



Nonprofit Publisher
of Consumer Reports

Testimony

of

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on the

Consumer Product Safety Commission

before the

**Subcommittee on Consumer Affairs, Insurance, and
Automotive Safety**

of the

Senate Committee on Commerce, Science, and Transportation

March 21, 2007

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Good morning, Chairman Senator Pryor and Ranking Member Sununu, and other members of the Subcommittee. I am Sally Greenberg, Senior Product Safety Counsel for Consumers Union (CU), non-profit publisher of *Consumer Reports*®.¹ Thank you for providing me the chance to come before you today to provide our views on the work of U.S. Consumer Product Safety Commission (CPSC).

For the past 71 years, Consumers Union (CU) has been testing and reporting on products and services in order to arm consumers with the information they need to protect themselves in the marketplace. CU's mission is to work for a fair, just and safe marketplace for all consumers.

CU applauds the Subcommittee for holding this oversight hearing. We believe that there are two paramount questions before the Committee today – does the CPSC have the resources necessary to fulfill its mission? And is the CPSC using the resources it has to effectively fulfill its mission? CU's serious concerns in both of these areas are discussed below.

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Every Congress that has reauthorized the CPSC during the past 30 years has reaffirmed its clear and unmistakable purpose: the CPSC is charged with the mandate to reduce or eliminate unreasonable risks of injury and death to consumers from more than 15,000 types of products. There are 27,100 fatalities and 33.1 million injuries per year associated with products under the CPSC's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$700 billion annually. The CPSC's viability is of critical importance to the safety of children,

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* and *ConsumerReports.org* with more than 6.2 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

since the Commission has jurisdiction over the safety of so many children's toys and products like bath seats, high chairs, and cribs.

However, we believe the CPSC currently is at a crossroads which will determine its ability to be effective in the future. Among our concerns are the following: (i) the failure of Congress to provide CPSC with needed regulatory and enforcement authority and the failure of the CPSC to seek new regulatory and enforcement authority or to aggressively use the authority it possesses; (ii) budget cuts resulting in a crippling loss of their most experienced and knowledgeable staff; (iii) increasing numbers of counterfeit, dangerous and violative imported products; (iv) new and emerging technologies in product production (e.g., nanotechnology); and (v) the changing demographics of the U.S. population. In addition, CU is concerned that the CPSC will not be able to adequately address areas that we consider to be of high priority, including: increasing the effectiveness of product recalls and reporting of product hazards; decreasing import of unreasonably dangerous imported products; drowning prevention and pool safety, reducing deaths relating to CO poisoning from consumer use of portable electric generators and home heating appliances; improving ladder safety (*i.e.*, strength and stability); furniture safety (preventing deaths and injuries from furniture tip over and glass tables); removal of lead from all products intended for use by children (*e.g.*, jewelry, toys, and clothing); all terrain vehicle safety (increasing safe use of all-terrain vehicles by adults, and ending their use by children under 16 years old); and identifying dangers associated with products developed through the use of new technologies – particularly nanotechnology.

The CPSC must have the resources – and the will – needed to inform and to protect the public from new and emerging hazards. CU strongly urges this Subcommittee to recommend significant increases in the CPSC's budget in order to enable the Commission to better protect consumers from unreasonably dangerous products. However, added resources will not be enough. We also strongly urge the Subcommittee to continue its oversight to ensure that the CPSC uses its resources appropriately to fulfill its mission relating to current and emerging hazards.

Specific areas of increasing challenge to the CPSC and its effectiveness are discussed in detail below.

1. Budget Cuts Resulting in a Crippling Loss of Staff and Functions

The CPSC is critically underfunded and understaffed. According to CU's review, the staffing level at the CPSC has been steadily dwindling, and has resulted in the "brain drain" of too many of the most experienced and knowledgeable staff at the Commission. When the CPSC opened its doors in 1974 its budget was

\$34.7 million, rising in 1977 to \$39 million budget with a staff of 900.²

The staffing level at the CPSC has been steadily dwindling. The budget for fiscal 2007 culminates a two-year reduction of full-time positions from 471 to 420 -- a total loss of 51 employees. The Commission's 2008 Performance Budget Request notes in a bleak statement: *The Commission's request for 2008 of \$63,250,000 represents an increase of \$880,000 from 2007. Because of the cost increases described below, the increase of \$880,000 will require a decrease of 19 FTEs.*³

Indeed, the Commission's Budget Request reads like a cry for help to support critical programs and is justified, in our view.

If mandatory salary increases are taken into account, the Commission stands to lose an additional 19 employees,⁴ dropping staff levels to 401, leaving the Commission understaffed and full time employees (FTEs) at an all time low.

² Understanding Government Report, E.Marla Felcher, "US Consumer Product Safety Commission: Paper Tiger of American Product Safety."

³ US Consumer Product Safety Commission, 2008 Performance Budget Request, Submitted to Congress, February 2007, <http://www.cpsc.gov/cpsc/pub/pubs/reports/2008plan.pdf>.

⁴ US Consumer Product Safety Commission, 2008 Performance Budget Request, Submitted to Congress, February 2007, <http://www.cpsc.gov/cpsc/pub/pubs/reports/2008plan.pdf>.

The \$39 million allocated to CPSC in 1977 would be worth \$125 million today. Yet CPSC's funding request of \$63 million means that CPSC is funded at half of its original level in 1977 and the number of staff has consequently dropped by more than half.

The CPSC already has acknowledged in its budget document that it will not be able to continue to focus on a past strategic goal of great importance to CU – reducing child drowning deaths. Drowning is the second leading cause of accidental death for children under 14 and most drowning incidents occur in residential swimming pools. Further budgeting and staffing cutbacks will clearly result in reduced enforcement of safety authority. Without adequate policing, unsafe products can continue to more easily infiltrate the marketplace.

Offers for sale of banned imported products, such as “Kinder Eggs,”⁵ monitored by CU, appear to be much worse recently. In addition, the presence of counterfeit products in the U.S. marketplace has increased. We believe that part of this increase results from fewer CPSC representatives present at border points of entry. In addition, the CPSC has been forced to reduce the number of field staff that normally would lead investigations and follow up on product-related injuries and deaths. CU is concerned that CPSC's inadequate budget is preventing it from having the critically needed staff and resources to properly police the marketplace. We believe that the CPSC must have the resources it needs to monitor imported consumer products that may pose safety hazards, and take whatever actions are needed to keep unreasonably dangerous products off the market. CPSC must be able to work more collaboratively with U.S. Customs to prevent dangerous and violative products from crossing the borders into this country.

⁵ Hollow chocolate eggs (made by Italy's Ferrero Group) containing "surprise" toys, banned in the United States since 1997, when the CPSC warned that the toys could pose a choking hazard to children under 3.

2. Lack of Adequate Manufacturer Focus on Safety and Ineffective System of Recalls

According to the July 28, 2006 *CPSC Nursery Product-Related Injuries and Deaths to Children under age 5* Annual Memorandum, an estimated 59,800 children under age five were treated in hospital emergency rooms for injuries associated with nursery products in 2005. We believe the number of injuries and deaths from using such products is far too high and that most are preventable.

These trends are confirmed in a report,⁶ based on CPSC data, due to be released next week from the Chicago advocacy group, Kids in Danger. Kids in Danger's report indicates that there were 111 recalls of children's products in 2006 -- representing 35% of all product recalls. Of the 111 products recalled, about a third were recalled because they exposed children to risk of bodily injury -- falling, laceration and impact injuries. Indeed, these recalled products caused 177 injuries and six deaths in 2006.

This is not a new phenomenon. In the years from 2001 to 2006, children's product recalls ranged from one-third to one-half of all recalls, with a high of 55% in 2001 to a low of 31% in both 2004 and 2003. This year alone nearly 19 million children's product units were recalled. Between 1993 and 2003, the children's product industry had recalled almost 60 million items.

The term "recalled product" suggests that a product has been, or will be, returned, repaired or replaced, by a manufacturer. This rarely is the case. Despite the fact that, once a product is recalled, the CPSC and the manufacturer draft a recall notice and send it out over the wires, this vital information often does not reach the very people -- such as parents, day care centers and other caregivers -- who should see it. There is no law requiring manufacturers to try to find purchasers of the product or to notify parents or day care centers if a product proves dangerous and must be recalled. Further, there is no requirement that manufacturers advertise a product recall in the

⁶ Upcoming, "Unexpected Danger: Children's Product Recalls in 2006," Kids in Danger, March 2007. www.kidsindanger.org

same way they advertised the product in the first place – high chairs, cribs, strollers, infant swings and carriers often continue to be used for months or years after they have been recalled. As a result only a very small percentage of recalled juvenile products ever make their way back to the manufacturer. In fact, a CPSC study estimates that manufacturers cannot account for 70-90% of sold infant products after they have been recalled.⁷

Recall effectiveness is a major concern. 15 children, for example, have died in five different brands of recalled cribs,⁸ and many more of these cribs presumably remain in homes and day car centers.

In an effort to improve recall effectiveness, consumer groups petitioned the CPSC⁹ asking that the Commission require simple registration cards on products intended for use by children. Registration cards have proven an effective means for facilitating recalls: A 2003 National Highway Traffic Safety Administration survey found that almost three-quarters (73%) of parents/caregivers who said they obtained the car seat new also said that a registration card came with the seat. Of these, 53% mailed back the card.¹⁰

The Commission denied the consumer groups' petition on April 28, 2003, citing concerns about the effectiveness of registration cards,¹¹ Consumers Union and other groups are supporting legislation to require registration cards with certain baby products.

In addition to the challenges of effectively notifying consumers about recalled products, once a product is recalled by CPSC, the Commission will not release information on the number of units that have been successfully recalled. This prevents the public and

⁷ "It's No Accident," Marla Felcher, Common Courage Press, 2001.

⁸ Kids In Danger Newsletter, 2002.

⁹ **Federal Register**, Vol. 66, No. 148, Wednesday, August 1, 2001

¹⁰ Motor Vehicle Occupant Safety Survey, <http://www.nhtsa.dot.gov/people/injury/research/2003MVOSSVol5/pages/ExecSumm.htm>

¹¹ <http://www.cpsc.gov/LIBRARY/FOIA/FOIA03/petition/Intended.pdf>

news organizations from accurately estimating how many dangerous products remain at large, the extent of the remaining risk, or whether the particular recall outreach was successful. We discuss this at length below in our comments related to Section 6(b).

In response to the deficiencies in the system outlined above, consumer groups have supported two bills introduced in the 109th Congress and expected to be introduced shortly in the 110th:

- HR 6141, the “Child Product Safety Notification Act,” sponsored by Congresswoman Jan Schakowsky (D-IL), directs the CPSC to promulgate a consumer product safety standard requiring manufacturers of juvenile products (such as toys, cribs high chairs, bath seats, playpens, strollers, and walkers), and small appliances to establish and maintain a system for providing notification of recalls to purchasers. Manufacturers would be required to improve their notification of consumers by either distributing products safety notification cards that could be returned to them by consumers, or by creating a method of registering buyers electronically.
- HR 4896, the “Infant and Toddler Durable Product Safety Act,”¹² also sponsored by Representative Schakowsky, would better ensure the safety of infant and toddler products by requiring independent testing of certain durable goods before they are sold on the market. The legislation would require manufacturers to pre-test “durable” products likely to be used by children under five, including cradles, cribs, toddler beds, high chairs, safety gates, play yards, and strollers.

Under their General Product Safety Directive, the European Union requires pre-market testing and recordkeeping to show that products are essentially safe prior to going to market. The U.S. has no similar regulations.

We encourage the Senators on this Subcommittee to sponsor similar legislation to better protect U.S. consumers.

¹² Introduced by Congresswoman Jan SCHAKOWSKY. Co sponsors include Mrs. MCCARTHY of NY, Mr. LANTOS of CA, Ms. NORTON of DC, Ms. MILLENDER-MCDONALD of CA, Ms. KILPATRICK of MI, Mrs. CHRISTENSEN of VI, Mr. GRIJALVA of AZ, Mr. SERRANO of NY, Mr. MCDERMOTT of WA, and Mr. GUTIERREZ of IL, Ms. BROWN of FL, Ms. De Lauro, CT, Mr. Gutierrez, IL, Mr. Meehan, MA, Mr. Moran of VA, Mr. Davis of IL, Mr. Lipinski of IL, Ms. Lowey of NY, Mr. Waxman, CA,

Section 6(b)

Last year, my brother-in-law's airbag failed to deploy during a 65 mph crash. As a result, he was badly injured, but happily alive. However, he wanted to see whether drivers of the same vehicle had experienced similar airbag failures. He went to the National Highway Traffic Safety Administration's ("NHTSA") website, entered in his car's make and model, and learned that, indeed, there were several similar complaints. He decided not to buy the same model again. If a parent finds that a highchair collapses, he or she cannot do what my brother-in-law did – check CPSC's website to see if there have been other complaints - because under Section 6(b) of the Consumer Product Safety Act (CPSA) the Commission cannot provide the information unless the product has been recalled. This restriction is a major obstacle to consumer information and consumer safety.

Section 6(b) acts as a kind of reverse Freedom of Information Act, barring the release of consumer complaint 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 CPSA. Exceptions to these restrictions are extremely limited.¹³

The resource drain on the Commission staff for these procedures is enormous and unfair. The effect of Section 6(b) 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.

¹³ 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 opportunity to submit comments, and take reasonable steps to ensure accuracy.

Indeed, before the 111 children's products were recalled in 2006, 928 failure incidents were reported. Unlike under NHTSA's system described above, if a product hasn't been recalled, the CPSC is unable to provide consumers with information about previous safety complaints. Parents looking to buy a crib or high chair will often want to be sure it has a good safety record. They ought to be able to check on the CPSC's website for previous complaints. Perhaps if they could have, some of the 928 incidents last year related to the 111 recalled products might have been avoided. Unfortunately, parents and caregivers must go to other websites with consumer reviews, such as Amazon.com, rather than consulting the CPSC, to see if consumers have reported product has safety concerns with products on the market.

We think the statute should be changed. CU recommends that Congress repeal Section 6(b) of the CPSA because it prevents public access to important -- and possibly life saving -- product safety information in the files of CPSC...

While we understand that life - even for children - is not risk free, too large a percentage of unsafe products are marketed for children or to children. Products intended for use by children should be tested for safety before being sent into the marketplace because once they arrive in consumers' homes, the ineffectiveness of our current recall process means that getting them back is unlikely.

Reporting Requirements Under Section 15(b) of Consumer Product Safety Act

One of most important sections of the Consumer Product Safety Act is 15(b). That section requires companies to report to the Commission if they learn that their product may create a "substantial risk of injury to the public."¹⁴ In July of 2006, Chairman Hal Stratton announced a final interpretive rule change¹⁵ on Section 15(b), which he argued was intended to demystify the reporting process. Chairman Stratton noted in his

¹⁴ CPSA, Section 15(b).

¹⁵ <http://www.cpsc.gov/pr/strattonsec15.pdf>

statement, “I thought it essential that this agency engage regulated parties to determine how best the CPSC could accomplish its goals without creating a drag on commerce.”

In the previous two years, industry groups had asked the CPSC to revise its interpretive rules. Apparently this final rule was the Commission’s response to industry’s request. The revised interpretive rules added three factors companies were to consider in deciding whether they were obligated to report a product hazard under Section 15: 1) obviousness of the hazard 2) product warnings and instructions and 3) consumer misuse. The interpretive rules also allow manufacturer to consider such issues as to whether the product meets voluntary standards when considering whether to report incidents to the CPSC. Reliance on voluntary standard is, in our view, misplaced trust in standards that often do not address safety concerns.

We commend to members of the Committee the full statement of CPSC Commissioner Thomas Moore in response to these interpretive 15 (b) changes. CU shares Commissioner Moore’s concerns about the impact of these changes on reporting of hazardous products:

The Commission was created to protect consumers, sometimes even from what might be viewed as an obvious risk and, with regard to children, sometimes even from the inattentiveness of their own parents. Our work on child-resistant cigarette lighters and baby walkers are evidence of that. The power of section 15 (b) is its requirement that information that could prevent the injuries or deaths of consumers be reported to the Commission. Even with these revisions, the Commission’s position remains, **when in doubt, report**. It is the Commission that will ultimately decide whether a product defect presents a substantial product hazard, not the manufacturer. Adding more unexplained factors that manufacturers might grasp at to decide they do not need to report is likely to do the manufacturers (not to mention consumers) a disservice and adds nothing by way of real guidance, clarity or transparency.¹⁶

Consumers Union believes these new rules are unnecessary and confusing. Moreover, simply because a company reports under 15(b) does not automatically trigger CPSC

¹⁶Statement of the Honorable Thomas Moore on the Publication of the Federal Register Notice Seeking Public Comments on Proposed Revisions to 16 C.F.R. Part 1115.
<http://www.cpsc.gov/PR/MooreCFR1115.pdf>

action – indeed, one CPSC official estimated that only 50% of 15(b) reports trigger CPSC activity.¹⁷ Reporting safety hazards is critical because it ensures that when hazards come to the attention of a company, they are reported to the Commission and when warranted, necessary action is taken. CPSC is mandated to carry out this function. By giving companies reasons NOT to report, we believe the new interpretive rules may discourage companies from erring on the side of caution and thereby heighten the risk that consumers will be exposed to product hazards.

All Terrain Vehicles

The CPSC faces the perennial problem of stemming the tide of deaths and injuries from use of All Terrain Vehicles (ATVs). ATVs rank as consistently as one of the most hazardous consumer products – ATV-related injuries requiring emergency room increased to 136,700 in 2005. Children under 16 suffered 40,400 of those injuries. In 2005, 120 children under 16 operating ATVs were killed. The steady trend of increasing numbers of injuries and deaths should be a concern to Congress and to the CPSC.

Pursuant to a petition filed by the Consumer Federation of America, CU has supported a ban on the sale of ATVs to children under the age of 16 (and other safety measures). We are also concerned that the CPSC is moving forward with an ill-advised rule on ATVs that proposes teen and pre-teen ATVs and even junior ATVs for children between 6-8 years old, without having conducted the proper testing or research to proceed.

But we also think Congress can play a pivotal role in helping to reduce the injuries and deaths from ATVs. We believe that states should be encouraged to enact model ATV safety legislation like the kind drafted by the American Academy of Pediatrics. AAP's 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.

¹⁷ Conversation with officials at Office of Compliance at the U.S. Consumer Product Safety Commission.

We urge this Subcommittee to schedule field hearings on ATV safety similar to the hearing the CPSC held in West Virginia in 2003. Congress could then consider providing financial incentives to states to adopt ATV safety laws.

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 33 and the District of Columbia.

3. Other CU Priority Safety Areas for CPSC Focus

CU is concerned that due to shortfalls in its budget, the CPSC will not be able to adequately address areas that we consider to be of high priority, including: product safety issues affecting children (e.g., toy hazards, lead in children's jewelry, and pool safety); reinitiating efforts to reduce incidents of consumer injury and death from cooking fires (there are 80 deaths, 2,440 injuries, and over 47,000 residential range top fire annually); other product-related fires (e.g., products powered by lithium-ion batteries); decreasing all-terrain vehicle accidents and deaths; carbon monoxide poisonings relating to use of portable electric generators¹⁸ and home heating appliances; identifying and addressing potentially unreasonable risks posed to consumers through the use of or exposure to products created with nanotechnology, using nanoparticles.

¹⁸ CU commends the CPSC for initiating a rulemaking proceeding to examine regulatory approaches that could be used to reduce portable generator-related deaths and injuries, particularly those related to carbon monoxide poisoning (71 Fed. Reg. 74472, December 12, 2006). CU also commends the Commission for issuing a new portable generator mandatory labeling rule, approved by the Commission on January 4, 2007, but noted that "education and warnings alone are not enough" and urged CPSC to take critical next step in requiring all generators be equipped with a CO detector that automatically shuts down the unit if it detects dangerous levels of CO. See <http://www.cpsc.gov/cpsc/pub/prerel/prhtml07/07074.html>.

Two other areas of concern bear mentioning. First, there are nearly 50,000 residential cooking fires each year, killing and estimated 80 people and injuring almost 2,500. Cooking fires account for about 10 percent of fire deaths in recent years. Mitigating cooking fires was once a priority of the CPSC who developed technological fixes to the problem in their lab. The project was later dropped due to industry pushback.

Injuries from glass furniture now amount to more than 20,000 serious injuries per year. Although there are safety standards in Europe require safety glass in furniture, there are no safety standards here. Yet these hazards have long fallen below the radar of the CPSC.

Both of these safety hazards are ones we believe the CPSC needs to address.

4. Trends and Factors Exacerbating the Impact of CPSC'S Lack of Adequate Funding

CU is also concerned that a number of trends are presenting the CPSC with great challenges to their efforts to reduce the number of unreasonably dangerous products on the market. These trends (discussed more in detail below) include: (i) the increasing number of counterfeit, dangerous, and violative products on the market, (ii) new and emerging technologies (e.g., nanotechnology), and (iii) the changing demographic of the American consumer. CU also is concerned, that in addition to the above trends, the CPSC also is hampered by other factors beyond the lack of adequate resources. These factors, discussed in detail below, include: (i) the lack of a permanent chairman and lack of a quorum, (ii) lack of manufacturer focus on safety and insufficient deterrents available in the form of strong civil penalty authority, and (iii) inadequate laboratory facilities.

A. Trends Exacerbating the Impact of CPSC'S Lack of Adequate Funding:

(i) Increasing Numbers of Counterfeit, Dangerous, and Violative Products

We are very concerned that current trends are increasing the risk that unsafe products will make their way to the marketplace -- and too many remain on the market even after safety hazards are uncovered.

As the world's large, powerful retailers squeeze manufacturers to reduce prices, we have seen evidence that quality and safety can also be reduced. Today, more than ever, pressure from major retailers has created a "speed to market" mantra that can leave little time and few resources for the product safety testing and quality assurance process. Off-shore design and manufacturing is too often conducted by companies who have inadequate knowledge of U.S. voluntary and mandatory safety standards. In addition, sometimes foreign manufacturers lack an understanding of how consumers will use the products they produce because use of the product is not prevalent in their country. For example, the manufacture of gas grills is moving rapidly from the U.S. to China where the concept of grilling food on a gas heated cooking grid is unfamiliar. We believe that a recent result is the manufacture of substandard and sometimes dangerous gas grills; since 2004, there have been more than one dozen product safety recalls on gas grills -- in all cases the defective products or components were made outside of the U.S. Over a similar two-year period just 10 years ago, when most gas grills were U.S. made, there were no recalls.

Also of concern to CU is the widespread lack of compliance with voluntary safety standards. The March 2006 issue of *Consumer Reports* features an article on furniture tipover, a problem that results in 8,000 to 10,000 serious injuries and almost 10 fatalities each year, mostly to young children. Although ASTM-International publishes a safety standard to prevent furniture tipover injuries, many of the products CU tested do not comply. In fact, since the CPSC requested that ASTM develop an industry safety standard, the numbers of annual fatalities associated with falling furniture have actually

increased by 50 percent. In today's highly competitive marketplace, there is often little incentive for manufacturers to meet voluntary safety standards.

(ii) New and Emerging Technologies in Product Manufacturing and Production

CU is very concerned that the "brain drain" impacting the Commission may prevent the CPSC from aggressively investigating safety issues relating to new and emerging technologies – particularly those relating to the manufacture of consumer products created with nanotechnology, using nanoparticles.

Nanotechnology

Relating to nanotechnology, the CPSC's, sole mention of nanotechnology in its 2008 Performance Budget request is, as follows:

Nanomaterials represent a wide range of compounds that may vary significantly in their structure, physical and chemical properties, and potentially in their behavior in the environment and in the human body. CPSC staff will continue to participate in interagency activities for nanotechnology. **Goal:** Staff will use the information gained from its participation in interagency activities, along with other information collected on the use of nanomaterials in consumer products, to identify issues and projects for future consideration. Staff will prepare a draft status report of this effort.¹⁹

We believe that the CPSC must be much more proactive in arming itself with a detailed understanding of the dangers posed to consumers by cutting-edge products, especially those created through nanoengineering. We urge this Subcommittee to ensure that the CPSC has the laboratory equipment and resources needed to assess any unreasonable risks to consumers, and the will to follow through.

¹⁹ U.S. Consumer Product Safety Commission, "2008 Performance Budget Request, *Saving Lives and Keeping Families Safe*," Submitted to the Congress, February 2007. <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>

Lithium-Ion Batteries

An additional area of concern is fire and burn related dangers relating to lithium-ion batteries. On August 16, 2006 the CPSC announced a sweeping recall involving batteries, manufactured by Sony, which came with 33 different computers sold April 1, 2004 through July 18, 2006. The recall involved 4 million rechargeable lithium-ion batteries (sold separately and as replacement parts) for dozens of Dell laptop computers, due to the danger that they could overheat and catch fire. Of the 4.1 million suspected batteries, 2.7 million were distributed in the U.S. At the time of the recall, Scott Wolfson, public affairs spokesman for the CPSC, stated to *Consumer Reports* that the hazards stem from quality-control issues at battery manufacturing facilities in Japan and China.

Additional recalls were conducted of Sony laptop batteries, eventually bringing the total number of Sony's recalled laptop batteries to about 9.4 million. Overheating problems affecting rechargeable lithium-ion batteries have been an ongoing issue. Lithium-ion batteries pack high amounts of energy into a small package and, subsequently, can produce a lot of heat. Despite the wide-spread attention given to batteries in laptops, the dangers are not limited to these products. The CPSC has logged 339 incident reports between 2003 and 2005 involving potentially faulty laptop computer batteries as well as cell phone batteries. The incidents ranged from smoking and charring, to batteries bursting into flames and skin burns. Cell phone batteries have been associated with more serious burn injuries because of the close proximity between the telephone and the user's head and face.

Issues relating to lithium-ion batteries require research, investigation, and market surveillance to ensure that unsafe electronic products do not present an unreasonable risk to consumers. We encourage the CPSC to continue to urge the development of safety standards for these batteries, and to strongly encourage manufacturers to focus more attention on quality control. In addition, we urge the Subcommittee to follow the CPSC's activities in this area closely.

(iii) Changing Demographics of the U.S. Population

The CPSC itself has identified a disturbing trend, and has documented that from 1991 to 2002, the number of older adults (75 and older) treated in US hospital emergency rooms for products-related injuries increased 73%. This increase is almost three times the group's increase in population. Many of the injuries were related to common household products such as yard and garden equipment, ladders, step stools, and personal use items. As the population ages, it is even more important that manufacturers work to reverse this recent trend with products that are not defective and unreasonably dangerous when used by the elderly.

B. Legal and Regulatory Factors Exacerbating the Impact of CPSC'S Lack of Adequate Funding:

(i) Lack of a Permanent Chairman and Quorum at the Commission

The Commission has suffered from lack of a quorum after the departure of Chairman Hal Stratton in July of 2006, and has since been working with only two commissioners and forced to operate without a quorum for some months. That this position lay vacant for so many months is itself a statement on the lack of regard for the work of the CPSC. However, while the Commission needs leadership, to be sure, its work is too important to allow the chairmanship to go to a political appointee with no demonstrable experience in or commitment to consumer protection. CPSC is a regulatory agency and it requires a chairman who is willing to protect the public from risks to safety by regulating industry where necessary. Section A of the Consumer Product Safety Act²⁰ provides useful guidance to Congress and the President on this point:

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the

²⁰ Consumer Product Safety Act, 15 U.S.C. 2051-2084, Public Law 92-573; 86 Stat. 1207, Oct. 27, 1972.

public from risks to safety, are qualified to serve as members of the Commission.

We urge this Committee and the Senate, therefore, to keep this in mind and carefully examine the background and qualifications of the current Administration nominee.

(ii) Inadequacy of Civil Penalties

The use of civil penalties to penalize suppliers for selling or failing to report unsafe products is often an ineffective deterrent. The \$750,000 civil penalty levied against Wal-Mart in 2003 for failing to report safety hazards with fitness machines cost the company an equivalent of the sales rung up in only 1 minute and 33 seconds. For large retailers and manufacturers, paying civil fines are a small cost of doing business. In 2006, CPSC negotiated out of court settlements in which six companies agreed to pay 2.3 million in civil penalties to the U.S. Treasury for failing to report under 15(b).²¹

The Consumer Product Safety Act's Section 15 (b) requires that manufacturers, distributors, and retailers who learn that their product either: (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard; (2) or contains a defect that could create an unreasonable risk of serious injury or death (*i.e.*, a "substantial product hazard") must immediately notify the CPSC – unless the company knows the CPSC has already been informed.²² The history, however, of manufacturers' failure to report in a timely manner under this section is all too well known. Especially of concern are manufacturers' failures to report children's products known by them to have caused injury or death. Included among companies failing to report are Wal-Mart and General Electric (GE) -- two of the wealthiest corporations in America. We believe the cap on the fines CPSC can levy for failure to report known hazards weakens the power of the reporting statute. Current total fines may not exceed \$1,850,000 for any related series of violations. This amount is too small to be an effective deterrent for large corporations. CU believes in lifting the cap on fines.

²¹ CPSC 2008 Performance Budget Request, submitted to Congress February 2007.

²² See 15 U.S.C. § 2064(b).

We believe that if the level of fines is not so easily calculable, companies will view the potential fines as a bona fide deterrent to the nonreporting of product safety hazards.

(iii) Inadequacy of CPSC Laboratories

CU understands that the effectiveness of the CPSC in fulfilling its mission is seriously impaired by a lack of capital investment. This failure to equip CPSC staff with state-of-the-art laboratory equipment is disturbing. The CPSC must be given the resources needed to keep abreast of advancing science and technology. Without these resources, the Commission is handicapped -- and is little able to investigate products developed with new technologies, such as nanotechnology.

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I thank the Chairman and other members of the Subcommittee for the opportunity to testify, and I look forward to answering any questions you have.