go into stores. Sure. I understand that. But they are not made by our members, and they don't necessarily—if they were made by our members, they would have to go through all the testing that all of our members put their products through, Okay? And if they were filled with a hazardous substance, it would be banned under the Federal Hazardous Substances Act, which the CPSC does enforce.

Mr. STEARNS. Ms. Felcher, you have alluded to the 6(b) regulation. And can I characterize your statements, you would like to eliminate it?

Ms. FELCHER. Yes, I would very much like to.

Mr. STEARNS. Now, if we eliminated the 6(b), how would you get companies to voluntarily come in? Now, Hasbro did not seem to do this, but I assume there are some good companies that are willing to come in and say to the CPSC, yes, we have this problem. And so what would you replace it with?

And I guess a larger question is, Ms. Weintraub, is there any paradigm maybe in Europe or other countries that we could use to tailor a new CPSC that would make it more credible to the consumers organizations like the Consumer Federation of America? So I asked Ms. Felcher.

Ms. FELCHER. I drive a Subaru station wagon because I always felt it was a sensible car. And if someone of you followed the newspapers a few weeks ago, there was a ranking in terms of various safety measures for various cars, and I learned that outside of SUVs, my car has a very high propensity to tip over. And I went right to the NHTSA Web site, and it is—being the regulatory agency for cars.

Mr. STEARNS. NHTSA is under our jurisdiction, too. So we have had them here.

Ms. FELCHER. And I checked. And I said, my God, I thought that I am driving this car because it is safe, and it is not. So automatically I made note to self: Next time I buy a car, I wanted to buy the safest car. And I am going to buy a Volvo or whatever is safer.

If I am deciding to go and buy an infant's swing for my new niece who will be arriving in a couple weeks, there is no comparable Web site or part of the CPSC Web site that I can go to get that safety ranking, and that is because of 6(b). So NHTSA doesn't have this statute. NHTSA doesn't have their hands tied like CPSC, and, therefore, again, we are getting the information.

And I know that I am unusual in that not everyone is going to read a newspaper article and go check the safety ratings. But, again, there has been a lot of talk about getting information out there. I am one of those people. And so that information is there. And my guess, I am not as up on what goes on at NHTSA—

Mr. STEARNS. But you are saying NHTSA is a paradigm that you think would work.

Ms. FELCHER. Right. And car manufacturers still report problems to NHTSA.

Mr. STEARNS. Okay. Is there anything that you would like to add?

Ms. WEINTRAUB. The one thing that I would like to add is that I think there is a whole carrot stick issue here, and that is with the civil penalties. Right now the most that CPSC can assess against a company that violates one of those—

Mr. STEARNS. So if they went to 20 million as opposed to 1.6 million, you think that would make—

Ms. WEINTRAUB. I think that would be—

Mr. STEARNS. So would 6(b), in your opinion, then, we could still continue—

Ms. WEINTRAUB. No. I think that 6(b) should be eliminated as well. But I think the disincentive for a substantial fine would also encourage companies to comply with laws in a more substantial way than they are doing so now.

Mr. STEARNS. Staff has shown me that the CPSC has taken a significant step. They have created a Web site. It is [www.recalls.gov](http://www.recalls.gov), and on—that is now under the CPSC, but the Food and Drug Administration, the National Highway Traffic Safety Administration, the Environmental Protection Agency, the U.S. Coast Guard, and the U.S. Department of Agriculture. So all of these folks have joined together sort of to create this one-stop shop for consumers to go to to facilitate product recalls. So I think that is a good step. And on this Web site consumers can register to receive instant e-mail alerts from the CPSC on all product safety recalls, including children's products.

So, you know, I think that is important to realize that consumers can go on this Web site, and then they can get alerts through their e-mail, and then they will be told of these problems. In addition, consumers can use this site to report a problem. So in this case, Ms. Ginzel, you could report a problem with a consumer product, a motor vehicle, a boat, food, environmental product.

And I am going to send around a Dear Colleague letter to all my Members to ask them to tell all their constituents about this, and do everything I can to get this new Web site out. So, reverse congressional marketing, so to speak, to try to get this out so we can get consumers aware of it.

Anything else? My time has expired. Yes.

Ms. WEINTRAUB. Chairman Stearns, if I may. This Web site could be very useful to some consumers. However, it relies on a consumer to take a number of affirmative steps to go to the Web site to learn about the particular recall. No. 1, of course, is Internet. It relies upon the person to have access to the Internet. We know there is a digital divide. Not all people have such access. But significantly, it is sort of—it is the same old thing.

Now, I think that the Web site is a good idea. However, it is not a solution to our broader recall problem because the answer lies in directly notifying consumers for the information to get to the consumers who actually purchased the product.

Mr. STEARNS. They have to have a computer.

Ms. WEINTRAUB. Not necessarily.

Mr. STEARNS. I am just saying, your point is that if a person doesn't have a computer, they can't even go to this site.

Ms. WEINTRAUB. Correct. If they don't have a computer, they can't. And there are systems such as the product registration card which would directly go to the people who actually purchased the product.

And one other point I wanted to make about existing product registration cards is that on the cards themselves there are now huge disincentives for consumers to fill them out. I don't fill them out many times.

Mr. STEARNS. Because of privacy.

Ms. WEINTRAUB. Exactly. Because of privacy. Because they ask questions about your education level, about your income level, about how you found out about the product, about your buying patterns. That has nothing at all to do with safety.

Mr. STEARNS. You don't have to fill it out. It is voluntary. And not everybody tells the truth anyway.

Ms. WEINTRAUB. Correct. But a lot of people, when they see all those questions, they just throw it out even though sending it in with just a little bit of personal information could potentially save a life if there is a recall.

Mr. STEARNS. Because then the Hasbros of the world would send back a notice and say, da, da, da, da, da, beware, and let us know and so forth, like this. We have had this case, and so if this product is in your home, be very careful.

Ms. WEINTRAUB. Exactly. And it gets to the people who purchase the product, and they are the ones who need to know.

Mr. STEARNS. My time is up.

Ms. Schakowsky.

Ms. SCHAKOWSKY. First, I would like to see if Ms. Cowles, who has not been asked a question, to see if there is anything you wanted to add in terms of the dialog that has been going on.

Ms. COWLES. I think that actually my position has been well represented. I think that the recalls.gov is a good portal for people who are Web-savvy and want to use it. It really is just one additional step, though, you have to go to to get—it just takes you directly to the CPSC page. So we still refer people, if they are worried about children's products, to go directly to cpsc.gov rather than through the portal, because it is just an additional link that they have to go through.

And I also just want to talk very briefly about the testing issue and the voluntary standards. I sit on those voluntary panels for children's products, which, unfortunately, are meeting right now. So I am here instead. I hope they are not doing anything too drastic. But as Marla said, my two or three consumers that usually sit together are often outvoted. For instance, the bassinet standard which is out there, the voluntary standard has no requirement for a side height on a bassinet. You could basically—if this table was sturdy enough, I could say that it is a bassinet, and they would have to put the sticker on it saying that it met voluntary standards even though it has no sides on it because they have no requirement for a side height on a bassinet. So it is a very unuseful product for protecting children, I believe, because of the role of manufacturers. They make products with side heights lower than what should be recommended, and so they don't want to put it because they would have to remake those products. So I think that that system is not working. We need to look at mandatory regulations.

Ms. SCHAKOWSKY. Ms. Lipin.

Ms. LIPIN. I just wanted to say one thing about the yo-yo ball. One of the problems I have found with this, first of all, a recall—I was never asking for a recall; I was asking for this product to be banned, because a recall for this particular product would never work because we don't know who the manufacturers are. We do know that Imperial Toy Company out of Los Angeles—because I have spoken to their president of that company—had brought this toy, and they imported it. I have communicated with them. They claim this was a fad item and so forth. You couldn't recall the product because there are millions of them, they say, like 11 to 15 million of these toys in.

And when Chairman Stratton was talking about how he has gone to China, I have also communicated with toy companies in China via e-mail. It has been really interesting. And what they told me is they knew of the strangulation hazard of this toy, and one of the companies told me that he was no longer able—I wanted to see if I could buy it from China, to get them to ship it to me. He told me that China would not allow the exportation of this toy. Now, if China does not allow the exportation of a toy to the U.S. because of a safety concern, why in the U.S. do we sell this toy?

Ms. SCHAKOWSKY. Well, and more than that, let me—

Ms. LIPIN. And other countries have banned it.

Ms. SCHAKOWSKY. Let me read to you from a Consumers Union report of October 5. It says: When a product intended for sale in the United States violates a mandatory safety standard, and a manufacturer or exporter wants to ship it abroad, that party is required to notify the CPSC. The Commission staff rarely says no. More than 900 times between 1994 and 2004, products that violated mandatory Federal safety standards were exported, according to Commission records.

Now, sometimes they go back to the countries that manufactured it, and they are supposed to be responsible; but other times, it just simply gets into the marketplace. So we are, in fact, Mr. Chairman, allowing the export of toys that are not deemed to be safe and have been recalled in the United States.

I wanted to get to almost a philosophical issue, and that is the issue of parent, parental responsibility, and the enormous sense of guilt, at least initially, that must go with the idea of a child being injured by a product and where parental responsibility begins and ends.

Clearly, in Linda Ginzel's testimony, she did everything and did everything right, and there was absolutely no way to prevent that, given the regulations as they stood and as they continue to stand. And I appreciate the recommendations that seems so very simple. I would add pretesting of the products as an obvious addition to that. But when we are talking about a product that by its nature has inherent dangers attached to it when used properly, it seems to me that we do have a responsibility.

Linda Lipin was standing right next to her son, and yet he nearly strangled to death, and other parents as well. So these are not people who are leaving their kids.

There is a horrific story about a bassinet in Ms. Felcher's book where a number of children died from a cradle—a cradle that rocked. A woman had her children taken away from her by the Child Protection Agency, blaming her for the child's death when it was known that this was a dangerous product that was sold.

And so while clearly parents have a responsibility, and baseballs are always going to hit kids in the head, and they are going to fall off their bikes, I think it is very important for us to take very seriously our role as regulators of products that, when we know them to be a hazard when properly used, that we do everything we can to make sure they never get on the shelf in the first place, and that we do something to get them away.

This notion that the registration cards aren't used anyway, well, you know, people don't—we could figure out a system, a simple card that said, if you want to be notified of a recall, sign this. Manufacturers know how to get people to act in a certain way. Why can't we apply those standards of marketing to make sure that we create as safe an environment for our children?

And I just am not going to buy this idea, well, you know, parents are to blame, or they are not doing enough if we are not doing as much as we can. And clearly, from this wonderful testimony that we have heard, I conclude unequivocally that we are not doing enough to protect our children, that they are in essence test dummies for products, and that that is just not sufficient.

Thank you, Mr. Chairman, for holding this hearing.

Mr. STEARNS. Yes. And I thank the ranking gentlewoman for her participation. And I want to thank all the witnesses for their work in the area of children's product safety, and obviously want to thank them for their testimony this morning.

Ms. SCHAKOWSKY. If I could ask one more thing, Mr. Chairman.

Mr. STEARNS. Sure.

Ms. SCHAKOWSKY. For unanimous consent for the record to be held open for opening statements and questions, and for the Consumer Reports article, Hazard on Aisle 5, which reports on unsafe products on the shelves, to be included in the record.

Mr. STEARNS. By unanimous consent, so ordered.



I also would encourage the CPSC folks that are here, if there is anything they would like to add to this hearing as footnotes or attachment or appendix, that would be very helpful.

I think the witnesses have posed some very interesting questions, and I think it is incumbent upon the Commission to respond to some of these, because, as it turned out, we had the first panel of the chairman, and he is unable to respond to some of these. It would have been helpful perhaps to have him respond to some of these. So I would suggest to you folks that you might consider an appendix.

And I am going to thank all of you again for your testimony, and I think it has been a very great hearing. And, with that, we are adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]  
[Additional material submitted for the record follows:]

RESPONSE FROM RACHEL WEINTRAUB, ASSISTANT GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA TO QUESTIONS FROM HON. EDOLPHUS TOWNS

**1. In your view, why has the Commission been ineffective in protecting consumers? Is it a lack of funding, regulatory power, culture, or some combination of the three, and what can Congress do to change this?**

Thank you for the opportunity to answer your questions. The reasons why the Consumer Product Safety Commission (CPSC) has not been as effective as it can be in protecting consumers is complex. As your question supposes, it is a combination of a lack of funding, the existing regulatory authority, and possibly the current culture flowing from the leadership of the agency.

A. CPSC Funding

To put CPSC's funding levels in perspective, it is important to note 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 by Congress, the agency was appropriated \$34.7 million and 786 full time employees (FTEs). Now 28 years later, the agency's budget has not kept up with inflation, has not kept up with repairing 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 this fiscal year.

CPSC, 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.

Due to the funding limitations, 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. 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.

CPSC's funding directly affects its ability to regulate effectively. In every recall matter it considers, the Commission must be prepared with research evidence to convince the company of the need for action. This research costs money and could be very expensive, especially over time.

In addition, as new products and new technologies come on to the market, the numbers of products under CPSC's jurisdiction increases. 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 the lack of funding and the increase in the number and complexity of the products under CPSC's jurisdiction, CFA is 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 Congress can do to protect consumers, including children, from unsafe products is to assure that CPSC has sufficient funding levels each and every year.*

#### B. CPSC's Regulatory Power

CFA recommends that Congress make a number of changes to CPSC's authorizing statutes, to give CPSC the regulatory authority it needs to more effectively protect consumers from unsafe products. *Our first recommendation is for Congress to pass legislation that would 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. Knowing violations often involve a company's awareness of serious injury or death associated with their product. Eliminating the cap will encourage manufacturers 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 Consumer Product Safety Act.* 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 company 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.

In addition, CFA has a number of recommendations that Congress could implement that would improve CPSC's ability to protect consumers, which we did not have the opportunity to include in our testimony on October 6th before the Subcommittee. CPSC does not have jurisdiction over fixed site amusement parks. CPSC does have authority over mobile parks, but not over parks that remain in place over time. Unfortunately, at least fifty-five fatalities have occurred on amusement park rides in the last fifteen years and serious injuries have soared 96 percent in the last five years. Federal oversight is crucial due to the vast variation in state laws and the absence of any regulation in some states. *Congress should pass legislation, specifically H.R. 2207, The National Amusement Park Ride Safety Act, which would restore CPSC's authority over fixed-site amusement parks and should authorize more money to take on this expanded role.*

*CFA urges Congress to require businesses selling toys on the Internet to provide on their website the same cautionary labeling that is required on toy packaging.* Online retailers should be required to post the cautionary warnings on their websites so that consumers can be aware of the potential safety issues before purchasing the product. Current law, drafted before millions of consumers purchased products online, does not contemplate internet purchasing. Thus, in order to provide online consumers with the same information that consumers in brick and mortar stores can access, safety labeling should be required to be displayed online, near the product that is being sold.

*Congress can improve CPSC's ability to effectively communicate recalls to consumers by passing the Product Safety Notification and Recall Effectiveness Act of 2003 (H.R. 1197).* This legislation would solve an enormous problem, currently plaguing CPSC's ability to communicate recalls to the public, by requiring manufacturers of certain products to accompany those products with a "Product Safety Registration Card" or online equivalent. Once consumers fill out the card and send it to the manufacturers, manufacturers will have the ability to communicate recalls to the people who have to hear it most—the consumers who bought or received the product.

#### C. CPSC's Culture

The culture of CPSC is difficult to ascertain and the most difficult element to improve. CFA would hope that the culture of CPSC would prioritize doing the most possible, within its regulatory and financial limitations, to protect consumers from unsafe products. This would include initiating meaningful safety initiatives, responding quickly and effectively to deaths and injuries caused by particular products, communicating to the public frequently about potential hazards, and working overall, in the best interest of consumers rather than the special interests, especially the regulated entities. CFA can not truly determine the current culture of CPSC; however, we can point to a number of examples that cause us concern. Broadly, we

are concerned about what appears to be a wait and see attitude by the Commission which has resulted in inaction on a number of critical issues.

In response to the growing number of injuries caused by yo-yo water balls, CPSC has merely issued a weak warning to consumers. There has been no additional or stronger warning, CPSC has not urged retailers not to sell this product and CPSC has not recalled nor banned these potentially hazardous products that have been the cause of almost 400 injuries, almost 300 of which have been strangulations.

In response to the rising tide of injury and deaths caused by adult-size ATVs, CPSC held three field hearings, but has implemented no change to the current voluntary system to decrease deaths and injuries. CFA filed a petition with CPSC in August of 2002, urging CPSC to take action to ban the sale of adult-size ATVs for use for children. It has been over two years since we filed our petition and CPSC has not even begun the regulatory process.

CFA filed a petition with CPSC to require manufactures of certain products to accompany those products with a "Product Registration Card." CPSC denied the petition and has taken no action to improve the way manufactures communicate critical recall information to the consumers who purchased their products.

#### D. Conclusion

In conclusion, Congress should take a number of actions to improve the effectiveness of CPSC, including, increasing its funding, and amending its authorizing statutes to make it stronger and by monitoring CPSC to ensure that they are prioritizing protecting the public from unsafe products over the desires of the special interests who are "regulated" by CPSC.

**2. Your testimony provided an example of how the Consumer Product Safety Commission failed to implement a product registration card, which is required by the National Highway Transportation Safety Administration (NHTSA) for child car seats.**

**While CPSC decided not to require registration cards, are there other tools that NHTSA uses for recalls of tire or car parts that the CPSC should consider to better protect children?**

First, I must state that the focus of my work is the Consumer Product Safety Commission (CPSC), not the National Highway Transportation Safety Administration (NHTSA), and thus I have much greater knowledge of CPSC's authority than NHTSA's. That being said, some tools that NHTSA seems to have at its disposal do make their recalls more effective than CPSC's. Significantly, NHTSA enjoys a vastly higher recall compliance rate, about 70%, than does CPSC, which hovers at about 15 to 20%.

What is it that enables NHTSA to enjoy this relatively high recall compliance rate? NHTSA and car manufacturers have the ability to do what CPSC can't do: directly communicate to every owner of the product. NHTSA can do this because every owner of a car is required to register their car, thus the contact information is available and accessible. Even more significantly, NHTSA, in its regulations, requires that "each manufacturer of motor vehicles shall maintain, in a form suitable for inspection... a list of the names and addresses of the registered owners..." (49 CFR 573.8) This is a critical requirement. It allows for the creation of a list of the consumers who purchased the product and, thus enables each and every one of them to be directly notified about a recall.

In contrast, not only is product registration not mandatory for every product under CPSC's jurisdiction, but manufactures are not even required to attempt to obtain this information through accompanying their product with a form that a consumer could fill out. Thus, to communicate the news of recalls CPSC and product manufactures send out a press release hoping that media outlets will pick it up and cover the story and also hope or assume that the people who bought or own the product will happen to read or hear about the recall. NHTSA's model could, therefore, be a useful tool for CPSC and Congress to consider when taking action to improve recall compliance rates for consumer product recalls.

NHTSA's regulations also require that, "each manufacturer who is conducting a defect or noncompliance notification campaign... shall submit to NHTSA a... quarterly report, with respect to each notification campaign, for each of six consecutive quarters beginning with the quarter in which the campaign was initiated... or corrective action has been completed on all defective or noncomplying vehicles or items of replacement equipment involved in the campaign..." (49 CFR Sec. 573.7) Each report must include the number of vehicles or items of equipment involved in the notification campaign; the number of vehicles and equipment items which have been inspected and repaired; the number of vehicles and equipment items inspected and determined not to need repair; and the number of items of equipment repaired and/or returned by dealers, other retailers, and distributors to

the manufacturer prior to their first sale to the public. (49 CFR Sec. 573.7) A similar requirement for CPSC would strengthen CPSC's ability to ensure recalls are effective and reaching the necessary consumers.

In addition, NHTSA has the authority to monitor the completion rate for recalls for six quarters and can issue another notice if an inadequate number of vehicles or parts have been returned for remedy. (49 CFR Sec. 577.10) Consumers would be served well by CPSC having this additional authority. If recall compliance rates for a particular product were low, CPSC would be able to take additional, and if necessary, stronger action to communicate the recall to consumers.

Another factor that may impact the relative success of NHTSA's recall authority is that NHTSA may assess a civil penalty up to \$15,000,000, while CPSC's civil penalty is capped at \$1,650,000. The more significant penalty may serve to encourage car manufacturers to comply more rigorously with the terms of the recall and may act as a deterrent to non compliance with NHTSA's regulations. An increase in the amount of civil penalties that CPSC can assess will likely increase compliance with CPSC regulations, including notifying consumers about product recalls.

NHTSA has another tool at its disposal that CPSC does not have. A consumer can go to NHTSA's web site and find comparative safety data about specific brands of cars. This tool drastically increases consumers' knowledge about specific vehicles.

However, if a consumer were to go to CPSC's web site to find comparative safety data on specific brands of strollers, for example, none could be found. The failure of the public availability of this information is due to one of CPSC's most onerous regulations, section 6(b) of the Consumer Product Safety Act, which requires CPSC to give product manufactures veto authority about disclosing information about specific products to the public. The repeal of 6(b) is critical to providing consumers with the necessary safety information to make informed decisions about specific products.

In conclusion, it would be very useful for staff from CPSC and NHTSA to convene a meeting to discuss recall effectiveness, specifically to determine the tools that NHTSA has at its disposal that CPSC could potentially emulate.

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QUESTIONS FOR THE HONORABLE HAL STRATTON, CHAIRMAN, U.S. CONSUMER  
PRODUCT SAFETY COMMISSION, FROM HON. EDOLPHUS TOWNS

*Question 1.* In the testimony of Ms. Linda Ginzler, she stated that a child was killed this year by the same type of portable crib that killed her child six years ago. I assume you want to avoid another similar tragedy. Why are these dangerous products still in the hands of parents? What specific steps will the Commission take to better ensure that parents actually return dangerous products when they are recalled?

ANSWER: Because of the Consumer Product Safety Commission's (CPSC) aggressive action to improve crib safety, most infant deaths now occur in older, previously used cribs that do not meet current safety standards. The agency has been aggressive through the media and grassroots organizations in alerting the public to the dangers of these old and used cribs. Educating the public and removing these products from the stream of commerce are two of the most effective tools that the Commission uses to protect the consumer.

CPSC's Office of Information and Public Affairs disseminates information about recalls in a number of ways including joint press releases, video news releases, point of purchase posters, direct mail, paid advertisements, web site notification, and notification to outside organizations who in turn provide information to consumers.

As an example of the agency's public outreach, unsafe cribs are highlighted in our annual Recall Roundup Campaign which this year focused on resale outlets such as thrift stores. CPSC joined forces with the National Association of Resale and Thrift Shops and the Danny Foundation to stop resale, consignment and thrift stores from selling previously recalled or banned products and products that do not meet safety standards. Additionally, safety seminars were conducted across the country to educate store employees about CPSC and how to check their stores for hazardous products.

The CPSC also works with ebay to ensure that dangerous products, such as older cribs and other recalled products, are not sold on its public auction website. ebay worked with CPSC to develop a children's product "prompt" which is triggered when a seller attempts to register a children's product for auction. The prompt urges the seller to review the CPSC's website to make sure their product has never been recalled. With baby cribs, ebay requires each seller to review a CPSC-developed electronic crib safety information sheet prior to listing their crib for auction. ebay denies access to its website to persons attempting to sell any product that has been banned by the CPSC.

CPSC recently launched the Neighborhood Safety Network. Through this initiative CPSC is partnering with other government agencies and private sector organizations to communicate important safety messages to vulnerable and hard-to-reach populations. The goal of the Neighborhood Safety Network is to build a network of community leaders and organizations that are in regular contact with people who may not get their news from traditional media outlets or may not have access to computers.

Another new CPSC initiative is Recalls.gov. This new website provides a streamlined, one-stop service in alerting commuters to unsafe, hazardous or defective products. Because numerous government agencies have jurisdiction over a variety of products, consumers are often confused as to where to go to seek information on recalled products. This site is a user-friendly portal to the recall listings of six government agencies including the Environmental Protection Agency, the Food and Drug Administration, the Coast Guard, the Department of Agriculture and the Food and Drug Administration. Additionally, consumers can register at this site to receive instant e-mail alerts on all product safety recalls, and consumers can use this site to report a problem with a product.

In its efforts to continue to look at other opportunities to improve recall effectiveness, last year CPSC staff held three public meetings to discuss new approaches for improving recalls with outside experts and interested parties. The subjects of the meetings were: "Motivating Consumers"; "New Tools for Recall Effectiveness"; and "Measuring Recall Effectiveness." The Commission will be considering staff recommendations that resulted from this initiative.

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
*November 4, 2004*

The Honorable CLIFF STEARNS  
*Chairman*  
*Subcommittee on Commerce, Trade and Consumer Protection*  
*2125 Rayburn House Office Building*  
*Washington, D.C. 20515*

DEAR MR. CHAIRMAN: I appreciated the opportunity to testify before the committee and to answer the Members' questions on the subject of children's product safety. Having reviewed the hearing transcripts, I would like to follow up on your invitation to comment on some of the issues that were raised at the hearing by the second panel of witnesses.

First, I would like to again call your attention to the U.S. Consumer Product Safety Commission's (CPSC) new website [www.recalls.gov](http://www.recalls.gov). This site is an important tool that directs consumers to the appropriate agency when they are concerned about the safety of a particular product or line of products. As you know, federal agencies and their jurisdictions can be a frustrating maze of confusion to your constituents. Our goal with [www.recalls.gov](http://www.recalls.gov) is to present this information on recalls in a user-friendly way and to make it simpler for consumers to report a problem with a product. I appreciate your offer to share information on this important resource with your Congressional colleagues.

Recall effectiveness was an issue that was raised at the hearing. The CPSC has initiated a recall effectiveness project to better understand the strategies that can be used to reach the most people in a recall and to motivate those people to respond appropriately to eliminate the identified hazard. Staff is using a multiple stage strategy to evaluate consumers' behaviors and the entire recall process to better understand the attributes of an effective recall.

Staff has held three public meetings to discuss new approaches for improving recalls with outside experts and interested parties. The topics of those meetings included: "Motivating Consumers," "New Tools for Recall Effectiveness", and "Measuring Recall Effectiveness." A staff briefing package on this study is expected before the Commission in the near future, and I will be certain to provide the Committee with a copy of the staff's findings and recommendations.

In the interim the CPSC will continue to work aggressively and creatively to alert consumers to recalled products and to remove them from the stream of commerce. In my written testimony I describe CPSC's initiatives with our Recall Roundup campaigns, our work with outside groups such as the Danny Foundation and the National Association of Resale and Thrift Shops and other organizations, our recent project with eBay with regard to internet sales, and our new initiative, the Neighborhood Safety Network, which seeks to build a network of community leaders and organizations that are in regular contact with people who may not get their news from traditional media outlets or may not have access to computers. These initia-

tives are in addition to our print and electronic media releases and our regular work and communications with state and local governments.

In the fiscal year that just ended, CPSC completed 356 recall actions, and I would like to submit for the record the attached chart that displays CPSC's recalls over the past ten years. Additionally, in response to two other issues that arose during the hearing I would like to submit two other charts for the record. The first is a chart of CPSC's civil penalty history and the second is a chart of yo-yo ball incident reports received by CPSC both before and after our public advisory in September, 2003.

The second panel also raised the question of pre-market testing. Section 14 of the Consumer Product Safety Act states that the Commission may require firms to certify compliance of their products based on proscribed testing programs when a regulation is promulgated regarding such products. CPSC has done that under a number of regulations. Under the statute, firms have the option of using outside private laboratories. While the CPSC is not given any express authority over these private laboratories, the agency does have the authority to require record-keeping and do inspections of the manufacturers according to section 16 of the Consumer Product Safety Act.

Finally, I would like to submit for the record a letter that CPSC's Executive Director sent to the President of Consumers Union in response to an article which appeared in their publication, *Consumer Reports*. That article was submitted for the record at the hearing.

Again, thank you for this opportunity to follow up on these issues. We look forward to continuing to work with the Committee on issues of our mutual concern in the 109th Congress.

Sincerely,

HAL STRATTON  
*Chairman*

