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TESTIMONY

of

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Before the

SUBCOMMITTEE ON CONSUMER AFFAIRS AND PRODUCT SAFETY

of the

SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

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Mr. Chairman and distinguished members of committee:

It is a pleasure for me to address this subcommittee regarding the reauthorization of the Consumer Product Safety Commission (CPSC). I am joined today by Sally Greenberg, CU's Senior Product Safety Counsel.

I speak to you today as one of the original five commissioners of CPSC (1973-82); as the former Technical Director of Consumers Union, the nation's largest consumer product testing organization; and currently CU's Senior Vice-President for Technical Policy. Serving in these three capacities, I have experienced both the public's critical need for the unique services that CPSC provides and the many difficult technical and legal hurdles that the agency must overcome in order to deliver on its mandate.

As a member of the original Commission, I spent nine years weighing the complex factors involved in establishing product safety standards and bans, recalls of substantial hazards, policies to encourage voluntary action by industry, comprehensive compliance programs and campaigns to inform and educate the consumer. Based on 30 years of working on product safety and reducing unreasonable risks to consumers, I have concluded that an agency like CPSC should be reauthorized by asking these two fundamental questions:

> Are CPSC's mission and authority, as stated in its enabling legislation and subsequent amendments, appropriate to fulfill the public's need for safer products and if not, how should they be changed?

In my view, the answers to these questions comprise the basic ingredients that together determine how successful CPSC will be in saving lives and reducing injuries.

During my tenure at CPSC, four different Presidents resided in the White House, and numerous senators chaired the CPSC's oversight subcommittee. Many things changed—but many things stayed the same. For example, the basic mission of the agency has remained the same. Every Congress that has reauthorized CPSC during the past 30 years has reaffirmed its clear and unmistakable purpose: reduce or eliminate unreasonable risks of injury and death to consumers. There is no equivocation—and rightly so, in my opinion. The pain and suffering from accidents involving chainsaw kickback, toxic formaldehyde vapors, flammable children's pajamas, explosions caused by leaking gas valves, unsafe infant safety gates, unstable ATV's and so on is devastating. And I believe consumer safety is so important that it should transcend partisan politics. The pain and suffering is the same--regardless of who is in the White House or who sits on the Commission.

The National Commission on Product Safety issued its final, bipartisan report to the President and Congress in June 1970. That report set the stage for the establishment of CPSC to promote safer products in the marketplace and regulate companies manufacturing those products. The agency today estimates that deaths, injuries and property damage from consumer products cost the nation more than $700 billion annually. CPSC also estimates that its work to ensure the safety of consumer products—from toys, cribs, power tools, and home heating equipment to dangerous household chemicals—has contributed to the 30% decline in the rate of deaths and

injuries associated with consumer products over the past 30 years. Clearly, protecting the public from unreasonable risks of serious injury or death from the more than 15,000 products under the CPSC's jurisdiction makes sense in both human and economic terms.

To make the agency more effective—i.e., save more lives and reduce more injuries—there are several areas of CPSC's basic legislation that we believe warrant change, including section 6, section 15, section 37, and fixed-site amusement park rides. In an era marked by scarce resources, it is incumbent on us all to remove obstacles, especially low-cost obstacles that hamper the agency from being more effective.

AMUSEMENT RIDES (Fixed-site)

Mr. Chairman, in 1981, Congress, as part of an overall political compromise, removed the Commission's authority over fixed-site amusement rides. To say the least, the decision was entirely political and not based on the merits. Unfortunately, this political deal has not worked to the advantage of the millions of consumers who annually go to enjoy amusement rides. Numerous deaths and injuries have occurred—and continue to occur—on these rides. And the states, upon which the Congress depended to step into the regulatory void, simply have not done so in an effective or timely manner.

We believe this loophole in federal law with regard to amusement park safety is nonsensical and dangerous for consumers. As I said, fixed-site amusement parks are host to literally millions of patrons each year. When an accident occurs on such rides, the law actually prevents the CPSC from even looking into the incident to find out what happened. While some states will conduct

an investigation, many conduct little or no regulatory oversight at all over amusement parks in their own states. We think it makes far more sense for the federal safety officials to play both an oversight and information clearinghouse role for safety information about the amusement park rides, especially since a number of the same rides exist in different parks in different parts of the country. Further, no state has the jurisdiction or resources to be able to share safety information with all of the other states.

Consumer Reports surveyed consumers about their experiences at amusement parks for the first time this past spring. We also discussed the safety record of these parks and noted that while the safety risks appeared small, they are nonetheless very real.

In 2001, 6,700 people were treated in emergency rooms for injuries at fixed-site amusement parks. At least 55 people have died on amusement park rides in the last 15 years. In August 1999, four deaths occurred on roller coasters in one week, including a 12-year-old boy and an 8-year-old girl. Since then, there have been six more fatalities on amusement park rides. This past spring, an 11-year-old-girl died at a Six Flags Park in Illinois.

We don't understand the logic of carving an exception out for fixed-site amusement park rides. We ask simply that CPSC be authorized once again to investigate the injuries and deaths, determine the causes, and work to reduce or fix the hazards at fixed-site amusement park rides.

I'd like to direct the Committee's attention to the factsheet and overview of legislation introduced by Congressman Edward Markey of Massachusetts to correct this problem. Congressman

Markey has also gathered statistics on the increase of injuries in fixed-site amusement parks and enumeration of injuries in parks across the country.

SECTION 15—Remove the cap on fines that can be levied for failing to report dangerous or defective products under Section 15(b)

The Consumer Product Safety Act's Section 15 (b) requires that manufacturers, distributors and retailers report to CPSC when they have reason to believe a product 1) isn't in compliance with safety standards, 2) contains a defect that could create a substantial product hazard, or 3) creates an unreasonable risk of serious injury or death.

The history of manufacturers failing to report in a timely manner under this section is all too well known—and is especially worrisome for children's products that have caused injury or death. Included among companies failing to report are Wal-Mart and GE, two of the wealthiest corporations in America. We believe the cap on the fines CPSC can levy for non-reporting diminishes the power of the reporting statute. That cap is $7,000 per each violation with a total of $1,650,000 for any related series of violations—pathetically small amounts that are hardly felt by large corporations.

Below are details of fines CPSC has imposed for failure to report under 15(b).

- In 1991, Graco, a children's products manufacturer, paid a $100,000 civil penalty for failing to report stroller injuries to CPSC in a timely fashion. In 1989, the *Philadelphia Inquirer* estimated Graco's revenues at $150 million.

- In April of 2001, Cosco/Safety 1st agreed to pay CPSC a total of $1.75 million in civil penalties—the largest fine CPSC has ever levied—for failing over a four year period to report to CPSC defects in cribs, strollers and a toy walker that caused the deaths of two babies and countless other injuries. Both companies had previously been fined for failing to report under 15(b); in 1996 Cosco paid a $725,000 civil penalty and in 1998 Safety 1st paid a $175,000 penalty. Both companies have also had an inexcusable number of recalls of products used by children. By the time this fine was levied in 2001, Cosco had had 12 recalls of children's products and Safety 1st had five recalls. Dorel Industries, which owns Cosco and Safety 1st, reported $421 million in sales from juvenile products in 2002. Does a $1.75 million fine deter a firm of this size from failing to report?

- In June of 2001, CPSC fined Fisher-Price $1.1 million for failing to report injuries from a dangerous and defective toy. The company had not reported 116 fires from the Power Wheels toy. Fisher Price, a wholly owned subsidiary of Mattel, boasts sales of $1.2 billion in its most recent annual report and notes that its sales are up 8% worldwide.

- In November 2001, CPSC fined Icon Health and Fitness $500,000 for failure to report serious safety hazards with home exercise equipment.

- In August of 2002, General Electric (GE) paid the CPSC a $1 million penalty for failing to report defects in dishwashers that it first became aware of 10 years earlier. GE is one of the largest companies in the history of the United States, with 2002 revenues of $131.7 billion.

- In March 2001, West Bend Co. paid CPSC a $225,000 fine for failing to report fire hazards caused by a defect in its water distillers it had learned about three years earlier.

- In 2002, the CPSC won a case in court imposing a $300,000 fine on a juice extractor company that had failed to inform CPSC about injuries 22 customers had complained of when using their juicers.

- In 2002, Honeywell paid $800,000 for failing to report under 15(b). In 2003 to date, Weed Wizard has paid $885,000, while Wal-Mart has paid $750,000.

Are these fines acting as an adequate incentive for companies to report product safety hazards? The record suggests they are not. We believe these companies are well aware of the CPSA's reporting requirements—these requirements have been on the books for 30 years. It seems clear that the caps on these fines limit them to the deterrence equivalent of a $2 parking ticket in downtown New York City.

Recommendation: CU recommends lifting the cap on penalties for failure to report for several reasons:

a) Caps mean the companies can figure in the cost of paying penalties at or below the cap as a cost of doing business.

b) A cap usually means that CPSC is always negotiating down from that amount; the CPSC has never fined a company to the limits of the current cap.

c) Other federal safety agencies aren't hindered in their enforcement powers by caps on penalties. The FDA last week announced that it had won a court case that imposed a $92.4 million against Guidant Corporation for the company's failure to notify the agency of defects in its artery device. There was no artificial cap hindering the FDA's enforcement.

d) The number of companies paying fines for failure to report demonstrates the need for higher penalties. Of course, we all would like to think that these companies would report because it is the right thing to do, but we know from the CPSC's experience that far too often this is not the case. We must put the sting back into the failure to report a dangerous or defective product under 15(b) by lifting the caps on fines.

SECTION 37

Section 37 was added to the CPSA in 1990 and was intended to strengthen CPSC's ability to learn about relevant product hazards. Section 37 says that if a consumer product is the subject of at least three civil actions filed in federal or state court for death or grievous bodily injury resulting in a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer must report that fact to the CPSC.

Section 37 was supposed to serve as an "early warning" system to CPSC to ensure that it hadn't missed important product hazard information. The problem with Section 37, however, is that its wording renders it largely ineffective. Under Section 37, CPSC receives information about

lawsuits when the three cases involving the same product are settled, which is simply too late in the process to provide the requisite early warning. If the statute required reports to CPSC once three cases involving serious injury or death were *filed* as opposed to *settled,* the early warning intent of this statute would be greatly enhanced.

Jeffrey Bromme, at the time serving as CPSC General Counsel and writing in the December 27, 1999 BNA Product Safety and Liability Reporter, reaffirmed this flaw in the law. Bromme cited "two chief reasons that Section 37 has contributed little to consumer safety. First, reports received by the Commission generally come too late to serve as any kind of 'early warning system'. Second, the Commission is receiving fewer reports." Bromme concluded: the original 1990 proposal to require reports of litigation *when filed* - and not when settled - would likely have served as a far more effective "early warning system," if such a system were truly what Congress intended.

Further, if a product defect exists, reports under 15(b) are required long before any litigation is settled, hence, a Section 37 report seldom provides the first warning. Secondly, according to Bromme, from January 1991 to January to 1992, there were 190 reports under Section 37. That number dwindled throughout the 1990s - in October 1999, there were only 19 reports, from November 2001 through December 2002 there were 41 reports and for the first six months of this current two year period, there have been only 2 reports. Bromme speculated that this dwindling number might stem from companies having found a way to delay the third settlement on the same product until the next reporting period, thereby avoiding the reporting requirement. In any

case, it is abundantly clear that even with the best of congressional intent, Section 37 as currently written is largely a failure.

After a decade of experience, we believe that it is time to amend Section 37 to conform to how it was originally drafted.

Recommendation: Amend Section 37 to require manufacturers to report to CPSC when three or more lawsuits are *filed* (not settled) about the same product that allege that serious bodily injury or death has been caused by that product and that product falls under CPSC's jurisdiction.

SECTION 6

Mr. Chairman, one of the criticisms of health and safety agencies is that they regulate rather than inform. Opponents of CPSC regulations insist that government's role should be to provide information to the public and let consumers make their own safety choices.

Unfortunately, this would be difficult to implement at the CPSC. The agency stands alone among the federal health and safety agencies in being unable, as a practical matter, to provide important safety data to the public. The reason is that section 6(b) of the Consumer Product Safety Act presents a major obstacle to the timely release of product-specific safety information in the agency's possession. It does so by barring the release of this information unless and until the agency has sent a copy of it to the named manufacturer, allowed the manufacturer 30 days to comment on the information, reviewed the manufacturer's comments regarding the accuracy of

the information and the fairness of releasing it, and determined that disclosure of the information would effectuate the purposes of the Act. Exceptions to these restrictions are extremely limited.[1]

The resource drain on the Commission staff for these procedures is enormous and unfair. Even if section 6(b) constituted good public policy—which it does not—it consumes so many staff hours and causes so many delays in the release of information, one cannot avoid the conclusion that it causes more problems than it solves. The CPSC is one of the smallest health and safety agencies. Yet, it alone must follow these burdensome procedures, and consumer safety is the loser.

Moreover, industry knows about and constantly exploits CPSC's resource problems. Most manufacturers are well aware that a strong letter to the agency threatening litigation over the release of the information will chill the agency's ability to release information about them. They know that the most common reaction will be to accommodate a manufacturer's objections, even if the objections do not have substantial merit, simply to avoid a lawsuit.

But, my opposition to section 6(b) goes deeper than agency resource problems. I think it is bad policy for congress to require a government agency to "censor" health and safety information. If the CPSC has acquired data that raises questions about a product, CU thinks that the public should have access to the data and decide for themselves.

In this regard, I find completely unconvincing the argument by some manufacturers that merely by virtue of being the repository of information, the CPSC will inevitably be viewed by the

[1] Section 6(b)(1) requires that the CPSC must, at least 30 days prior to "public disclosure" of information, notify each manufacturer or private labeler identified in the documents of the forthcoming release and give them an

public as having placed its imprimatur on it. A carefully worded disclaimer would easily handle this problem. Indeed, I don't hold a library responsible for the content of the books on its shelves, nor would the public conclude that the accuracy of every consumer complaint in CPSC files is endorsed by the agency.

As stated earlier, CPSC is the only federal health and safety agency that operates with these substantial restrictions on information disclosure.[2] We believe that Section 6 hampers the agency's ability to let the public know breaking information about safety matters, as NHTSA did during the Ford/Firestone tragedies, for example, in statements like "we are looking at reports about the Ford Explorer's safety record" or the "Firestone tire's tendency to lose its tread at high speeds."

CPSC official Marc Schoem told *Consumer Reports* in 1994 that the "effect" of Section 6 "is to make the release of some information almost impossible. Objections by any manufacturer can lead to a long struggle." Even newspaper clippings on a particular product cannot be released by the CPSC without prior review.

Executive Order Already Protects Trade Secrets and Confidential Commercial Information

Section 6 is unnecessary and redundant, and is in direct conflict with the public health and safety goals CPSC was set up to promote. It is premised on protecting the trade secrets and legitimately

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opportunity to submit comments, and take reasonable steps to ensure accuracy.

[2] In 1983 the Commission was directed by Congress to compare these restrictions to those of ten other health and safety organizations. None operated with restrictions other than the normal restrictions on trade secrets and confidential business information.

confidential information of manufacturers. Executive Order No. 12600,[3] signed by President Ronald Reagan in 1987, already provides such protections and federal agencies use this Order for the very same purposes that Section 6 was set up to accomplish, except that Section 6 goes far beyond the requirements set out in President Reagan's Executive Order.

6(b)(5) for example, doesn't permit CPSC to disclose information on whether a product may present a "substantial product hazard" unless the Commission has filed a formal complaint against the company, settled the case or the company agrees to disclosure. Under FOIA, however, such information would have to be disclosed unless the information qualified for protection under one of FOIA's exemption, i.e., that it is a trade secret or confidential commercial information. Thus, 6(b)(5) prevents the press and watchdog groups like CU from determining whether manufacturers are complying with their duty to report substantial product hazards.[4]

The Supreme Court's holding in *GTE Sylvania v. Consumer Prod. Safety Comm'n*, 447 U.S. 102 (1980), expanded the restrictions on CPSC's ability to release of information to the public to include FOIA requests as well as affirmative disclosures by the CPSC.

[3] The Executive Order requires the head of each Executive department and agency to establish procedures to notify submitters of records containing confidential commercial information, if the agency determines that it may be required to disclose the records. The agency is to afford the submitter a reasonable period of time to object to the disclosure and to state all grounds for objection, and the agency is bound to give careful consideration to all specified grounds for nondisclosure prior to making a determination on the issue. 52 Red. Reg. 23781 (June 25, 1987),

[4] Congress added amendments to 6(b) in 1981 largely at the urging of the Chamber of Commerce, which argued that companies would be more likely to report product hazards under 15(b) if the public did not have access to such information. To the contrary, after passage of the restrictions, the number of "15(b) reports" dropped significantly.

Robert Adler, law professor at the University of North Carolina and former CPSC attorney-adviser to two CPSC commissioners, reviewed the Commission's record of releasing information during the 7 years before the Supreme Court's decision in *GTE Sylvania*. He found the CPSC released information in about 50,000 cases when it received FOIA requests. When pressed to cite abuses in releasing information, the industry cited only six limited and debatable set of examples, several of which Adler found to be inaccurate or unfair. Further, of the six examples cited by industry representatives, five related to CPSC-initiated information releases which would remain covered by 6(b) even under reform measures offered by members of Congress. Finally, in releasing information that it has in its files, the government's job is not to determine which information is accurate and which is not. That is the public's responsibility—and its right.

As a final point, I must say that I find it disturbing that those who argue most vehemently for giving the public adequate information and letting them make safety decisions tend to be those most opposed to doing so in the case of section 6(b)

Recommendation: Repeal Section 6(b) of the CPSA. It inhibits public access to important information about product safety. Indeed, as presently constituted, it is the exact opposite of promoting the consumer's right to know about safety information, possibly life saving information, in the files of CPSC.

ONGOING CPSC SAFETY CONCERNS

1. The Safety of "Durable" Childrens Products

According to the July 5, 2002 *CPSC Nursery Product-Related Injuries and Deaths to Children under age 5* Annual Memorandum, an estimated 69,500 children under age five were treated in

hospital emergency rooms for injuries associated with nursery products. An average of 65 children, according to this CPSC report, have died annually in such incidents from 1997-1999.

We believe the number of injuries and deaths from using such products is far too high- indeed, it is unconscionable - and we urge this Subcommittee to focus a series of hearings on:

- The extent to which safety is incorporated in the design and manufacture of baby products;
- Pre-market testing of baby products by manufacturers;
- Voluntary safety standards set by private standards-setting organizations for baby products;
- Barriers to public access to information about injuries to children using baby products;
- Frequent recall of baby products intended for use by children;
- Secrecy in settling lawsuits when children have been injured or killed when using a baby product.

We urge the Subcommittee to focus on products like strollers, high chairs, or portable cribs, products that one would find in a nursery, which we call "durable" children's products.

Why do we urge this action on the Subcommittee?

The top 5 manufacturers of durable childrens' products have had an alarming number of recalls over the past decade.

From March 1993 to February 2003, we have listed the five top companies and their respective recalls:

Dorel Juvenile Group -- 20 products recalled (includes Cosco 12, Safety First 8)

Graco- 11 products recalled

Century-11 products recalled

Kolcraft -9 products recalled

Evenflo -9 products recalled

It is unreasonable and unconscionable for any company, especially those making products for use by children, to have more than one or two recalls over a decade. Proper safety-oriented design, rigorous pre-marketing testing, and strong industry-wide voluntary safety standards should prevent the recurring problem of having to recall product after product. And yet recalls clearly are not uncommon for the top five durable child product manufacturers.

Add this lax record of putting products into the stream of commerce that must be recalled later to the fact that only 10-30% of product recalls are effective - i.e., the product is successfully repaired, replaced, refunded and/or destroyed - and you have a recipe for extreme danger, and that danger is to children, our most vulnerable consumers.

Consumers Union has met with parents whose children have died using products that were recalled but the parents or the day care center were unaware of that recall. While we are critical of how often new products are getting into the marketplace without proper testing, we are also critical of CPSC's ineffective process of recalling those products from consumers.

The Commission held a hearing on May 15, 2003 that focused on methods for increasing recall effectiveness, bringing many top public relations and marketing experts to the table. These experts discussed many creative methods for increasing recall effectiveness and consumer

response, however, most of them require manufacturers of products and the agency to spend money and resources. We commend the Commission for bringing together so much experience and talent, but we are concerned that it may lack the will to require manufacturers to put into place effective recall strategies that may cost money.

Perhaps our concern is prompted by the Commission's rejecting by a 2-1 vote, shortly before the May 15 hearing, a petition calling for baby products to be accompanied by Product Registration Cards that would allow parents the opportunity to fill the cards out with simple contact information and thereby allow manufacturers to contact them in the event of a recall. The industry argued that the cost of such cards was not worth the benefit they might provide. We disagree. We had urged the Commission to tailor a rule that required companies to provide registration cards for higher cost "durable" baby products, indicating that these cards would be used only for safety recalls and not for marketing, allowing consumers to provide multiple contact information, and have the postage paid. We believe we would see greater registration percentages and the possibility of saving young lives.

Recommendation: This committee should hold hearings on the manufacture of child products, as discussed above. CU supports two legislative proposals related to durable children's products and recommends that this Subcommittee hold hearings on both:

a) Legislation offered by Senator Mary Landrieu Product Safety Notification and Recall Effectiveness Act of 2003, S. 584, would require registration cards to accompany products intended for use by children. These cards would clearly state they are only for the purpose of contacting the consumer in the event of a recall and would ask not for marketing information, as so many cards currently do, but for simply contact information. There is a precedent for this. The

National Highway Traffic Safety Administration began requiring such cards with the sale of each child restraint in 1993 and the numbers of consumers registering went from 3% to 27% in 10 years.

b) Legislation introduced in the last Congress by US Representative Jan Schakowsky of Illinois entitled "The Infant and Toddler Durable Product Safety Act," HR 3283, would require pre-market testing of all durable children's products by an independent entity. This legislation was initiated by a leading child safety advocacy organization, Kids in Danger, based in Illinois, whose founders' son was killed in a recalled portable crib.

We also recommend that CPSC report annually to this Committee on effectiveness of recalls for the preceding calendar year. Most consumers are unaware that success rates for recalls are so low; we believe making the information public would spur manufacturers to improve their safety records.

2. All Terrain Vehicles

Between 1993 and 2001, the number of injuries caused by ATV-related accidents more than doubled, with 111,700 ATV accidents occurring in 2001. The number of injuries suffered by children under sixteen increased 94% to 34,800 in 2001.

Pursuant to a petition filed by the Consumer Federation of America, CU supports calling for CPSC to ban the sale of ATVs to children under the age of 16 (and other safety measures). The CPSC held an all day hearing on ATV fatalities and injuries on June 5 of this year in West Virginia. That state has the 6th highest number of injuries, while efforts to pass a state law

regulating ATVs have met with defeat on several occasions.

We commend the Commission for providing an open forum at that hearing for some 36 individuals, including ATV enthusiasts, state legislators, industry representatives, consumer advocates, pediatricians, neurosurgeons, and ATV dealers to share their ideas for addressing the problem. One message that came out of the meeting is that in states with laws regulating ATVs, the number of deaths and injuries are lower than in states with no such regulations. The challenge is how to encourage states to pass such laws. We think Congress has an invaluable part to play in making this happen.

Recommendation:

This Subcommittee should work with the Commission to schedule hearings on ATV safety, perhaps on a smaller scale but similar to the kind of hearing the CPSC held in West Virginia. Congress should then provide financial incentives to states to adopt ATV safety laws. (The American Academy of Pediatrics Model Statute is an excellent and comprehensive approach to ATV regulation, providing for training and licensure of ATV riders and requiring safety gear like helmets and proper clothing).

There is precedent for this approach. In 2000, Congress passed and President Clinton signed a law requiring that states enact a 0.08% BAC (blood alcohol content level) law by October 1, 2003 or lose a portion of highway funding. Federal law currently offers financial incentives to the states to adopt a 0.08% permissible blood alcohol level for drivers and has been successful in persuading states to adopt this provision. Prior to this law, 18 states and the District of Columbia

had passed 0.08% BAC laws. In the two years since, the total number of states with 0.08% BAC laws has increased to 40 and the District of Columbia, with Nevada just last evening become the 40th state.

3. Baby Bath Seats

CU feels strongly that this baby product should have been banned long ago and indeed, we supported the Consumer Federation of America's 2000 petition to ban these seats. Baby bath seats have been involved in 96 baby drowning deaths since January 1983, according to CPSC's May 2003 Staff Memorandum. The tragedy, we believe, is that the Commission voted to proceed with a mandatory rule on these seats in August 2001, but to this day still has not acted to ban or improve their design. In the interim, an additional 10 babies have died in this nearly two year period.

We know that the staff has recommended a mandatory performance standard for baby bath seats. While we maintain an open mind about the recommended changes, we are skeptical: these devices, despite the warning stickers on them, still give parents a false sense of security that when they place their child in these seats, it is safe to leave them in the bathtub alone. Clearly, the bath seats being sold and used today are not safe, and we are simply not sure that any design change will remedy these inherent problems.

4. Furniture Flammability and other fire hazards

The Commission has failed, in our view, to address in a comprehensive way the issue of fire

safety over the past several decades. The US has one of the highest fire death rates in the industrialized world. Each year, fire kills more Americans than all natural disasters combined.

More than 730 people on average die each year in fires where cigarettes, matches, lighters and candles ignite upholstered furniture or mattresses and bedding. These ignitions are the number one cause of fire deaths. Since 1980, when the CPSC began gathering data on fire deaths, more than 20,000 people have died and countless more have been injured in fires involving smoldering and open flame ignitions of upholstered furniture, mattresses, and bedding. The government has been making and considering mattress and furniture flammability standards since before the CPSC was established over 30 years ago.

We recommend that CPSC develop fire safety standards in the following areas: fire safe cigarettes, [5] fire safe candles,[6] residential bedding systems (mattresses, foundations, accessories, etc) and upholstered furniture. The Commission would not be starting from scratch. Much research has been done over many years in each of these areas. The comprehensive fire safety program, as recommended by the National Association of State Fire Marshals, is a good starting point.

What has been is lacking is strong and decisive leadership on the part of the CPSC in moving forward with standards. Perhaps the agency needs greater resources to adequately address fire hazards. We encourage Congress to provide those resources.

[5] Cigarette fires are the leading cause of fire deaths in the United States, resulting in 800 deaths, including 100 children, in 1998. New York State has a fire safe cigarette standard based on the National Institute of Standards and Technology (NIST) testing methodology for cigarettes. This is one example that the Commission could consider in developing a national standard for fire safe cigarettes.

[6] Candle fires resulted in 170 deaths and 1,200 injuries in 1998, representing a 750 increase in deaths from 1980 to 1998.

Few issues have received more research or debate at the Commission than developing a fire safe standard for upholstered furniture. We understand that developing such a standard is a highly complex issue and one that requires careful consideration, but it has been nine years since (petition granted in 1994) the Commission granted the National Association of State Fire Marshals Petition to do so and the research seems to be never ending.

The news last week regarding the terrible fire at a Seton Hall University dormitory that killed three students and injured more than 50 others highlights the problem. Yes, this fire was started by students deliberately setting a poster on fire, but as the *New York Times* noted, "The poster . . . was lying on a couch made of highly flammable foam that caught fire and filled the dormitory with smoke. . . "[7] The foam inside most upholstered furniture is highly flammable, a fact few consumers comprehend. California is the only state with an upholstered furniture safety standard and the deaths and injuries in that state from upholstered furniture fires are far fewer than in the rest of the country.

Recommendation: The Commission should move forward with a comprehensive plan to set fire safety standards for candles, cigarettes, upholstered furniture, and mattresses and bedding.

CONCLUSION

The product safety agenda has much unfinished business. Too many consumers, especially children, are still injured and killed through no fault of their own, and the sad part is that much of this grief can be prevented. Consumers need and depend on the vigorous, ongoing work of

[7] *New York Times*, June 13, 2003, p. A28.

CPSC. We believe the recommendations we make here, if adopted, would make the agency far more effective in reducing or eliminating unreasonable risks from consumer products. We urge you to provide this federal safety agency the necessary financial resources and exercise the strongest possible oversight to make CPSC function as Congress intended.

Thank you.