

**ENHANCING THE SAFETY OF OUR TOYS: LEAD  
PAINT, THE CONSUMER PRODUCT SAFETY  
COMMISSION, AND TOY SAFETY STANDARDS**

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**HEARINGS**

BEFORE A

SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES SENATE  
ONE HUNDRED TENTH CONGRESS

FIRST SESSION

**SPECIAL HEARINGS**

JUNE 18, 2007—WASHINGTON, DC  
SEPTEMBER 12, 2007—WASHINGTON, DC

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LEAD PAINT, THE CONSUMER PRODUCT  
SAFETY COMMISSION, AND TOY SAFETY  
STANDARDS**

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**MONDAY, JUNE 18, 2007**

U.S. SENATE,  
SUBCOMMITTEE ON FINANCIAL SERVICES  
AND GENERAL GOVERNMENT,  
COMMITTEE ON APPROPRIATIONS,  
*Chicago, IL.*

The subcommittee met at 9:30 a.m., in room 2525, Ceremonial Courtroom, Everett McKinley Dirksen U.S. Courthouse, Hon Richard J. Durbin (chairman) presiding.

Present: Senator Durbin.

Also present: Congressman Rush.

STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Welcome to the field hearing of the Financial Services Subcommittee on Appropriations.

This Financial Service and General Government Subcommittee is a new creation, and it has some 28 different Federal agencies under its jurisdiction, including the Consumer Product Safety Commission (CPSC), which is the lead agency today on a very important consumer safety issue.

I want to thank our friends in the Federal courthouse here for allowing us to use these beautiful chambers, and it's my understanding that they're going into a trial as soon as we finish, so we'll try to clear out and let them get down to business.

I also wanted to acknowledge that my colleague, Congressman Bobby Rush, will be here in just a moment. I wanted to start on time. I'm not sure which clock to follow here because I notice that they're kind of giving you different starting times, but I'm going to use this one. I want to thank Bobby Rush for co-chairing this hearing this morning and our witnesses in particular for being here, Attorney General Lisa Madigan who will lead off, Acting Chairman of the Consumer Product Safety Commission, Nancy Nord, who is also here.

Nancy, thank you very much, and our outside experts who came here on very short notice. I want to thank all those who've participated. I called today's hearings because I have concerns about consumer product safety and the ability of our agencies at the Federal and State level to respond. I was alarmed to read about the magnetic toys that we'll discuss today causing the death of children in

dozens of cases of life-threatening injuries, and yet, for a variety of reasons, consumers were not warned, and many of these products stayed on the shelf far longer than they should have.

Our exposure to this type of issue was recently heightened by the pet food recall in March and April of this year. In the pet food case there's an interesting parallel. The combination of weak regulatory systems, an underfunded Federal agency, tainted products made in this case by irresponsible Chinese manufacturers led to the sickness and death of many household pets and a massive recall of pet food all across America.

In early May I was reminded of the lessons learned from the pet food recall when I read a Chicago Tribune series on the recall of Magnetix toy products. In this recall, the Consumer Product Safety Commission worked to recall the very popular children's toy Magnetix but was confronted with a firm which refused to cooperate. Just like the pet food recall, the product being recalled was produced by a Chinese manufacturer. Now, here's a statistic which bears remembering as we go through this hearing.

At the Consumer Product Safety Commission, nearly two-thirds of the products that they deal with are imports, and two-thirds of those are from one country: China.

Do the math. Half of the work of the Consumer Product Safety Commission deals with products that are made in China. Over the past week, we have seen similar parallel stories emerging.

Another popular children's toy: One and one-half million units of Thomas the Train cars that contain lead paint also made in China subject to recall. The news is part of a larger picture we've observed in recent months. Chinese toothpaste adulterated with diethylene glycol, a common ingredient in antifreeze, but certainly not a common ingredient in toothpaste. Recalled. Shoddily produced magnetic toys and wooden train cars coated in lead paint.

In the case of Magnetix, the toy, the plastic casings that encapsulated the powerful rare earth magnets were not properly made in the first place. When the pieces broke, as they can, tiny little magnets fell out. The CPSC and the firm Rose Art Industries received reports of these magnets falling out and a possible health risk associated with swallowing them.

When more than one of these magnets was ingested, we know how many children are prone to putting toys in their mouths and picking up little pieces and swallowing them, these magnets, when they were swallowed, attached in their intestines causing serious injury in many cases, in some cases even death. More than a dozen serious surgeries associated with this risk were reported. One family tragically lost their child, a 20-month-old boy named Kenneth Sweet, who swallowed these tiny little magnets that almost look like candy, and died a tragic death.

Unfortunately, these injuries and deaths could have been prevented by a series of steps that never occurred. They never occurred because the evasive nature of the uncooperative firm and the limitations on the authority of the Federal agency, Consumer Product Safety Commission, to protect consumers. That's the reason we're here today for this hearing.

I hope we'll let the experts tell us how we can make the laws better in America, how we can protect consumers, children and fami-

lies even more. From the moment this risk was perceived, the Consumer Product Safety Commission and the company in question here should have acted quickly to remove these products from store shelves and alert consumers of the risk.

Unfortunately, it didn't happen. I want to know why it didn't happen. I want to know what we can do to be better prepared in the future.

There are three areas I'll then focus on in today's hearing with Congressman Rush.

First, timing: The CPSC first learned of the health risk supposedly by these magnets on May 12, 2005, when a 5-year-old child underwent intestinal surgery for swallowing magnets.

However, it wasn't until March 31, 2006 that the first recall was announced, and it wasn't until May 2007, 2 years after the first child was operated on that a full, clear recall was established by Rose Art/Mega Brands and the Consumer Product Safety Commission. Why? Why did it take so long? Could the CPSC have issued the subpoena sooner? Could the firm have been held responsible earlier? What regulatory authorities did CPSC lack that could have expedited this case? It's clear what penalties a company faces. When it delays it isn't clear what penalties are going to be faced if there's a delay. Should these penalties be increased? It's my thought that companies that unnecessarily delay reporting and endanger human health should face serious penalties. We ran into exactly the same set of circumstances when it came to pet food.

A Canadian company importing this pet food found that the animals weren't eating it, were getting sick and dying and waited over 3 weeks to report it. Meanwhile millions of cans of this product were spread across the United States and North America. What was the penalty for the company? Very little, if any. Second, I'm concerned by a string of media reports that detail lax Chinese standards as a source of risk for American families.

In the Magnetix case and Thomas the Train engines, toothpaste situation, irresponsible manufacturers in China are putting families at risk. It is sad to report that the "Made in China" label has become a warning label to many families across America today. I want to know what we can do to establish good international standards through testing organizations like ASTM International or through memorandum of understanding to establish clear guidelines and priorities, penalties and systems for information exchange.

Third, why should our regulatory agency, Consumer Product Safety Commission, not have the authority it needs to deal with uncooperative firms? I want to know what changes in authority or funding will be necessary to give this agency the tools it needs to protect us. There are many questions clearly that need to be asked and answered.

When Congressman Rush arrives, we'll allow him to make an opening statement at that time. I certainly understand his situation trying to fight traffic and get in here. I know he'll be here very shortly, but I'd like at this point to call as our first witness the Attorney General of the State of Illinois, Lisa Madigan. I want to thank her for being here. She has, of course, in the time that she's been in office, been a leader on consumer products safety. She's

here today to talk about efforts that are being made at the State level. I'm hoping—Congressman Rush is here. Let me give him a chance to open. Just started. Just finished my opening statement.

Mr. RUSH. I want to thank you, Senator Durbin, for recognizing me and for inviting me to participate in this Senate field hearing. As chairman of the Subcommittee on Commerce, Trade and Consumer Protection, I've held two hearings on children's safety and the Consumer Product Safety Commission, including one that addressed the Magnetix case.

My subcommittee's jurisdiction is multifaceted and covers a broad area, but there is nothing more important than our mission to look out for our children. If the Federal Government cannot deliver on this basic responsibility to help parents keep their children away from hazardous products, then we're not doing our job.

The Tribune's articles on Magnetix are disturbing to say the least, and they depict the worst nightmare of any parent come true. Twenty-month-old child, Kenny Sweet, Jr., swallowed numerous powerful tiny magnets that fell out of a popular toy kit called Magnetix. Inside the toddler's stomach these magnets stuck together and cut a hole through his bowels. Unbeknownst to his parents, these tiny magnets were in the carpet only to be found and swallowed by young Kenny. Kenny died on Thanksgiving Day, 2005. He died from what was the equivalent to a gunshot wound to the stomach. This child's death was tragic. What is even more tragic is the possibility that Kenny's death was preventable.

According to the Tribune article both the company that manufactures Magnetix, Rose Art, and the Consumer Product Safety Commission were notified of those loose magnets and the possible dangers they pose to young children, but neither acted in time and in a manner to prevent Kenny's death.

In my hearing on this subject matter, we tried to discover why it took the Chicago Tribune to do a thorough investigative story on Magnetix to finally get this product off the shelves. The story made clear that toys were still in some stores as it went to press, and subsequent editions of the Chicago Tribune reported that the product was still on store shelves.

I want to know why it wasn't the Rose Art company or CPSC that was taking the necessary steps to protect our children. I don't believe we should engage in a blame game, and I don't believe we should initiate a consumer product, "witch hunt". I fully appreciate efforts of the Consumer Product Safety Commission, and I'm not attributing incompetence, nor negligence to the Acting Chairman Nancy Nord. The Commission did its best given the resources that they had. However, I do think that we should determine how the system broke down, and, more importantly, how to fix the problem. From this Senate field hearing as well as from hearings we have held in my House subcommittee in the District of Columbia, hopefully we will come away with an idea of what steps Congress should take to ensure that something like this doesn't happen to our children again, and I'm not naive to think that we can protect all children from all the dangers that lurk in the world, but I do know that the regulatory regime we have in place under the CPSC can be improved. I certainly look forward to working with my friend, my former colleague Senator Durbin and other members of



this subcommittee to make the necessary reforms to the Consumer Product Safety Commission so that the number of preventable future deaths are minimized. I've already said publicly that one of my priorities as chairman is to write a reform bill that overhauls the CPSC's underlying enabling statute. Kenny Sweet should be alive today.

Again, Senator Durbin, I want to thank you for graciously inviting me to participate in these hearings.

[The statement follows:]

PREPARED STATEMENT OF CONGRESSMAN BOBBY L. RUSH

I want to thank my friend for recognizing me and for inviting me to participate in this Senate field hearing. As Chairman of the Subcommittee on Commerce, Trade and Consumer Protection of the House Energy and Commerce Committee, I have held two hearings on children's safety and the Consumer Product Safety Commission, including one that addressed the Magnetix case. My subcommittee's jurisdiction is multi-faceted and covers a broad area. But there is nothing more important than our mission to look out for our children. If the federal government cannot deliver on this basic responsibility to help parents keep their children away from avoidable hazards, then we are not doing our job.

The Chicago Tribune articles on Magnetix are disturbing—to say the least—and they depict the worst nightmare of any parent come true. A 20-month old child, Kenny Sweet, Jr., swallowed numerous, powerful tiny magnets that fell out of a popular toy kit called Magnetix. Inside the toddler's stomach, these magnets stuck together and cut a hole through his bowels. Unbeknownst to his parents, these tiny magnets had blended in with the carpet, only to be found and swallowed by the young toddler. Kenny Sweet, Jr., died on Thanksgiving Day, 2005. He died of what was equivalent to a gun shot wound to the stomach.

This child's death is tragic. What is even more tragic is the possibility that Kenny's death was preventable. According to the Tribune articles, both the company that manufactures Magnetix, Rose Art, and the Consumer Product Safety Commission were notified of the loose magnets and the possible dangers they posed to young children. But neither acted in time and in a manner to prevent Kenny's death.

In my hearing on this subject matter, we tried to discover why it took the Chicago Tribune to do a thorough, investigative story on Magnetix to finally get this product off the shelves. The story made clear that the toys were still in some stores as it went to press—and subsequent editions of the Tribune reported that the product was still on store shelves. I want to know why it wasn't the Rose Art company or the CPSC that was taking the necessary steps to protect our children.

I don't think we should engage in a blame game, and I don't believe we should initiate a consumer product "witch hunt". I fully appreciate the efforts of the Consumer Product Safety Commission, and I am not attributing incompetence or negligence to their staff or to Acting Chairman, Nancy Nord. The Commission did the best it could do given the resources they have. However, I do think we should determine how the system broke down, and more importantly, how to fix the problem. From this Senate field hearing as well as the hearings we have held in my House subcommittee, hopefully we will come away with an idea of what steps Congress should take to ensure that something like this doesn't happen again.

I am not naïve to think that we can protect all children from all the dangers that lurk in the world. But I do know that the regulatory regime we have set up under the CPSC can be improved.

I look forward to working with my friend, Senator Durbin, and the other members of this subcommittee to make the necessary reforms at the Consumer Product Safety Commission so that the number of preventable, future deaths are minimized. I've already publicly said that one of my priorities as chairman is to write a reform bill that overhauls the CPSC's underlying, enabling statute. Kenny Sweet should still be alive today.

Again, I want to thank Senator Durbin for graciously inviting me to this hearing, and with that, I yield back the balance of my time.

Senator DURBIN. Thank you, Congressman Rush. Let me just put a personal note in here. My grandson Alex loves this toy. He has a huge plastic container filled with Magnetix pieces and spends

hours quietly playing. I didn't realize until the Tribune series came out that he was dealing with a deadly product. Luckily, he's old enough to know a little better, but in terms of smaller children, 20-month-old children, that tiny little magnet looks just like a piece of candy, and it's natural for kids to pick these up and be in danger because of the situation that Bobby Rush is describing.

I want to thank again Lisa Madigan for coming here. As our attorney general at this point I invite you to give your testimony, and we'll ask a few questions afterward.

**STATEMENT OF LISA MADIGAN, ATTORNEY GENERAL, STATE OF ILLINOIS**

Ms. MADIGAN. Well, let me start by thanking you, Senator Durbin and Congressman Rush, for giving me the opportunity to testify today on an issue that is of vital importance to parents and caregivers across the country, and that is protecting our children from dangerous and deadly toys. As attorney general, I serve as the State's chief consumer advocate. In that role we do a lot of work to protect children from dangerous products.

Over the past few years my office, along with some wonderful children's advocacy organizations, especially Kids In Danger and its executive director Nancy Cowles, have worked to pass the toughest laws in the country concerning recalls of dangerous children's products. As a result of these collaborative efforts, we now have the Illinois Children's Product Safety Act.

It is a law that requires manufacturers and retailers to post notices of product recalls in their stores as well as on their websites. The law also requires that manufacturers and retailers alert by mail or e-mail any consumers who have already purchased recall items. Illinois was the first State in the country to enact such comprehensive child safety notification measures, and we remain one of only a handful of States that requires this kind of notification for the protection of our children, but our State-level efforts are hindered, and they're often undermined by lax laws and lengthy procedures that slow action at the Federal level. For State efforts to be effective in informing parents and working with them to protect children, we need an aggressive and proactive Federal partner.

Unfortunately, the Consumer Product Safety Commission is underfunded, understaffed, and seemingly uninterested.

They are too often unable to protect our children from injuries and death. This was certainly the case when it came to recalling the Magnetix and Magnetix building sets.

For those people who haven't seen them, Magnetix are Tinker Toys. They're the Lincoln Logs of the 21st century. The obvious and crucial difference is that small, powerful magnets are used to keep the building blocks together to construct shapes and figures. These magnets, as noted, often fall out onto the playroom floor where they can be picked up and easily swallowed by children with life-threatening and even life-ending consequences.

I believe that we have Dr. Quinlan with us today, who will likely give you a detailed medical explanation of how these rare earth magnets work, but what I want to talk about briefly is how the deadly defect in the Magnetix toy illustrates the deadly flaws in

the Federal system, flaws that leave our children inadequately protected from dangerous products.

The timeline of the CPSC's response to repeated problems with toys containing these small, powerful magnets, and with Magnetix in particular, shows the agency's inability to react quickly and effectively.

As early as 2000, an 8-year-old child was forced to undergo intestinal surgery after he swallowed magnets that fell out of a fast food meal toy. The CPSC investigated and documented his case. In late 2003 CPSC investigated and documented another case involving intestinal trauma after a child swallowed small, powerful magnets.

In 2003, the Rose Art Company launched the Magnetix product marketing it as safe for children three and over. Not long after this, in early 2004, a North Carolina grandmother told CPSC that small magnets were falling out of the Magnetix toy and could be swallowed by a young child. A Colorado mother made a similar report to CPSC in February 2005, and during that same time period three concerned consumers sent pieces of these defective toys to CPSC. Then in May 2005, Sharon Grigsby, an Indiana preschool teacher, reported that Magnetix almost killed a 5-year-old child who swallowed magnets from the toy and survived only after emergency surgery. Even after this report CPSC did nothing to alert parents to the danger posed by Magnetix, and as we have all gone over painfully, on Thanksgiving Day 2005, Kenny Sweet died after swallowing magnets from Magnetix.

Finally, in December 2005, 2 years after the product was launched and complaints to CPSC began, a CPSC investigator recommended a recall. When it finally decided to respond only after a devastating tragedy, the Federal agency charged with protecting our children from dangerous products spent another unreasonable and quite frankly unimaginable 4 months to finally issue the recall. During this period, while CPSC negotiated the text of the recall, four more children required hospital treatment for injuries caused by Magnetix. Then another year passed with more children suffering injuries because they swallowed the magnets from this toy until the CPSC in April 2007 finally issued an expanded recall notice for this product.

After the initial CPSC recall on March 31, 2006, and after the second expanded recall in April 2007, I sent my staff out to check stores throughout the State to ensure that the recall was being properly implemented.

To protect unsuspecting parents and caretakers from this potentially fatal toy, we wanted to make sure that the product was off store shelves and the recall notice was posted. Unfortunately, we found a series of problems with the Magnetix recall. Of the 80 stores that we checked throughout the State, 15 still had the toy on their shelves. Five of those stores had both failed to post the notice as well as remove the toy from their shelves. Ten stores had posted the recall notice but hadn't removed the toys from their shelves, and we found 17 stores where the item had been removed from the shelves, but they had failed to post the recall notice so that parents who already owned the toy could see it.

When we talked to retailers, we learned that many of them were confused by the recall notice, and they couldn't tell which of the

Magnetix toys they were required to remove from their shelves. We informed CPSC of retailers' concerns on May 24, and we understand that CPSC knows there are problems with the recall and is currently taking steps to provide better information to retailers.

However, the results of our check raise obvious questions. If retailers can't understand the recall, how can they implement it and actually remove the dangerous product from their shelves? And if retailers, those who are dealing and selling toys, can't understand the recall, how are parents and caregivers supposed to decipher recall notices?

Clearly, CPSC is struggling to effectively communicate recalls to parents and other caregivers, and this problem has another aspect. It is our understanding that CPSC has not issued recalls in Spanish. That failure creates an unnecessary and inexcusable obstacle in the effort to protect children from dangerous products. CPSC must do a better job to communicate its recalls. During our store compliance checks, we also discovered another gaping hole in CPSC's approach to protecting children from unsafe products. As we visited stores to check for recalled Magnetix, we quickly found knockoff Magnetix toys at several dollar stores. These knockoffs are the same toys. The only difference is that they are manufactured by a different manufacturer, so it stands to reason that these same small, powerful magnets in virtually identical toys may pose the same threats to children.

We sent a number of these toys to CPSC on May 24, and we asked them to consider recalling these products as well. Unfortunately, we received the same response that consumers hear every day from the agency:

CPSC doesn't test products until an incident is reported. Waiting for an incident. In other words, waiting to learn that a child has suffered an injury or died from the exact product at issue before conducting product safety testing is absolutely unconscionable. Those knockoff Magnetix sets are still on store shelves, not because they are constructed differently or have passed safety tests, but simply because they were made by a different company. If there are health and life-threatening problems caused by these magnets and toys, it doesn't matter who manufactures them.

They pose unacceptable risks and should not be allowed in our homes or in children's hands until they have withstood thorough testing. Every aspect of CPSC's response to the dangerous toy Magnetix is a horrible demonstration that our present system is not working. The entire process to protect our children from dangerous products is nothing short of a disaster. We can and we must do better. As an initial matter, most children's products are not subject to any kind of mandatory standards before they are sold. Most are not required to be tested or certified at all. While some voluntary standards do exist, they are created by committees dominated by toy industry representatives with little input from children and consumer advocates.

As a result, there is no independent safety review of children's products before they are sold. In response to the injuries and deaths that the Magnetix building sets have caused, I urge you to pass new laws that mandate testing before children's products are allowed on store shelves, and ultimately in our homes and daycare

centers where too many children have already been hurt or killed. Our very own Congresswoman, Jan Schakowsky proposed a bill, H.R. 1698, that would create the Infant and Toddler Durable Product Safety Act. That act would require CPSC to promulgate Illinois safety standards for durable products intended for infants and toddlers.

It would prevent products that can harm children from getting to the market by requiring independent testing before products enter the stream of commerce. I know that Nancy Cowles of Kids In Danger will speak further about the need for this legislation, and there are other issues with CPSC that must be addressed, and I urge you to take comprehensive action that covers these as well.

We know that once a product is on the market the CPSC is dependent upon the industry to self-report any problems, and, as most people in this room probably recognize, any system that is based on self-reporting will be inherently flawed, and, as is the case with Magnetix, recall notices are so watered down and confusing that most retailers, much less parents and caregivers, often cannot understand which products are subject to the recall.

CPSC must have more power to investigate possible problems with products instead of waiting to hear about them from the industry. CPSC also should have the clear power to issue strong recalls that adequately and quickly convey the dangers of products. They should not have to waste precious time negotiating every word of a recall notice with a manufacturer while dangerous products are allowed to linger on store shelves and enter our homes.

Additionally, CPSC does not have adequate staff to test or investigate the number of complaints it receives each year, and the process involved when they do conduct in-depth investigations takes far too long. Clearly, they need more staff and more resources. The lives of our children depend on this agency being able to fulfill its mandate. We cannot cut corners or balance tight budgets by taking risks with children's safety.

I certainly hope that the suffering of the families hurt by Magnetix and other dangerous children's products will spur action which dramatically changes this law and system, and I look forward to helping you in any way that I can. Thank you very much for this opportunity to testify today.

[The statement follows:]

PREPARED STATEMENT OF LISA MADIGAN

Thank you, Senator Durbin and Representative Rush, for giving me the opportunity to testify today on an issue of vital importance to parents and caregivers across the country—protecting our children from dangerous and deadly toys.

As Attorney General, I am the State's chief consumer advocate. In that role, I work to protect children from dangerous products.

Over the past few years, my office and many dedicated children's advocacy organizations—especially Kids In Danger and its Executive Director, Nancy Cowles—have worked to pass the toughest laws in the country concerning recalls of dangerous children's products.

As a result of these collaborative efforts, we now have the Illinois Children's Product Safety Act—a law that requires manufacturers and retailers to post notices of product recalls in their stores and on their websites. The law also requires manufacturers and retailers to alert by mail or email any consumers who have already purchased recalled items. Illinois was the first state to enact such comprehensive child safety notification measures. And we remain one of only a handful of states that requires this kind of notification for the protection of our children.

But our state level efforts are hindered and often undermined by the lax laws and lengthy procedures that slow action at the federal level. For our state efforts to be effective in informing parents and working with them to protect children, we need an aggressive and proactive federal government partner.

Unfortunately, the Consumer Product Safety Commission is underfunded, understaffed, and seemingly uninterested, thus they are too often unable to protect our children from injury and death.

This was certainly the case when it came to recalling the Magnetix magnetic building sets.

For those people who haven't seen them, Magnetix are the tinker toys and the Lincoln logs of the 21st century.

The obvious and crucial difference is that small, powerful magnets are used to keep the building blocks together to construct shapes and figures. These magnets often fall out onto the playroom floor where they can be picked up and swallowed by children—with life threatening and even life ending consequences.

Dr. Karyn Quinlan will likely give you a detailed medical explanation.

I want to talk briefly about how the deadly defects in Magnetix illustrate the deadly flaws in the federal system—leaving our children inadequately protected from dangerous products.

The timeline of the CPSC's response to repeated problems with toys containing the small, powerful magnets used in Magnetix toys—and with the Magnetix product in particular—shows the agency's inability to react quickly and effectively.

As early as 2000, an 8-year old child was forced to undergo intestinal surgery after he swallowed magnets that fell out of a fast food meal toy. The CPSC investigated and documented this case. In late 2003, CPSC investigated and documented another case involving intestinal trauma after a child swallowed a small, powerful magnet.

In 2003, the Rose Art Company launched the Magnetix product—marketing it as safe for children 3 and over.

Not long after this, in early 2004, a North Carolina grandmother told CPSC that small magnets were falling out of Magnetix—and could be swallowed by a young child. A Colorado mother made a similar report to CPSC in February 2005. And during that same time period, 3 concerned consumers sent pieces of these defective toys to CPSC.

Then, in May 2005, Sharon Grigsby, an Indiana preschool teacher reported that Magnetix almost killed a 5-year old child who swallowed a magnet from the toy and survived only after emergency surgery.

Even after this report and the other, repeated concerns about Magnetix, the CPSC did nothing to alert parents to the dangers posed by this children's product—with deadly consequences.

On Thanksgiving day in 2005, Kenny Sweet, Jr. died after swallowing a magnet from Magnetix.

Finally, in December 2005, two years after the product was launched and the complaints to CPSC began, a CPSC investigator recommended a recall.

But even when it finally decided to respond—only after a devastating tragedy—the federal agency charged with protecting our children from dangerous products took another unreasonable and, frankly unimaginable, 4 months (until March 31, 2006) to finally issue the recall.

During this period, while the CPSC negotiated the text of the recall, 4 more children required hospital treatment for injuries caused by Magnetix.

Another year then passed—with more children suffering injuries because they swallowed the magnets from this Magnetix product—until the CPSC in April 2007 finally issued an expanded recall notice for this product.

After the initial CPSC recall on March 31, 2006, and after the second, expanded recall in April 2007, I sent my staff out to check stores throughout the state to ensure that the recall was being properly implemented.

To protect unsuspecting parents and caretakers from this potentially fatal toy, we wanted to make sure that the product was off store shelves and that the recall notice was posted.

Unfortunately, we found a series of problems with the Magnetix recall.

Of the 80 stores we checked throughout the state: 15 still had Magnetix on their shelves; 5 of those stores had failed to both post the notice and remove the recalled toys from their shelves; 10 stores had posted the recall notice but hadn't removed the toys from their shelves, and we found 17 stores, where the item had been removed from the shelves but they had failed to post the recall notice so that parents who already owned the toy could see it.

When we talked to retailers, we learned that many of them were confused by the recall notice and couldn't tell which Magnetix toys they needed to remove from store shelves.

We informed CPSC of retailer's concerns on May 24, 2007, and we understand that the agency CPSC knows there are problems with the recall and is currently taking steps to provide better information to retailers.

The results of our checks raise obvious questions—if retailers can't understand the recall, how can they implement it and actually remove the dangerous product from their shelves? And if retailers can't understand the recall, how are parents and caregivers supposed to decipher it?

Clearly, CPSC is struggling to effectively communicate recalls to retailers, parents and caregivers.

And this problem has another significant aspect—CPSC does not issue recalls in Spanish.

That failure creates an unnecessary and inexcusable obstacle in the effort to protect children from dangerous products.

CPSC must do a better job to communicate its recalls.

During our store compliance check, we also discovered another gaping hole in CPSC's approach to protecting children from unsafe products. As we visited stores to check for the Magnetix toy, we quickly found "knock off" magnetic toys at several dollar stores. The only difference is that these magnetic building sets are made by different manufacturers.

It stands to reason that these same small, powerful magnets—part of virtually identical toys—may pose the same threats to children.

We sent these knock off toys to CPSC on May 24, 2007 and asked them to consider recalling these products.

Unfortunately, we received the same response that consumers hear everyday from the agency—CPSC doesn't test products until an incident is reported.

Waiting for an "incident,"—in other words, waiting to learn that a child has suffered an injury or died from the exact product at issues—before conducting product safety testing is unconscionable.

Those knock off magnetic building sets are still on store shelves, not because they are constructed differently or have passed safety tests, but simply because they were made by a different company.

If there are health and life-threatening problems caused by these children's magnetic building sets, it doesn't matter who manufactures them.

They pose unacceptable risks and should not be allowed in our homes or in children's hands until they have withstood thorough testing.

Every aspect of the CPSC's response to the dangers posed by Magnetix is a horrible demonstration that our present system is not working.

The entire process to protect our children from dangerous products is nothing short of a disaster. We can and must do better.

As an initial matter, most children's products are not subject to any kind of mandatory standards before they are sold.

Most are not required to be tested or certified at all.

While some voluntary standards exist, they are created by committees dominated by toy industry representatives with little input from children's and consumer advocates.

As a result, there is no independent safety review of children's products before they are sold.

In response to the injuries and death that the Magnetix building sets have caused, I urge you to pass new laws that mandate testing before children's products are allowed on store shelves and, ultimately, in our homes and day care centers where too many children have been hurt or killed.

Our Congresswoman, Jan Schakowsky has proposed a bill, H.R. 1698, that would create the "Infant and Toddler Durable Product Safety Act." That Act would require the CPSC to promulgate mandatory safety standards for durable products intended for infants and toddlers. It would prevent products that can harm children from getting to the market by requiring independent testing before products enter the stream of commerce.

I know that Nancy Cowles, the Executive Director of Kids In Danger, will speak further about the need for this legislation.

There are other issues with the CPSC that must be addressed—and I urge you to take comprehensive action that covers these as well.

We know that once a product is on the market, the CPSC is dependent upon the industry to self report any problems. Everyone in this room recognizes that any system based on self-reporting will be inherently flawed.

And, as in the Magnetix case, recall notices are so watered down and confusing that most retailers, much less parents and caregivers, often cannot understand which products are subject to the recall.

CPSC should have more power to investigate possible problems with products—instead of waiting to hear from the industry. CPSC also should have the clear power to issue strong recalls that adequately and quickly convey the danger of products.

They should not have to waste precious time negotiating every word of a recall notices with manufacturers while dangerous products are allowed to linger on store shelves.

Additionally, the CPSC does not have adequate staff to test or investigate the number of complaints it receives each year, and the process involved when they do conduct in-depth investigations takes far too long.

Clearly, they need more staff and more resources. The lives of our children depend on this agency being able to fulfill its mandate. We cannot cut corners or balance tight budgets by taking risks with children's safety.

We hope that the suffering of the families hurt by Magnetix, and other dangerous children's products, will spur action that dramatically changes this flawed system.

There are things that we can do to improve this system and make our homes safer for our children. I hope you will take these steps—and I look forward to working to help in any way that I can.

Thank you.

Senator DURBIN. Thank you. Let me see if I understand the Illinois consumer products safety law. Children's Product Safety Act is the formal title. Once a recall occurs, if a retailer in Illinois continues to have that product on the shelf, they are subject to a fine?

Ms. MADIGAN. Correct. It's not a criminal statute. It's a civil statute, and we have as the attorney general's office enforcement authority which is why we send our people out to check the store shelves.

We can make sure that, one, the toy is off the shelf; two, the recall notices are posted; three, to the extent they have the information that they're sending out notifications to consumers who have already purchased these.

If there is a failure to do any of those things, then we do have the ability to file a cause of action seeking a civil penalty which is a monetary fine.

Senator DURBIN. And the maximum penalty is how much?

Ms. MADIGAN. It is \$500 for each day that the violation continues.

Senator DURBIN. And what is the trigger for the Illinois law? Is it a formal recall of the Consumer Product Safety Commission?

Ms. MADIGAN. That's what we use, but ask Nancy Cowles. She probably knows in depth how we've constructed this.

Senator DURBIN. So if there's a delay at the Federal level as they negotiate with the company, gather information, all of that period of time which could be a cure to the danger cannot be counted against the retailer for obvious reason.

Ms. MADIGAN. Correct.

Senator DURBIN. The retailer has no notice that there's something dangerous unless an actual customer makes a complaint, and so they wait on the Federal agency to move forward, and that's when their responsibility begins.

Ms. MADIGAN. Exactly. Consumer Product Safety Commission is the lead agency in our country when it comes to recalls, and the delays that they take, they're deadly delays, because if it takes them 4 months, if it takes them 2 years to get around to issuing a recall notice, that amount of time those toys are still on the shelves, are still available for purchase, they end up in our homes,



and then there's nothing that our law can do to say to them that they can't have it.

Now, the only difference in our laws, we have a very, very, safe standard when it comes to lead in children's products. Again, we would apply strict liability standard, but that's not what we're discussing here today unless you want to talk about Thomas the Tank engine more.

Senator DURBIN. I'm learning more about that this morning. How many times have you imposed fines on retailers in Illinois for failure to remove product?

Ms. MADIGAN. At this point we haven't used the statute to impose a fine.

We have used it to go out and to make sure that its recall notices are posted and that toys are being removed. We have yet to find an instance where the retailers are willfully keeping these toys on the shelves or are intentionally not abiding by the recall that's been put out there. What we found specifically in this circumstance is that they simply didn't understand which toys were to be removed and which toys weren't because the recall notice didn't cover all the Magnetix. It only recalled some of them. There were changes made in terms of labeling. Still very confusing for parents because now I think you might have one of the products with you that we intercepted, but notices are just on the cardboard box on the outside.

Once that cardboard is removed, which you will remove, there's another—the larger one. Once that cardboard is removed the case that remains—you can take that cardboard off if you want. We made it impossible for you to do that, but once you do that—kids are much better at this than Senators.

Once you do that, you'll see that the case that the Magnetix comes in, there's no labeling on that at all, so that gets thrown in the garbage can. A parent then has nothing to rely on. Let's face it. Six-year-old kids can't read "This toy should not be ingested." It's not typical that they know that word, and not all 6 year olds can read as we are aware.

Senator DURBIN. I can just tell you with my glasses I can barely read—

Ms. MADIGAN. This is another point. So in addition to parents who would like to and don't yet need reading glasses, although for some of us that's not the case, certainly the grandparents, when they're out purchasing toys, if they're not actually bringing their reading glasses to read the warnings, they may inadvertently bring—

Senator DURBIN. So you read the Tribune series, as we did, and learned that despite everything that occurred and all the dangerous warnings and all of the bad health consequences the product was still on the shelf. Many times without any warning whatsoever.

Did you take action against those retailers when you sent out your investigators?

Ms. MADIGAN. Well, what we did was make sure they were complying, so of the 17 stores that we found that were not in compliance, we worked with them to take those toys off the shelves. We'd make sure we had the actual recall notices had been posted, those

notices as well, and we have sent investigators out this week around the Thomas the Tank engine toys.

Senator DURBIN. Thank you.

Congressman Rush.

Mr. RUSH. Ms. Madigan, I'm interested. You might have covered this before, but please explain to me.

The State, does it have a comparable commission to the CPSC judgment, so the enforcement of consumer product protection laws rests solely with your department, your agency?

Ms. MADIGAN. It rests with us as well as the Department of Public Health, particularly when it comes to lead being found not just in toys. We've dealt with lead in bins over the past few months. Certainly we find lead in jewelry, children's jewelry, again made in China. We had an incident a number of years ago with lead being found in what we would refer to as those candy. Basically, a Mexican spice of some sort that is strictly used as candy, so we often work in conjunction with the Illinois Department of Public Health when it comes to enforcing safety of those products.

Mr. RUSH. So Illinois does not have a commission.

Ms. MADIGAN. No, we do not have a comparable agency to the Consumer Product Safety Commission which is why we are reliant at the State level, and I believe Illinois is probably different than most States.

We're reliant on CPSC to do their jobs as are parents and people throughout our country. If they are not issuing recalls, that information is very, very rarely ever going to get out.

Now, you will hear from Nancy Cowles from Kids In Danger. They sometimes are way ahead of the curve when it comes to finding out that there are problems with certain products that pose a health or life risk to children, and so they oftentimes issue informational materials to parents in particular, but, really, it's the CPSC.

Mr. RUSH. So it's your contention that other States, no other States have a comparable sector government deal with product safety, is that what you're saying?

Ms. MADIGAN. Well, in terms of testing the ability to issue recall notices, I'm not aware. The only State that would have the resources, and they're usually way ahead of the curve, might be California. I'm sure somebody on my staff would be happy to check.

Mr. RUSH. Do you think that Illinois needs that kind of agency?

Ms. MADIGAN. We would very much like to be able to rely on the CPSC to do the testing because this isn't just an issue that impacts people in the State of Illinois. It impacts consumers across our country, so I think it's reasonable that it's at a Federal level.

Mr. RUSH. I just kind of, you know, I'm not trying to take the responsibility from the CPSC. I'm not trying to delete that. I'm trying to give it more responsibility and more resources to deal with this responsibility, but I think this issue is of a magnitude that I believe there should be more aggressive State action across the board for the children of Illinois because we're really concerned about the safety of our children in terms of consumer product safety and the flood, the absolute flood of these cheap, unsafe toys into our Nation. It's incumbent upon the State government to step up to the plate also.

Ms. MADIGAN. And, Congressman, we do when it comes to lead, so it's something that we can easily forward to you, but in terms of some of the durability things that need to be done for testing other types of products, there's nobody in the State that I'm aware of that does that. If I'm wrong, I'm sure somebody will be happy to tell me or clarify that.

Mr. RUSH. Can you explain how your office works with the CPSC to deal with matters such as this, how to get these things, products off the shelves?

How does your office or is there any interaction at all with CPSC?

Ms. MADIGAN. There has been some interaction particularly around the magnets found in Magnetix. As I mentioned, we did reach out to them in May after the second recall was issued so we could alert them to problems that we were hearing from retailers in addition to asking them if they had this recall notice in Spanish because obviously many of the stores that we went to were frequented mainly by Spanish speaking parents.

In addition, as I mentioned, when we went to a lot of these stores and we found these knockoff toys, really, the same exact magnet's being used, simply a different manufacturer, we requested that they expand their recall and were disappointed to hear that they looked to see if they had any incident reports, but unless they had an incident report they would not be issuing a recall on these other toys with the same magnets.

Mr. RUSH. You mentioned toys that are being imported from China and the quality and safety of these imported products. Is there anything that could be done at the State level to deal with this, and is this only a matter that the Federal Government can regulate?

Ms. MADIGAN. Well, I think obviously the State is happy to take any responsibility that it can in terms of making sure that we are protecting children and making parents aware and making other caretakers aware of these problems. Again, we look at CPSC as being a free agency.

Again, we're happy to have partners here in Illinois, wonderful children's acts organization. IRMA, the Illinois Retail Merchants Association has been very helpful to us when it comes to recall notices and information on it, but we would love it if you in Congress would be able to pass some stronger measures. Give CPSC not just the responsibility but the resources that they need to carry out their mandate to protect all of us from dangerous products.

Mr. RUSH. That's one of my chief main objectives as chairman of the subcommittee, jurisdiction over CPSC, but I would like to get some of your suggestions in terms of how you think the CPSC could better serve you and serve the citizens of this State, how it might be able to complement what you're doing a lot better, where the weaknesses in the Federal legislation exist and some suggestions for how we can strengthen and correct those weaknesses because I'm very interested in trying to now get additional resources, but also to strengthen the legislative authority of the CPSC. It's an agency that has suffered from a lot of attacks even from—the executive branch actually wanted to eliminate this agency.

So we want to bring it out of the closet and bring it into the world of beautiful American people so that the American people will make sure that it functions for them, and I would certainly encourage you, if you will, to just help us and thank you.

Ms. MADIGAN. Congressman, thank you very much. We would be more than happy to give you any assistance you need in terms of suggestions, and we'll make sure that you have that information. Again, thank you both of you for bringing this matter to more public attention.

Please do what you can to give CPSC the teeth that it really needs to protect our children. I think we need no better reminder than the tragic death of Kenny Sweet.

Senator DURBIN. Attorney General Madigan, thank you for testifying today. We appreciate your testimony.

Ms. MADIGAN. Thank you.

Senator DURBIN. Thanks a lot. I'd now like to call up Nancy Nord the Acting Chairman of the Consumer Product Safety Commission. I'd like to invite you to make your full statement for the record and just open up and summarize. Congressman Rush and I will have a few follow-up questions.

**STATEMENT OF HON. NANCY A. NORD, ACTING CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION**

**ACCOMPANIED BY:**

**GIB MULLAN, DIRECTOR OF COMPLIANCE AND FIELD OPERATIONS**

**ERIC AULT, DIRECTOR, EASTERN BRANCH OF THE FIELD INVESTIGATIONS DIVISION, CHICAGO**

Ms. NORD. Thank you very much, Chairman Durbin and Chairman Rush. I'm delighted to be here. I've also asked that my colleague, Mr. Gib Mullan, our Director of Compliance and Field Operations join me at the table here.

Mr. RUSH. Spell his name, please.

Ms. NORD. Yes, Mullan, M-U-L-L-E-N. First name is John Gib Mullan.

Mr. RUSH. G-I-B-B?

Ms. NORD. G-I-B. M-U-L-L-E-N. I'm sorry. M-U-L-L-A-N.

Senator DURBIN. Proceed.

Ms. NORD. And I'd also like to recognize another colleague who is here in the audience, Mr. Eric Ault. Eric is the director of the Eastern Branch of our Field Investigations Division. Eric is resident here in Chicago, and I might add that we have more CPSC personnel in the Chicago area than we have in any other part of the country with the exception of our headquarters in Bethesda, Maryland.

I know that the CPSC has been in the news lately, particularly here in the Chicago area, and that it's partially why you're holding this hearing today. Mr. Chairman, as I'm sure you will agree, public service is truly a wonderful thing, and I can tell you that serving on the Commission for the past 2 years has been one of the most important and rewarding experiences of my life, but with public service comes public scrutiny, and I think President Lincoln got it quite right when he observed that, "You truly cannot please all of the people all of the time." From our critics some say that

we are too aggressive, and others say that we are not aggressive enough.

But, Mr. Chairman, the CPSC does a tremendous job for the American people. Yes, we are constantly striving to improve, but for an agency with 400 employees, a budget of just over \$60 million a year and charged with ensuring the safety of more than 15,000 types of consumer products across the United States, we deliver tremendous value to the citizens of this country.

Since its inception in 1973, the CPSC has worked tirelessly to investigate tens of thousands of product-related injuries, to recall thousands of dangerous products, to issue dozens of mandatory product safety standards and to warn, educate and inform literally hundreds of millions of Americans about every kind of product safety issue that you can imagine, and we have produced results.

#### CONSUMER PRODUCT SAFETY COMMISSION'S RECORD OF ACHIEVEMENT

Since 1973 there has been nearly a one-third reduction in the rate of product-related injuries and deaths associated with the use of consumer products, and in specific product categories our results have been very, very significant. Just to give you two examples: An 89 percent reduction in crib-related deaths, and an 82 percent reduction in the poisoning deaths of children from drugs and household chemicals.

These successes are the direct result of the efforts of the CPSC, and they are quantifiable, but what is by far our biggest measure of success are the millions of deaths and injuries that do not happen because of the work of the CPSC. This agency has been and continues to be at the forefront of emerging product safety issues. For example, with respect to the health hazard to children presented by lead, we have addressed this issue in a number of different contexts including most recently proposing to ban lead in children's jewelry.

As another example, for many years there's been on the books a mattress flammability standard aimed at reducing fires caused by careless smoking. In 2 weeks, Mr. Chairman, our first ever major rule will go into effect mandating that mattresses also be resistant to open flame ignition such as from candles and lighters. We estimate that when this is fully implemented it will save close to 300 lives a year. I could go on, Mr. Chairman, but the point is this: We are careful. We collect data. We analyze issues. We look for patterns of product-related injury.

While this year we investigated one-third more incidents than we did 10 years ago, we do not investigate every isolated incident. We base our decisions on facts in the law, and when the facts in the law warrant, we act. I mentioned that we have approximately 400 staff nationwide, yet despite our small size by any objective standard, we are more effective today than we have been in the history of the agency. Is it all perfect at the CPSC? Of course it isn't.

But as a Commissioner for 2 years and as Acting Chairman for nearly 1 year, I can tell you that I work every day to find better and more efficient ways of doing things, and since assuming the role as Acting Chairman, I have initiated a number of reforms at the agency that I believe have and will continue to bring significant rewards to consumers including efforts to increase recall effective-

ness, to improve our information technology (IT), infrastructure, to decrease investigation response times and help ensure that the regulatory process proceeds with purpose, direction and efficiency.

In addition, Mr. Chairman, you and I have spoken about the possible revisions to our governing statutes that I believe will help remove some of the unnecessary legal hurdles through which we must jump to do our jobs while still protecting the interest of the public. Since fully two-thirds of our product recalls are now of imported products, you also know that we are being extremely proactive on the international front, having negotiated 12 agreements with foreign governments, and for the first time we are discussing concrete steps with the Chinese government to reduce the number of defective products. Mr. Chairman, I believe that the work of the CPSC over the years deserves the respect and recognition that it gets in many quarters.

I look forward to continuing to explore with you the ways in which we will continue to improve how we do business and how we serve the American public, and toward that end I am happy to answer any questions you may have.

[The statement follows:]

PREPARED STATEMENT OF NANCY A. NORD

Good morning, Mr. Chairman.

I am pleased to appear before you today in your capacity as Chairman of the Senate Appropriations Subcommittee on Financial Services and General Government and to discuss the missions and activities of the U.S. Consumer Product Safety Commission (CPSC), of which I am presently Acting Chairman.

We at the CPSC are proud to serve your constituents in Illinois and throughout America, and I can tell you that I have never before had the privilege to work with a more dedicated group of professionals than those at our agency. We truly do care about consumers and we work hard every day to ensure that the public is protected from unsafe products and empowered with the knowledge they need to reduce the risk that they or their families will be injured by using consumer products. After all, we, our children, family and friends are consumers as well. We, too, have a vested and personal interest in the effectiveness of the CPSC.

As you know, the U.S. Consumer Product Safety Commission (CPSC) is an independent, bipartisan federal commission established by Congress and charged with protecting the public from unreasonable risks of injury and death associated with more than 15,000 types of consumer products under the agency's jurisdiction.

Since its inception in 1973, CPSC's work has contributed substantially to the decline in the rates of death and injury related to the use of consumer products. We estimate that overall, injury and death associated with the use of products under our jurisdiction have declined by approximately one-third since the agency began its work. These reductions include: A 45 percent reduction in consumer-related residential fire deaths; an 89 percent reduction in crib-related deaths; a 74 percent reduction in product-related electrocutions; a 47 percent reduction in consumer-related carbon monoxide deaths; and an 82 percent reduction in poisoning deaths of children from drugs and household chemicals.

These are absolute reductions. When the increase in U.S. population is considered, the rate of these, and many other categories of product-related injuries that we have targeted, declined even more substantially.

While we are proud of these and the agency's many other achievements over the years, there is still much work to be done. Ever more technologically complex products, like those utilizing nanomaterials, as well as an unprecedented surge of imports, especially from China, continue to present the agency with new challenges.

The CPSC maintains a total nationwide staff of just over 400, has an annual budget of just over \$60 million and has jurisdiction over 15,000 types of products, with hundreds of new products entering the marketplace virtually every week. Limited resources and ever-changing products hazards require that the agency continually reassess priorities and increase efficiencies. Nevertheless, we do accomplish our missions, and I believe quite well.

The CPSC has three central missions:

- To identify existing and emerging product hazards that create an unreasonable risk of injury and to address those hazards by developing mandatory safety standards and by initiating and contributing to dozens of consensus standards every year;
- To conduct product recalls and to investigate and respond to product-related incidents; and
- To alert and educate consumers about product-related safety issues.

We carry out these three main missions by administering and enforcing the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, and the Refrigerator Safety Act.

Before describing each of these three main missions of the CPSC, I would like to provide some insight into the process by which we pursue certain product safety issues.

#### *Prioritization and Data Collection*

As the comparison of our resources with the sheer number and scope of consumer products in the United States would indicate, by necessity we prioritize. Issues that were paramount yesterday may not be so tomorrow, and as new product incident patterns emerge, they may displace earlier priorities. I emphasize the word “patterns” because this concept is integral to understanding how we conduct our activities at the CPSC. We do not now have, and frankly, never have had the resources to fully investigate and examine every one of the hundreds of thousands of annual product incidents of which we become aware.

Instead, the agency looks for trends or patterns among product incidents to anticipate and respond to emerging hazards. To do otherwise would disperse our finite resources in a thousand directions at once, dramatically reducing our overall effectiveness for the American public.

Integral to our identification and response to product incident patterns is the collection and analysis of product incident information and data. The CPSC is a data-driven agency. To adequately understand a product hazard and then to respond to it within the bounds of our governing statutes, we must have good information.

One of the primary tools we use to collect this information is our widely acclaimed and utilized National Electronic Injury Surveillance System, or NEISS system. This system monitors 100 hospital emergency rooms nationwide and captures any product-related injuries that individuals report. From more than 360,000 such reports received annually, we develop statistical estimates of product-related injuries. (It is important to understand that these are product-related, but not necessarily product-caused injuries).

CPSC also collects injury data from a number of other sources, including through company and consumer reports to our website, [www.cpsc.gov](http://www.cpsc.gov) and via our consumer hotline, medical examiner and coroner reports, monitoring media outlets, and through various other means. Manufacturers and retailers are also required by federal law to report to the CPSC when they become aware of defects in their products that could cause or that have caused injury. Many of these reports are examined and investigated by agency staff, culminating in “in-depth investigations,” which are in turn utilized to support regulatory, compliance (recall) and/or public education efforts.

Collectively, this information provides the basic data necessary to help guide our standards, compliance, and public information and education activities.

#### *Standards Activities*

With regard to regulatory action, it must be first understood that in the United States, there is a well-established system of voluntary—or what we prefer to call consensus—product safety standards. Under the guidance of respected groups like the American National Standards Institute, ASTM International, and Underwriters Laboratories, who work to bring all stakeholders, including consumers and consumer advocates, into the process, literally thousands of such standards have been written and are continuously being revised. CPSC staff over the last year participated in numerous consensus standards activities, including those covering magnets in toys.

There exists a strong preference in our statutes for deference to such consensus standards over the promulgation of mandatory CPSC-drafted regulations, when a consensus standard adequately addresses the product safety risk at issue. As a small agency, this consensus standards process allows the CPSC to leverage its resources and achieve much greater reach to affect the safety of many more products under our jurisdiction than would otherwise be possible with our limited resources.

However, in any case where a voluntary standard fails to adequately address a product hazard or where there is a lack of substantial compliance with an adequate

standard, the Commission may promulgate mandatory product safety regulations. In fact, we currently have underway 14 different rulemakings, more than at any other time in our agency's history.

As I mentioned earlier, the agency is being challenged by a surge of imported products. Today, over half of our recalled products were manufactured in China alone. This growing number of imported products, including those that do not meet relevant mandatory and voluntary standards, has strained CPSC's resources and challenged us to find new ways to work to ensure the safety of products in the stream of commerce.

#### *Imports*

To address the issues presented by imported products, the CPSC has negotiated memoranda of understanding with a number of foreign countries. These agreements generally call for close consultation on product safety issues. Additionally, last month, I went to China along with a team from the CPSC to discuss with Chinese officials the need to improve the safety of consumer products imported from that country.

We proposed to the Chinese a number of activities that they might undertake, both independently and in cooperation with our agency, to address product safety issues in four key product areas: toys, electrical products, fireworks, and lighters. It is my hope that these discussions will lead to tangible and measurable results. We have also organized the second U.S.-Sino Product Safety Summit, to be held this September in Washington, to continue this important work.

But these are by no means the only things that we are doing to address imported product-related safety problems. Recognizing the continuous and significant increase in the number of imported consumer products entering the American marketplace, the CPSC established the Office of International Programs and Intergovernmental Affairs to provide a comprehensive and coordinated effort to ensure greater import compliance with recognized American safety standards.

Additionally, we undertake both routine and targeted surveillance and sampling of products at U.S. ports of entry, working in conjunction with the Bureau of Customs and Border Protection. The CPSC is determined to make certain that imports meet the same high safety standards that products manufactured in America must meet.

#### *Compliance*

Whether manufactured domestically or imported from overseas, once a consumer product is found to be unreasonably hazardous, the CPSC's primary avenue to remove it from the stream of commerce is through a product recall.

In fiscal year 2006, the CPSC announced 466 recalls of defective products, representing over 120 million individual products. This was an all-time record number of recalls for the CPSC and demonstrates our more efficient and effective use of available resources today than at any point in our history. Utilizing efficiencies gained through a number of information technology, as well as a number of significant management and organizational reforms, we truly are doing more with less.

While the agency has the authority to require a mandatory product recall, due to the lengthy and costly nature of the statutorily-directed legal proceedings that we must undertake in order to issue such a recall, the reality is that the overwhelming majority of the recalls we oversee are voluntary on the part of the recalling firm. Voluntary recalls provide the quickest and most effective way of getting products off store shelves and out of consumers' hands. Compliance staff negotiates the details of each recall with the subject firm, after significant exchange of information between the firm and the CPSC.

Today, approximately half of our recalls take advantage of our innovative "Fast Track" recall program. Under this program the subject firm agrees to initiate a recall or other corrective action within 20 days after being contacted by the CPSC, generally in exchange for lack of a formal finding by the agency that a substantial product hazard exists. This program has been extremely successful at getting unsafe products off the market in a faster time frame that simply would not otherwise be possible if resorting to litigation were the norm.

#### *Public Information and Education*

CPSC's third important mission is to inform and educate the public about product hazards. Recalls and other important safety information are disseminated through all forms of media to warn the public of specific product hazards and advise consumers on more general product use issues. Many of our safety campaigns are directed toward children.

For example, last year the CPSC conducted public outreach campaigns on back to school safety and on the hazards of inflatable pools. The 2006 Safe Swimming



Campaign identified inflatable pools as an emerging hazard. This year's Safe Swimming Campaign focuses on the fact that a drowning death is a silent death that does not usually involve a child thrashing in the water or calling for help. This campaign emphasizes that multiple barriers and constant supervision are required when children are near pools. In 2006 the CPSC also conducted an information and education campaign on the dangers of television and furniture tipovers to raise awareness of this risk.

Additionally, the agency maintains three websites that give consumers and others access to all manner of product safety information. Those sites are [www.cpsc.gov](http://www.cpsc.gov), [www.recalls.gov](http://www.recalls.gov), and our newest website, [www.atvsafety.gov](http://www.atvsafety.gov), which is part of a very significant information and education campaign now underway to advise consumers about a number of ATV safety issues. Visits to CPSC's websites have grown rapidly over the past few years from 200,000 in 1997 to over 20 million last year.

In an effort to communicate with hard to reach populations, the CPSC initiated the Neighborhood Safety Network (NSN) which is a grassroots outreach program that provides timely lifesaving information to 5,000 organizations and individuals who in turn share our safety message with hard-to-target consumers. Among these groups are 222 from Illinois, including fire departments, child care centers, and clinics from around the state. These safety messages are often directed toward children's safety, such as the poster that we produced and distributed through the NSN warning of in-home drowning hazards.

CPSC's outreach efforts include making our safety information available in Spanish, and in fact, CPSC maintains Spanish language links on our website. We are also active in signing up Hispanic groups to our Neighborhood Safety Network and reaching out through Spanish language media outlets such as Telemundo and Univision.

In 2006 the agency exceeded its goal on topics related to products that present children's hazards by generating 57 agency appearances on television around the country. Topics included ATV safety, pool drownings, furniture and television tipovers and helmet safety. Also in 2006 we provided almost two million safety alerts, fact sheets and other publications through our Web site. The greater-than-expected increase in hits on CPSC's Web publications reflects the increased use of the Internet since our overall Web hits increased from 13.7 million in 2005 to 20.3 million in 2006.

This increase underscores the critical importance of CPSC's Information Technology infrastructure and systems. In addition to our data systems, such as the NEISS system that I described earlier, CPSC's IT tools allow us to extend our public outreach well beyond where it could go ten, or even as little as five years ago. As the numbers and types and sources of consumer products continue to grow at a time of limited resources for the federal government, maintenance and modernization of CPSC's IT infrastructure is more important than ever.

#### *Magnetic Toys*

This morning's hearing agenda also includes the subject of toys containing small magnets, a product hazard that the CPSC is aggressively working to address. In fact, today at CPSC headquarters in Maryland, the agency is conducting a long-planned, comprehensive forum to explore and develop new strategies to reduce magnetic toy ingestion hazards.

Following sessions on behavioral factors, incident data, magnet technology and medical issues, attendees will be updated on voluntary standards work and international efforts. The forum will then address design and technical issues for magnetic toys and discuss strategies to increase awareness of this hazard in the medical community and the public in general.

I am pleased to talk about this important subject with the Committee this morning within the constraints that we have previously discussed that are required by Section 6(b) of the Consumer Product Safety Act as well as the fact that the CPSC currently has active, open and ongoing investigations of incidents with regard to magnetic toys. I will note, however, that the agency has already initiated several major recalls of toys containing small magnets.

#### *Reauthorization*

Finally, Mr. Chairman, I would like to raise the issue of reauthorization of the CPSC and its governing statutes, particularly the Consumer Product Safety Act (CPSA). As you know, the last time the CPSA was updated by Congress was 1990. While I realize that you chair our relevant appropriations subcommittee, and that the Senate Commerce Committee has initial jurisdiction over our governing statutes, I thought it would be helpful to highlight to you some of the areas which I believe warrant attention by Congress generally.

Although the Commission's statutory authority is generally sufficient to deal with the vast majority of safety problems within our jurisdiction, I believe it is in the best interests of consumers to look to possible modernization of these statutes. In the long run, ensuring that the CPSC continues to maintain adequate statutory and resource tools not only will help address existing product safety issues, but also will enable us to continue to anticipate and understand emerging product safety hazards.

A thoughtful reauthorization could strengthen the agency's ability to deal with some of the most vexing consumer product safety problems and emerging hazards. For example, I believe that Section 6(b) of the CPSA serves a useful purpose in encouraging firms to report unfavorable information to the Commission by instilling trust that such information will not be unfairly or prematurely disclosed. However, the 30-day notice requirement to give firms the opportunity to assure the accuracy of the information to be released to the public might be shortened, in recognition of the instantaneous nature of modern communications.

I would also suggest that Congress consider amending Section 19 of the Consumer Product Safety Act to make it unlawful for anyone knowingly to sell a product that has been recalled. This type of provision has been adopted here in Illinois and exists at the National Highway Traffic Safety Administration, for example, and would be a useful tool for the Commission to have in those rare instances in which such willful sales of recalled products occur.

We are discussing internally whether additional authorities are needed to deal with imports and we look forward to discussing this subject with our authorizers. You should also be aware that our authorities differ under the various acts we administer, sometimes leading to differing results. Harmonization between the various statutes should also be considered.

Mr. Chairman, the outstanding work of the CPSC over the years has earned the agency the respect and recognition that it deserves—from the regulated industries, from advocacy groups and from the general public—to accomplish its mission effectively and efficiently. Consumer safety is never a completed task but always an ongoing process of research, standards development, enforcement and public education. The CPSC staff is talented, resourceful and absolutely committed to what they do, and I am pleased and proud to serve the American people with them.

Thank you again for your interest in the work of the Consumer Product Safety Commission. I look forward to answering your questions.

#### MAGNETIX CASE

Senator DURBIN. Thank you, very much, Madam Chair, and let me just make sure I understand for the record the timeline on Magnetix between the first notification to the Consumer Product Safety Commission of the potential danger, the confirmation of the injury or death and the actual recall of the product, can you give me the dates on each of those, please?

Ms. NORD. Mr. Chairman, as I have discussed with you and also with Chairman Rush, we are constrained by both our statute and the fact that we have an ongoing investigation from getting into specifics of this particular incident. I can tell you the dates of the recall, but, as you are aware, we have both statutory and prosecutorial restraints on what we can discuss in an open session. I would be more than happy to sit down with both of you and talk with you about this in closed session.

Senator DURBIN. I understand pending litigation in a courtroom. I'm a lawyer, but those three dates that I'm looking for appear to be matters of public record.

The first time that the Consumer Product Safety Commission was notified that there was a problem of any kind with magnets falling out of these products and being ingested was when?

Ms. NORD. Sir, there is no public record exception to section 6(b) of the Consumer Product Safety Act. That is a statute that is very clear on what I can say publicly. Again, I would be more than

happy to sit down and talk with both of you in closed session about this particular situation.

Senator DURBIN. Okay. For the record an incident report—when Magnetix first came out as a product was in April 2004. For the record, and I think we can confirm this, at least in May 2005 one victim swallowed these magnets from this product and going in for surgery. That's May 2005. December 2005 Kenneth Sweet died; 20-month-old child died ingesting these magnets. Now, we've gone from April 2005 to December 2005 to the death of this child. When was the first recall of this product issued by the Consumer Product Safety Commission?

Ms. NORD. The recall was March 31, 2006.

Senator DURBIN. 2006. So it was basically 2 years from the first Hot Line incident reported before the recall, and it appears to have been some 5 or 6 months from the death of a child before the first recall was issued.

Ms. NORD. Mr. Chairman, I am not going to sit here and violate the statute, so—

Senator DURBIN. I'm not asking you to.

Ms. NORD. What I would suggest to you is if we could speak in general terms here.

Senator DURBIN. I don't think there's anything general about a child dying, and you know the date he died. I am trying to figure out how long it took from the date of the death of this child to the recall of the product. That is a matter of public record, those two facts. I am not disclosing any secret confidential information, nor asking you to. Do you dispute those two dates?

Ms. NORD. The recall was March 31, 2006.

Senator DURBIN. Good. And you will concede the date of death of Kenneth Sweet is not at issue here.

Ms. NORD. I have no reason to think that it is.

Senator DURBIN. So my question to you is why would it take that long from the death of a child ingesting these magnets until the recall is sent out on the product?

#### CPSC RECALL AUTHORITY

Ms. NORD. Sir, we do not, as you well know, have the authority to unilaterally issue a recall.

In order to do that, the authors of the statute did not give us the authority to just say "This product will be recalled." They had due process in mind presumably. They have a hearing process that you have to go through, so that takes a great deal of time.

In order to protect consumers, in order to try to get product out of the hands of consumers and off store shelves as quickly as we can, we do things voluntarily. We try to negotiate voluntary recalls. That is a much quicker way of proceeding than if we were to go through the process that is spelled out in our statute.

Senator DURBIN. What is the normal timeline for an uncooperative firm? If you believe there's a dangerous product, the Consumer Product Safety Commission has been given notice of serious injury or death from a product and the firm refuses to cooperate, what is the usual and customary due process timeline that leads to recall under those circumstances?

Ms. NORD. The *Daisy* case would be the best one for you to look at. In that instance we started—or it's my understanding that the Commission started the proceeding in 2001. We settled it in 2004 without a recall.

Senator DURBIN. So in that case 3 years.

Ms. NORD. That's right, sir.

Senator DURBIN. Of so-called due process.

Ms. NORD. That's right, sir.

Senator DURBIN. That's certainly justice delayed by any perspective from children or in this case getting sick and dying.

Ms. NORD. And as I indicated, in that instance, there was no recall.

Senator DURBIN. In the case of Magnetix toys, did this firm, this Chinese manufacturing—I think later the company was acquired by another company, two companies involved in the production of this toy. Were they cooperative with the Consumer Product Safety Commission in the recall?

Ms. NORD. Sir, we have an open investigation ongoing here. We may take legal action. Again, I would welcome the chance to sit down with both of you gentlemen privately and go through all this.

Senator DURBIN. I understand that you have a pending case, and there are things that you can't say, and I don't want to put you on the spot any more than is necessary to make a record that makes sense to the average person.

We are dealing in our next panel with some people who have had personal tragedies because of this issue, so if I'm probing you for as much information as possible, it's because they want to know and we want to know. I think the public has a right to know about what is going on here.

Ms. NORD. I agree, sir.

#### IMPORTED PRODUCTS

Senator DURBIN. Well, let me get down to another basic here. I want to make sure that these facts are clear in the record. Two-thirds of all the products that you investigate are imports, correct?

Ms. NORD. Two-thirds of our recalls are of foreign products.

Senator DURBIN. And two-thirds of those imported products are from China.

Ms. NORD. That's correct.

Senator DURBIN. There was a suggestion made earlier or at least a question raised earlier as to whether the CPSC has the capacity to test products coming into the United States. From your testimony, 400 employees, \$60 million budget. It would seem to me to be beyond you to test every product that comes into this country.

Ms. NORD. We don't test every product, no.

Senator DURBIN. So the next question is are there organizations that test products? Underwriters Laboratories, well-known in this region of the country, that test products as to their safety? Are there similar organizations when it comes to something as basic as a toy, internationally recognized organizations for the safety of a product like a toy?

Ms. NORD. Yes, sir, I believe there are, but, you know, you're going to have a representative from the Toy Industry Association,

and that would be a good question to put to him, but there certainly are testing laboratories that test toys, of course.

Senator DURBIN. Is it fair to say that the Consumer Product Safety Commission does not investigate a product until the Commission receives notice of a problem, an injury or—

Ms. NORD. No.

Senator DURBIN [continuing]. Concern?

Ms. NORD. No. We have a whole staff of people who look at these issues. They respond to incident reports certainly, but we also on our own initiative go out and do investigations and acquire products to test, of course.

Senator DURBIN. So you will initiate the investigation even if you don't have—

Ms. NORD. Oh, yes, of course.

Senator DURBIN [continuing]. The report?

Ms. NORD. Absolutely.

Senator DURBIN. On what basis do you make that investigation?

Ms. NORD. On a number of different bases. First of all, we, the agency, has Commission-approved priorities, and those priorities direct where we spend our resources, but within those priority areas we will go out, and we will investigate products to see if we find violations of either mandatory standards or issues that indicate to us there needs to be a recall or regulatory action.

We also have something that we informally refer to as a program, and at the beginning of each year the compliance folks will put together a plan that they bring to the Commission which we approve that will have a whole series of activities to go out and investigate those kinds of products.

#### BAN ON LEAD

Senator DURBIN. You said that you were just a few weeks away from or close to proposing a ban on lead in toys?

Ms. NORD. No. I said that we have proposed a ban of lead in children's jewelry.

Senator DURBIN. Jewelry.

Ms. NORD. It's now an ongoing rulemaking, but the proposal out there is to virtually ban lead in children's jewelry, yes.

Senator DURBIN. Is there a reason why you haven't sought a similar ban for lead in children's toys?

Ms. NORD. Right now there is a ban on lead paint on children's toys.

Senator DURBIN. And so this recall of Thomas the Train product was it issued voluntarily?

Ms. NORD. Yes, it was.

Senator DURBIN. So the agreement by the company, the Chinese company that made this toy to recall the product.

Ms. NORD. Yes.

Senator DURBIN. Is that correct?

Ms. NORD. Yes.

Senator DURBIN. Can you tell me how long that took from your first notification that this toy had lead paint on it until the recall?

## SECTION 6(B)

Ms. NORD. It was not a particularly long period of time, but I am advised that I'm going to run into 6(b) again if I go into details here.

Senator DURBIN. 6(b). Why don't you explain that so anybody who is wondering whether you're avoiding the question——

Ms. NORD. Section 6(b) of the U.S. Consumer Product Safety Act requires that before we disclose to the public information that brings out a manufacturer's name and product, we take all means necessary to assure it's accurate and fair and that we give the company at least 30 days to look at the proposed disclosure and come back to us concerning the accuracy and the fairness of the disclosure.

Senator DURBIN. So I'm not going to dwell on this other than to say as a lawyer I'm troubled by what you just said. Here we have a toy with lead paint on it coming in from China that is a danger to children which has been widely recognized for decades, a company which acknowledges that the lead paint is a danger and a company that voluntarily recalls their product from the market because of this danger.

And you say it may prejudice that company for you to tell us a timeframe of when this decision was made?

Ms. NORD. The statute is very, very precise, sir.

Senator DURBIN. It's very, very bad too.

And clearly, this is our job to change it.

Ms. NORD. Yes.

Senator DURBIN. And if you cannot provide that basic information in the circumstances I just described, then is it any wonder that enterprising reporters from the Chicago Tribune and people across America think that this system is completely in chaos and is not protecting consumers across the country?

Ms. NORD. Sir, the statute is there. It's been there for a number of years, and if it needs to be changed, then you are in a position to do that, sir.

Senator DURBIN. Certainly hope we can.

Congressman Rush.

Ms. NORD. But sir, if I might just add a note here. Because of 6(b) we have been very constrained in what we can say, and I am incredibly troubled by the perception that you just articulated and the perception that the public might have that we are not doing our jobs. I think it's just incredibly unfair to the 400 folks at the CPSC who work so very hard to protect the public in ways that are hard to count, but we feel very constrained, believe me.

I would be very happy to sit here and tell you the details of those proceedings, but I do feel that I must follow the statute.

Senator DURBIN. Of course you must, and it's our responsibility to make sure those statutes are fair and realistic. In this case they clearly are not. If a child dies and you cannot even acknowledge that in your answer to a question in terms of the time to recall, something's wrong with the law or the agency, and it has to change, and if it comes to law, it's our job. If it comes to the administration of the agency currently as Acting Chairman, it's your job.

Ms. NORD. Absolutely, sir.

Mr. RUSH. Ms. Nord.

Ms. NORD. Yes, sir.

#### VOLUNTARY RECALLS

Mr. RUSH. We have had a number of conversations. You've testified before the subcommittee, and I'm each time I come away from the testimony with really quite a dilemma. I realize, and I strongly acknowledge that the 400 employees there at CPSC are doing quite well under the existing circumstances and under the limitation; the limitation in terms of the laws that govern the CPSC and also in terms of the capacity resource-wise, but I'm also—it seems to me that, and maybe you could help me here, because it seems to me that there is a reliance or over reliance on the so-called voluntary system of recall that plays out in demonstrating or at least implying that there is some kind of cozy relationship between manufacturers and the CPSC. Can you explain in detail the voluntary recall authority and mechanism and how it operates to this hearing?

Ms. NORD. Sure. Under the Consumer Product Safety Act, if we feel that there is an unsafe product out there and we believe a recall is warranted, basically what we need to do is start an administrative proceeding which would be a vote of the Commission, which I might just as a footnote indicate to you we could not have today because we have no quorum, but we start with a vote of the Commission. We then assign the case to an administrative law judge. The administrative law judge has a trial, makes a finding, makes a recommendation to the Commission. The company then can appeal to the Commission a finding if they don't like it. If we stick with our decision, then they can go to court.

As I indicated, this doesn't happen very often. It last happened in 2001.

We ended up starting this process, and we settled it in 2004, and, as I indicated, we settled it without a recall. Because of that process, we choose to do things in a much more streamlined way. Our view is if we can get the company to agree to do a recall, we get the product out of the hands of the consumers and off store shelves a whole lot more quickly than the process I just described, and indeed, sir, what we have done in recent years is initiate something that is even a faster process. It's called a fast track recall process. I think we are the only Government agency that has something like this whereby once we start talking with a company, if they agree that there is an issue here, we get that recall accomplished within 20 days. That is extraordinarily fast for the Government to operate, as I assume that you would concede, so about one-half of our recalls are these fast track recalls where we get the job done within 20 days of the problem walking in the door.

Mr. RUSH. How many recalls have actually—I mean can you say that this is as a result of fast track we have recalled how many products?

Ms. NORD. Oh, how many products? Well, we've had—

Mr. RUSH. And this is all in the voluntary system?

Ms. NORD. Oh, yes. Yes. We had last year I think 470 recalls. About one-half of them were fast track, so I can't tell you how many items that involves. I mean millions and million, but—

## MAGNETIX CASE

Mr. RUSH. Okay. And under Magnetix—

Ms. NORD. Uh-huh.

Mr. RUSH [continuing]. This was not—

Ms. NORD. No.

Mr. RUSH. This had to be litigated.

Ms. NORD. Well, no. This was ultimately a voluntary recall. They did agree to do it, but, again, if the company does not agree that there's a problem or they do not agree with the remedy that we are proposing, then we need to negotiate with them, which is what happened—well, which is what happens often when it's a nonfast track recall. You're looking perplexed.

Mr. RUSH. Well, I'm still at a point where I'm getting more and more into this quantity because you say that you laud the fast track process, but then with Magnetix it didn't result in the 20-day recall.

Ms. NORD. About one-half of our recalls are when the company agrees that there's a problem and that there needs to be a recall. That then proceeds under the fast track process which takes approximately 20 days at the outside. The other one-half of our recalls are much more contentious. They are still voluntary recalls because at the end of the day the company agrees to do the recall, but it is voluntary in the sense that we negotiate with them, we discuss what the scope of the recall should be, we discuss what the remedy should be. We have to make sure that the remedy is in place so that the customers can get something back.

Mr. RUSH. What's the current status of the Thomas toy, Thomas the Train?

Ms. NORD. It was announced last week, and it's ongoing.

## CPSC'S QUORUM

Mr. RUSH. The CPSC, you don't have a quorum?

Ms. NORD. No, sir.

Mr. RUSH. That means what?

Ms. NORD. That means we cannot vote on regulations. It means we cannot issue subpoenas. It means we cannot start an involuntary recall among other things.

Mr. RUSH. And why don't you have a quorum?

Ms. NORD. Because there's a vacancy on the Commission. The Commission is a three-person Commission, and under our statute when there is a vacancy on the Commission, we can operate with that vacancy for 6 months, and at the end of 6 months we are deemed by statute not to have a quorum. That 6-month period expired in the middle of January, so since January we have not had a quorum, sir.

Mr. RUSH. How long have you been without a Commissioner?

Ms. NORD. Since the middle of July.

Mr. RUSH. Of?

Ms. NORD. Of 2006.

## SECTION 15(B) REPORTING

Mr. RUSH. Consumer groups have charged that in following the interpretive guide issued last July on section 15(b) to report imme-



diately any product defects has in fact watered down that requirement. Do you agree with that?

Ms. NORD. Oh, no, sir. I don't agree at all. In fact, I think it's just the contrary.

Mr. RUSH. Would you explain what is 15(b)?

Ms. NORD. Sure. Section 15(b) of the Consumer Product Safety Act is the provision that says that a company must notify the Commission if they are aware that either they are selling a product that doesn't comply with a mandatory standard or, more significantly, if a product has a defect that could possibly present a substantial product hazard. This language, defects that could present a product safety hazard, is not very precise statutory language. For example, NHTSA has a similar provision, but the language there is much more precise as to what the trigger is, so, in any event, we need to have interpretive regulations to help describe what is meant by that statutory language. We have issued those.

We have heard complaints over the years that there is still a lack of precision as to what triggers that legal responsibility, and the regulations that were issued last summer were an attempt to give more precision. It was not an attempt to make it narrower. It was really an attempt to give it more precision, and, indeed, sir, I would suggest to you that one of the things that we did in that regulation that I think is really, really significant that has been very much overlooked is for the first time we recognize officially that failure to comply with a voluntary standard indeed could trigger a requirement to report under section 15(b) of the act, and that I think is something that is very, very significant because it really starts to give a lot more teeth to voluntary standards. So I suggest to you that what we did last summer was significant. It strengthened the act and was very useful.

Mr. RUSH. Returning to the area—

Ms. NORD. And, sir, if I might just add one more footnote to my answer. Since we issued that regulation, we have been getting more reports under section 15(b) than we got before, so if anyone is saying that somehow 15(b) was watered down by the regulation, they are just dead-on wrong. We are getting more reports now.

#### CPSC RECALL AUTHORITY

Mr. RUSH. In previous testimony by the attorney general, she indicated that in order to trigger a recall CPSC had to have an incident report, and I saw you grimace. Does CPSC need an incident report?

Ms. NORD. We can initiate recall discussions. We certainly don't need an incident to start a recall.

Mr. RUSH. So I wanted to clarify that. 6(b), you've mentioned 6(b), and you don't have unilateral authority under 6(b) to conduct recalls?

Ms. NORD. No.

Mr. RUSH. Should you have unilateral authority under 6(b) in the case of emergencies?

Ms. NORD. Well, sir, we've got authority under the act to go into court and seek an imminent hazard, but what that does is then push the action into a courtroom, and, again, what we have found is when we do that, it slows the process down.

Mr. RUSH. Well, should you have unilateral authority to initiate a recall such—I mean you mentioned NHTSA, that NHTSA has unilateral authority under the emergency conditions to initiate recalls. Should the CPSC have the same authority?

Ms. NORD. I'm not aware that NHTSA has that authority, but I'd like to look at the statutory provisions that NHTSA operates under and come back to you.

#### SPANISH TRANSLATIONS FOR RECALLS

Senator DURBIN. Thank you. Just a few wrap-up questions. Attorney General Madigan said that recalls are not issued in Spanish; is that correct?

Ms. NORD. We issue our press releases absolutely in Spanish.

Senator DURBIN. In terms of information given to retailers, for example, do you know if that's—

Ms. NORD. We do not issue—we don't issue recall posters. The manufacturer does that.

Senator DURBIN. Do you require of them that they put them in languages other than—

Ms. NORD. We do not require that posters be in Spanish.

Senator DURBIN. Why?

Ms. NORD. We negotiate that on a case-by-case basis, so we could, I mean in appropriate situations.

Senator DURBIN. Can you think of a reason why you wouldn't?

Ms. NORD. I think we have done that, sir.

Senator DURBIN. Can you think of a reason why you wouldn't require them to issue the recall in Spanish?

Ms. NORD. If there wouldn't be Spanish speakers in the area. I mean—

Senator DURBIN. It would seem to me if safety is the goal, protecting the public is the goal, that we would concede the obvious, and that is that there are many consumers in America for whom Spanish is the first language, so I'm hoping that from this point that you will think seriously about always requiring it. I can't think of a reason why you wouldn't.

#### KNOCKOFF PRODUCTS

Ms. NORD. We'll certainly take that to Washington.

Senator DURBIN. Now, in terms of the knockoff products which look even more dangerous than the Magnetix products, now that we have established—and I won't ask you to get into our 6(b) problems again—that this is a dangerous product that needed to be recalled because of these tiny magnets, and knockoffs have been produced with different names from different companies with the same tiny magnets, is there a reason why those knockoff products have not also been recalled?

Ms. NORD. Yes. Those were sent to us at the end of May. We responded to the attorney general within a couple of days actually of getting that, and they're being tested right now to see if indeed they have the same problems. If they don't have the same problems, then they shouldn't be recalled. If they do have the same problems, then we will take care of it.

Senator DURBIN. How long will that process take?

Ms. NORD. They're being tested right now. I can't tell you off the top of my head.

Senator DURBIN. Is it a matter of weeks or months?

Ms. NORD. Weeks.

Senator DURBIN. Let me ask you about adverse event reporting. The makers of drugs and of dietary supplements have a legal requirement to report to the Food and Drug Administration (FDA) if there is a bad result; person gets sick or a person dies. Are there any similar requirements for manufacturers of goods and products for the CPSC—

Ms. NORD. Yes. Section 15(b) of the U.S. Consumer Product Safety Act has a reporting requirement. In fact, frankly, sir, I think that 15(b) probably predates the FDA requirement.

Senator DURBIN. And does it require timely reporting?

Ms. NORD. Yes.

#### CPSC FINES

Senator DURBIN. And what is the failure or what is the penalty for failure to report on a timely basis?

Ms. NORD. Again, it could go up to \$1.825 million.

Senator DURBIN. And how often, if ever, have you imposed that kind of a fine for failure to timely report a product?

Ms. NORD. We impose fines all the time. Right now we can't collect fines because of the lack of a quorum, but up until that occurred we had collected I think \$4, \$4.5 million for this fiscal year.

Senator DURBIN. What is the ordinary fine? What is the range of your ordinary fine for failure to timely report a dangerous product?

Ms. NORD. Oh, you know, I hate to say something is typical because every case is different, but it ranges from—

Senator DURBIN. Hundreds of dollars?

Ms. NORD. No. From \$100,000 all the way up to \$1.8 million, and, sir, you should understand that we have ways to get above the \$1.8 million. Perhaps I shouldn't admit that to you, but we do.

#### MEMORANDUM OF UNDERSTANDING WITH CHINA

Senator DURBIN. You mentioned that you were entering into a memorandum of understanding with the Chinese.

Ms. NORD. We entered into it in 2005.

Senator DURBIN. And what has been the result?

Ms. NORD. Under the memorandum of understanding the agency agreed to do a couple of things with the Chinese.

First of all, we set up four different working groups to look at fireworks, lighters, electrical products, and toys. Those working groups have met sporadically since 2005. We had a pretty intense session in May in Beijing, a meeting of the four working groups. The Chinese are coming back to Washington in September, at which point I am hopeful that we will have agreements in each of those four areas that will get into how the two agencies operate, exchange information and cooperate with respect to problems we find.

Senator DURBIN. After the contamination of pet food, there's a similar effort underway with the Chinese.

Pending that kind of agreement the FDA is now inspecting every shipment of food exported by China to the United States to determine whether it's adulterated, contaminated or poisonous. Based on the information you've given us that one-half of your work deals with Chinese products, can you take in any extra effort as an agency to put that kind of surveillance on Chinese imports until you're satisfied that they don't pose a danger to American consumers?

Ms. NORD. We're doing a couple of things, sir.

First of all, we are working very closely with Customs and Border Protection. We are in the process of entering into something called their ACE system, automated commercial environment, which we're negotiating with them right now, and that is basically a computerized system whereby we will be getting information on the cargo containers, basically the incoming product that's coming into the United States so that we can see what's coming in as it is leaving China before it hits the border.

Senator DURBIN. Okay. Thank you very much.

Mr. RUSH. Mr. Chairman, you hit on an area I really need to—

Ms. NORD. Sir, you've hit on something that really requires a lot more conversation. I mean we don't have the authority—we don't have the resources to do what you have just described the FDA is going to do. We don't have it. We would need much more appropriations in order to do that.

#### CPSC'S CIVIL PENALTIES

Mr. RUSH. In the area of resource, Chairman Nord, what are the fines to companies? Where do those fines wind up? Do they go back to the General Treasury?

Ms. NORD. Yes, they go back to the General Treasury.

Mr. RUSH. They go back to the General Treasury. Last week I had a hearing in the House. You would not testify. Usually testify there, but at the hearing I proposed an increase of the fines that you could impose from \$1.8 million to \$10 million, and according to your written testimony you were not in favor of that increase in fines. Can you give me your reasoning for being opposed to an increase in fines?

Ms. NORD. First of all, let me just clarify, sir. As Chairman of the agency, especially since the Commission has not voted on an agency position, I did not express opposition for or support for any of the bills that you have in front of you. I was basically trying to tell you how they would impact the agency.

Mr. RUSH. Well, do you support or individual—as a Commissioner are you in favor of the increase?

Ms. NORD. I think it is really inappropriate for me as Chairman or a Commissioner to personally individually support or oppose legislation. That's I think the prerogative of the Commission. I can tell you, however, what the concerns that we have are. You know, we've discussed this at the staff level, and there are some concerns. The other thing, sir, I think you—

Mr. RUSH. Well, what are the concerns?

Ms. NORD. The concern is that if you increase the penalties tenfold, which is what you're talking about in your legislation, basically we issue penalties for failure to report.

Mr. RUSH. Well, we are increasing the ban, not the cap level, the cap.

Ms. NORD. What I am concerned about, sir, is that we are going to be just overwhelmed by reports of things that are not problems, and this is something that has happened to us, so it's not an unfounded fear, sir. If a company has a \$20 million liability for failure to report, under that provision that I described to you, which is very, very imprecise, then we are concerned that the company may just report everything, so we are going to get the wheat, we're going to get the chaff, we're going to get everything, and that could possibly overwhelm our compliance people, and that is a concern that we are very, very serious about.

That has happened to us. The first time we decided to go after a major retailer the response was, "Okay. You want to see it all? Here it is," and we just got a lot of information that was not very useful. Section 15(b) is really an important tool for us, so we don't want to see it overwhelmed with information that we have to go through that is really not relevant.

The other thing, sir, that I'm concerned about is there are some issues with our penalties provisions. They need to be monitored, they need to be changed, and I would hope that as we talk about changing the penalty cap amount, we could also expand the conversation to get into some of the other things that I think act as more of an impediment to enforcement of the act than perhaps the penalty does.

For example, we have criminal provisions, they're different from statute to statute. Under one of our statutes, one of our major statutes, basically we have to give a warning before we can bring action under that provision, so I'm saying you've got to catch them doing it once, tell them not to do it again and then catch them the second time. Sir, that's crazy. That shouldn't be the result.

So something like that could be cured as you're looking at this. It would be nice to start talking about some asset forfeiture provisions. Plus the penalty provisions in the statute are written in a somewhat odd way, and it's unclear really how much flexibility we have under section 20 of the act dealing with those. Clearly, we can impose penalties, so penalties is a complicated topic, and to really give us the tools we want, you're going to have to do more than just increase the cap, sir.

Mr. RUSH. Thank you, Mr. Chairman.

Senator DURBIN. Thank you, very much Congressman Rush.

Thank you, Chairman, for your testimony. Appreciate it. The third panel today consists of Sharon Henry, who is the mother of this boy; Carter Keithly, who is the president of the Toy Industry Association; Nancy Cowles. She's from Oak Park, Illinois—she's the executive director of Kids In Danger, and Kyran Quinlan with the American Academy of Pediatrics.

The Federal courthouse has been kind enough to let us use this courtroom. Judge Zagel told me in advance that there would be a trial following this hearing, so we are going to do our best to clear the courtroom in time for them to begin, and so we would ask those on the panel first thank you for attending.

If you would submit your written testimony in its entirety for the record, and then we will ask you to limit your remarks to about

5 minutes if you can, and then Congressman Rush and I will do our best to ask you some questions and try to wrap up as close to 11:30 as possible. Ms. Henry, if you would be kind enough to open up the testimony, I'd appreciate it very much.

**STATEMENT OF SHARON HENRY**

Ms. HENRY. Hi. I'm here today as a mother to tell the frightening story of what happened to my little boy Deron.

I'm also here as a concerned consumer to ensure that this tragedy does not happen to anyone else. My son Deron was very excited when he got the box of Magnetix building blocks for Christmas 2005. Like any other boy, he was eager to start building with these colorful objects.

During the time we allowed him to play with the toy we never suspected that the toy posed a hazard. We did not know that these pieces could be swallowed. We did not know that hundreds of other children had swallowed them and that the company still had not warned parents and consumers, made the product safer or taken the toy off the market. Unbeknownst to us, Deron played with these attractive magnets. He began to swallow them. Apparently the magnets stayed in his stomach and began clinging to each other.

Six months later in June 2006 when Deron complained that his stomach hurt we didn't know what was wrong. The vomiting and the pain were intense, so we took him to the doctor. X-rays revealed the presence of the magnets, that parts had perforated Deron's bowels, and he needed emergency surgery. The doctors told us that if 24 hours had passed Deron would have died. I will live with those words for the rest of my life. If I hadn't taken action and did what I did, my son would not be here today. Deron required 75 stitches in his bowel, and doctors say that he may suffer from bowel obstruction and abdominal pain for the rest of his life because of the many sutures. He must eat frequently because his bowels do not allow him to retain any food. Others have not been so fortunate to still have their children here because of this toy. Some children like Deron survived but with permanent intestinal problems. We wait to see what long-term effects this incident will have on my son.

Parents would not buy a toy that they knew was potentially lethal for their unsuspecting child. I went to Clifford law offices last year and decided to file a lawsuit to make others aware of this extremely hazardous toy. I want Mega Brands Company to understand what they did to my little boy and to our family. I am very fortunate to have seen Deron off to school today. These little objects are not handy. They are not even toys. They are very dangerous objects masquerading as toys. This company, this toy is composed of parts that have an extremely strong magnetic force. No parent would ever suspect that the magnet properties of this game could literally tear holes in a child's intestinal tract.

The company did not take proper precautions, particularly when the lives of small children are involved, simply to make a profit. Manufacturers must design and test children's toys with absolute safety in mind. As consumers we must make sure that other similar toys and pieces are not allowed to be put back on the market.

If my presence here today makes just one more parent aware of the dangers of this toy and saves just one more child, it is worth it. Thank you.

Senator DURBIN. Thank you for your testimony. Photo of your son. Handsome young man. How old is he now?

Ms. HENRY. He's seven.

Senator DURBIN. Off to school today?

Ms. HENRY. Summer school, yes.

Senator DURBIN. Thank you. Mr. Quinlan from the American Academy of Pediatrics.

**STATEMENT OF KYRAN QUINLAN, M.D., M.P.H., F.A.A.P., ON BEHALF OF THE AMERICAN ACADEMY OF PEDIATRICS**

Dr. QUINLAN. Good morning. My name is Dr. Kyran Quinlan, and I appreciate the opportunity to present testimony on behalf of the American Academy of Pediatrics (AAP). I'm a clinical associate in general pediatrics at the University of Chicago, and I'm the medical director of the Injury Free Coalition For Kids at the University of Chicago. I'm also a member of the American Academy of Pediatrics Committee on Injury, Violence and Toys.

The AAP commends the subcommittee and you both, Chairman Durbin and Congressman Rush, for holding this hearing calling attention to the hazard of rare earth magnets in toys. The introduction of these so-called rare earth magnets in children's toys have given rise to a new hazard for children. Simply stated, these are not your parent's magnets. Rare earth magnets are approximately 10 times stronger than even the stronger ferrous magnets. As a result, they're able to exert a powerful attractive field even through human tissue. A child may ingest a single magnet without suffering adverse consequences, but if more than one magnet is swallowed the results can be disastrous. Magnets can connect to each other inside the body through sections of the bowel leading to potentially fatal perforations, infection and sepsis.

In December 2006 the Centers for Disease Control and Prevention published a report that documented one death and 19 cases requiring gastrointestinal surgery after ingestion of these small powerful magnets. In April 2007 the Consumer Product Safety Commission noted that it was aware of one death, one aspiration and 27 intestinal injuries. The injuries caused by these magnets are especially pernicious because they're not immediately evident. Children present to the doctor's office or hospital with abdominal pain, vomiting or diarrhea, and these common symptoms may not be ascribed to the correct cause quickly, leading to further deterioration of the child's condition. These magnets can be so small that parents may not even realize that they have fallen out of a toy or been swallowed by the child.

Together these factor in the result in a unique and serious health hazard for children. Toys containing small magnets continue to proliferate on store shelves. A quick survey reveals several varieties of magnetic building sets, dolls with magnets embedded in them, numerous forms of jewelry and more. These toys are not limited to any particular age group, developmental level or geographic area. The AAP has been actively engaged in efforts by ASTM International to develop a voluntary standard for magnets used in toys.

The AAP was not satisfied with the proposed standard and registered concern with the ASTM regarding the proposal's provisions on safety labels, the size and strength of the magnets to which those standards would apply and issues surrounding the fact that older children as well as young children have been documented to ingest these magnets. The AAP did not block adoption of the standard in order to allow some standards to take effect as soon as possible.

We are however pressing ASTM to strengthen these provisions to ensure that children's safety is a top priority.

In addition to our work with ASTM, AAP is engaged in dialogue with the CPSC about how best to educate families about the dangers of magnets in toys and remove unsafe products from store shelves. AAP is participating in today's staff learn at CPSC headquarters in Washington which was designed to solicit input toward possible solutions that could be used to protect children from serious magnet ingestion injuries. The American Academy of Pediatrics has a number of specific recommendations on how to address the emerging hazard of magnetic toys.

First, recalls must be improved. Current law and procedures often result in recalls that are confusing to parents and the general public. As a result of these confusing recalls, unsafe toys remain in children's homes and are able to continue to cause severe preventable injuries. The AAP urges Congress to examine the Consumer Product Safety Commission's authority to issue clear, compelling effective recalls that are easily understood by parents and consumers.

Second, family and healthcare providers must be educated about the hazards of small magnets. The AAP recognized early the hazards of small magnets in toys in part due to our strong working relationship with the CPSC. Each month our news magazine, AAP News, publishes selected CPSC recall notices.

In January 2007, AAP News published a major article on the hazard of small magnets in toys. Pediatric experts discussed this issue with members of the media and parent-oriented publications. Nevertheless, it was difficult for this issue to penetrate the public consciousness. The parents I see are almost always unaware of the danger from these toys. Even if they have noticed magnets falling out of the toys, it never occurs to them that they can pose a health hazard. We must do more to assist parents in accessing vital health information on product recalls and the steps they can take to protect their children from these entirely preventable injuries.

Third, CPSC must be strengthened. As an agency the CPSC has never been given the tools it needs to fulfill its mission. Since its creation the agency has been routinely underfunded and undermined by successive Congresses and administrations. CPSC staff has gone from a high of 978 in 1980 to just 400 today even as the consumer marketplace has burgeoned with new products. The President requested a budget of \$63.2 million for CPSC in fiscal year 2008 which would require the agency to cut an additional 19 employees.

The CPSC has been without a voting quorum of Commissioners since January 2007 as we have heard, meaning it cannot make many regulatory enforcement and other actions. The President's re-



cent nominee to chair the Commission withdrew from consideration after a public outcry regarding his qualifications. An appropriately qualified chair must be nominated and approved in a timely fashion.

In conclusion, I appreciate this opportunity to present testimony on behalf of the American Academy of Pediatrics. The academy applauds the subcommittee's efforts to bring attention to this important issue. The AAP will continue working to educate pediatricians and families about these magnets and to prevent any more needless incidents due to magnet ingestion.

In addition, we look forward to working with Congress to strengthen CPSC and ensure it has all the tools necessary to protect children and families from dangerous products. I'd be pleased to answer any questions.

Senator DURBIN. Thank you.

[The statement follows:]

PREPARED STATEMENT OF KYRAN QUINLAN

Good morning. I appreciate this opportunity to testify today before the Appropriations Subcommittee on Financial Services and General Government at this hearing to discuss magnetic toys, the safety of consumer products, and proposals to improve the statutory authority of the Consumer Product Safety Commission (CPSC). My name is Kyrán Quinlan, MD, MPH, FAAP, and I am proud to represent the American Academy of Pediatrics (AAP), a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults. I am a member of the American Academy of Pediatrics' Committee on Injury, Violence and Poison Prevention. I am a clinical associate in General Pediatrics at the University of Chicago and Medical Director of the Injury Free Coalition for Kids at the University of Chicago.

*Magnetic Toys Pose a Hazard to Children*

The introduction of so-called "rare earth" magnets in children's toys has given rise to a new injury hazard for children. Simply stated, these are not your parents' magnets. Rare earth magnets are approximately ten times stronger than even the strongest ferrite magnets. As a result, they are able to exert a powerful attractive field even through human tissue.

A child may ingest a single magnet without suffering adverse consequences. If more than one magnet is swallowed, however, the results can be disastrous. Magnets can connect to each other inside the body through sections of the bowel, leading to potentially fatal perforations, infection and sepsis. In December 2006, the Centers for Disease Control and Prevention (CDC) published a report that documented one death and 19 cases requiring gastrointestinal surgery after ingestion of these small, powerful magnets.<sup>1</sup> In April 2007, the Consumer Product Safety Commission noted that it was aware of "one death, one aspiration and 27 intestinal injuries."<sup>2</sup> It is notable that the age of children affected is higher than typically seen with foreign body ingestion—the mean age of affected children is 5.5 years and 80 percent are 3 years or older.

The injuries caused by these magnets are especially pernicious because they are not immediately evident. Children present at the doctor's office or hospital with abdominal pain, vomiting, or diarrhea. These symptoms may not be ascribed to the correct cause quickly, leading to further deterioration of the child's condition. These magnets can be extremely small, meaning that parents may not be aware that they have fallen out of a toy or been swallowed by a child. Together, these factors result in a unique and serious health hazard for children.

Toys containing small magnets continue to proliferate on the store shelves. A quick survey reveals several varieties of magnetic building sets, dolls with magnets embedded in them, numerous forms of jewelry, and more. These toys are not limited

<sup>1</sup>Gastrointestinal Injuries from Magnet Ingestion in Children—United States, 2003–2006. *MMWR Weekly*, Dec 2006 55(48): 1296–1300.

<sup>2</sup>Consumer Product Safety Commission recall notice, "Magnetix Magnetic Building Set Recall Expanded," April 19, 2007, <http://cpsc.gov/cpscpub/prerel/prhtml07/07164.html>.

to any particular age group, developmental level, or geographic area. Moreover, many toys designed for older children are also accessible to their younger siblings at home.

*Strong Magnets in Toys Must Be Regulated Appropriately*

The AAP has been actively engaged in efforts by ASTM International to develop a voluntary standard for magnets used in toys. The AAP was not satisfied with the proposed standard and registered concerns with ASTM regarding the proposal's provisions on safety labels, the size and strength of the magnets to which the standard would apply, and issues surrounding the fact that older children as well as young children have been documented to ingest these magnets. The AAP did not block the adoption of the standard in order to allow some standard to take effect as soon as possible. We are, however, pressing ASTM to strengthen these provisions to ensure that children's safety is the top priority.

In addition to our work with ASTM, AAP is engaged in dialogue with the CPSC about how best to educate families about the dangers of magnets in toys and remove unsafe products from store shelves. AAP is participating in today's staff forum at the CPSC headquarters, which was designed to solicit input toward possible solutions that can be used to protect children from serious magnet ingestion injuries. A number of steps are necessary to improve CPSC's ability to police the marketplace for dangerous versions of these toys, some of which would require changes to the agency's underlying statute.

*Recalls Must Be Improved*

To date, the CPSC has issued at least 6 major recalls involving toys with small magnets totaling approximately 6.5 million units. In some cases, these recalls produced great confusion among parents. In March 2006, CPSC recalled 3.8 million Magnetix building sets due to the hazard posed by small magnets coming loose from the plastic building pieces. Consumers were instructed to return the sets to the manufacturer for a "free replacement product suitable for young children under the age of 6." The notice also stated, however, "The replacement program does not include sets at retail."

In April 2007, the CPSC expanded the Magnetix recall to cover all sets "except those sold since March 31, 2006" and those that contained a particular cautionary label. It is unclear how that label made those sets dramatically safer. It also seems unreasonable to assume that all unsafe products had been removed from store shelves as of March 31. Consumers were instructed to return sets to the manufacturer to receive "a comparable set." Again, it is unclear how or why a comparable set might be safer for children than the one being returned.

Similarly, in November 2006, the agency recalled 2.4 million "Polly Pockets" play sets because the tiny rare earth magnets in the sets were prone to falling out. CPSC cited 170 reports of the small magnets coming out of these recalled toys, including three reports of serious injuries to children who swallowed more than one magnet and suffered intestinal perforations that required surgery. However, that recall also stated, "Polly Pocket magnetic play sets currently on store shelves are not included in this recall." It is unclear why the unsold versions of these toys were considered safe.

The upshot of these confusing recalls is that unsafe toys remain in children's homes and are able to continue causing severe preventable injuries. The AAP urges Congress to examine the Consumer Product Safety Commission's authority to issue clear, compelling, effective recalls that are easily understood by parents and consumers.

*Families and Health Care Providers Must Be Educated About The Hazards of Small Magnets*

The AAP recognized early the hazards of small magnets in toys, in part due to our strong working relationship with the CPSC. Each month, the AAP publishes selected CPSC recall notices involving toys, children's products, and children's clothing in our news magazine, AAP News. In January 2007, AAP News published a major article on the hazards of small magnets in toys. Pediatric experts discussed this issue with members of the media and parent-oriented publications. Nevertheless, it was difficult for this issue to penetrate the public consciousness.

The parents I encounter daily are almost always unaware of the danger from these toys. Even if they have noticed magnets falling out of the toys, it never occurs to them that they could pose a health hazard. We must do more to assist parents in accessing vital health information on product recalls, health hazards, and the steps they can take to protect their children from these entirely preventable injuries.

*CPSC Must Be Strengthened*

As an agency, the CPSC has never been given the tools it needs to fulfill its mission. Since its creation, the agency has been routinely underfunded and undermined by successive Congresses and Administrations:

- CPSC staff has gone from a high of 978 in 1980 to just 400 today, even as the consumer marketplace has burgeoned with new products.
- The President requested a budget of \$63.2 million for CPSC in fiscal year 2008, which would require the agency to cut an additional 19 employees. This budget is insufficient to even allow the agency to continue current programs, much less expand its efforts. At its founding, the CPSC budget was \$39 million. If the budget had kept pace with inflation, it would be \$138.2 million today, more than double its requested allocation.
- The CPSC has been without a voting quorum of commissioners since January 2007, meaning it cannot take many regulatory, enforcement and other actions. The President's recent nominee to chair the commission withdrew from consideration after a public outcry regarding his qualifications. An appropriately qualified chair must be nominated and approved in a timely fashion.
- The authority of the agency to issue mandatory recalls and provide full information to consumers must be strengthened.

*Conclusion*

The American Academy of Pediatrics commends you, Mr. Chairman, for holding this hearing today to call attention to the hazards of rare earth magnets in toys. The AAP will continue working to educate pediatricians and families about these hazards and to prevent any more needless tragedies due to magnet ingestion. In addition, we look forward to working with Congress to strengthen the CPSC and ensure it has all the tools necessary to protect children and families from dangerous products. I appreciate this opportunity to testify, and I will be pleased to answer any questions you may have.

Senator DURBIN. Nancy Cowles is head of the Kids In Danger project, and we'd like you to submit your written testimony and be kind enough to try to summarize in 5 minutes so we can ask a few questions.

**STATEMENT OF NANCY A. COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER**

Ms. COWLES. Yes, I certainly will. As you mentioned, I'm executive director of Kids In Danger which is a nonprofit organization that works on children's product safety. We were founded in 1998 by two University of Chicago professors after the death of their son Danny in a poorly designed, inadequately tested and feebly recalled portable crib. Our mission is to promote the development of safer children's products, to advocate for children and to educate the public about children's product safety. We're doing all we can to protect children and welcome this opportunity to speak to you about this issue.

When we first learned of the death of Kenny Sweet in December 2005, I have to say that as a mother of three and safety expert, I thought I had heard of every possible way that a child could die from a dangerous product, yet this particular gruesome and specific danger of magnets was not one that I was aware of, but as the Chicago Tribune series published in May revealed, both the company and the CPSC had heard of potential injuries by the time Kenny died, and they could have taken earlier action to prevent his death and scores of other injuries.

As soon as Kids learned of Kenny's death, we brought it to the attention of the ASTM Committee on Toy Safety. Why CPSC or the toy industry didn't raise the issue when they first learned of it to that group is a mystery. This spring ASTM published a standard

1½ years after Kenny's death and almost 2 years after the Indiana childcare provider called to warn the CPSC.

Unfortunately, this is quick in the world of standard setting. The new standard is simply voluntary, includes a requirement that toys with swallowable magnets have a warning label about the dangers of magnets, and that toys be tested to make sure that the magnets don't fall as they did with Magnetix in the recall.

However, the standard is not required to make warnings on toys with larger magnetic components and still allows toys with loose, swallowable magnets to be sold. Read the stories of the children who survived as you heard here from Ms. Henry, and you'll see what a devastating injury these little magnets cause. Most of the children injured were well above the age limit on the toy. Those that weren't usually got their magnets when they broke loose from the toy, not from lack of supervision. When CPSC took action, it was too little too late. They recalled some of the Magnetix sets but left ones on the store shelves even though they had no proof there was any difference between those two items, but apparently they could do nothing more, and that recall stood for 1 year while children continued to get hurt from those old Magnetix, the supposedly new and improved Magnetix, other Magnetix toys and jewelry.

As the Tribune article put it, this isn't just the story of this one family's grief or this one product. It's emblematic of how this Federal agency is unable to carry out its mandate.

First of all, look at the fact that early reports of the dangers were overlooked or ignored from CPSC and the manufacturers. As the injuries piled up, no effort was made to reach out to the public to highlight this emerging risk.

Second, when a recall was announced, the resulting release and replacement program was so confusing it's amazing that any parent took advantage of it. CPSC must have the power to draft their own press releases about dangerous products without the red pen of the manufacturer scratching out their every attempt to get the danger across.

Third, I would like to commend the dedicated engineering staff and career staff at CPSC. They worked hard both with the ASTM Committee and with others to continue to push the danger of this. It was the CPSC staff along with consumer representatives in the AAP who kept pushing the group for stronger and stronger regulations.

And finally, not enough is done in this case or many others to make sure the products are off the shelves. As we heard here in Illinois, we have the work of our attorney general to continue to get them off, but that simply should not be her job. That should be done nationally. If a manufacturer—they know how to reach us to sell us these products. They should know how to get them off the shelves and out of our homes after they've proved to be dangerous.

So I have some suggestions, our wish list for children's product safety. First to manufacturers, simply test your products. Make sure they meet all voluntary mandatory standards before they're sold, and test for likely hazards not yet addressed by a standard. If you can't guarantee the safety of products you may have manufactured overseas, then bring your factories back here to the United States. The Thomas the Tank engine recall that you mentioned,

while it was made in China, the company who makes it is based right here in Oak Brook, Illinois.

The Technon Laboratory that you also asked about have more staff overseas than they have here in the United States. There is simply no excuse for a product that's sold in America not to be tested to the same standards no matter where it's made. Consider how the product is actually going to be used, not your ideal circumstances. Expect your designers and engineer to think about safety as they develop a product, not simply as an afterthought. For CPSC we would ask that you advocate for your agency initiatives. Request the money needed to protect consumers, especially children.

When the statutes under which you operate prohibit you from naming specific companies, don't miss the opportunity to warn parents about the general hazard of the product. Take your obligations under the Freedom of Information Act seriously. Simply not responding to requests for information or losing the file is simply not acceptable. Investigative journalists, consumer advocates and even lawyers can be your allies in getting the message out about product safety, and for Congress we would ask that you give CPSC the funding it needs to keep our children safe.

We need more dedicated staff members to pursue the standard setting, investigate changes and enforce corrective actions. Remove the cap on civil penalties. Serious violations of safety law deserve serious fines. Remove section 6(b). Don't censure public safety. I can now get more information on safety concerns about a baby stroller and other products from the customer comments on Amazon.com, and I would recommend all parents go there when they're considering buying a product than I can from our Federal safety agency.

Senator DURBIN. If I could ask you to please wrap up.

Ms. COWLES. Sure. We were funded by grieving parents who believed that the company who made the deadly crib and the CPSC failed to protect their son from death. I cannot tell you how it adds to their grief to know that almost 10 years later more families are put through similar tragedies because of the inaccurate response by manufacturers, retailers and regulators. We thank you for holding this hearing and look forward to some action on this issue.

Senator DURBIN. Thank you.

[The statement follows:]

PREPARED STATEMENT OF NANCY A. COWLES

Good morning Senator Durbin, Representative Rush, Commissioner Nord and panel 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 feebly 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.

Starting here in Illinois, 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 seven 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 work with engineering programs at univer-

sities including Northwestern 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 how we believe the Congress and the U.S. Consumer Product Safety Commission could better protect our children.

KID first learned of the death of Kenny Sweet in December of 2005. Kenny had died on Thanksgiving Day from magnets attaching to each other and ripping through his intestines, creating a blockage and releasing toxins into his abdominal cavity—he was 20 months old. The magnets had fallen unnoticed out of a Magnetix construction set as his older siblings played with it and nestled unseen in the carpet until Kenny found them.

As a mother of three and a safety expert, I thought I had heard every possible way there was for a child to die from a dangerous product—but until Kenny died, I had never heard of the very specific and gruesome danger of swallowing magnets.

But as the Chicago Tribune series published in May revealed, both the company and the CPSC had heard of the potential injuries by the time Kenny died. They could have taken earlier action to prevent his death and scores of other injuries.

As soon as KID learned of Kenny's death, we brought it to the attention of the ASTM Committee on Toy Safety, the voluntary standard setting group for toys. Why CPSC or the toy industry didn't raise the issue when they first learned of it is a mystery. We raised the issue at the February meeting, the first Magnetix recall was the end of March, and ASTM began working on the issue in June after a task group was appointed. This spring, ASTM published a standard, a year and a half after Kenny's death and almost two years after an Indiana child care provider called to warn the CPSC. And this is quick in the world of standards setting.

The new standard is voluntary. It includes a requirement that toys with swallowable magnets be labeled with a warning about the dangers of magnets and that all toys with magnets be tested to assure that the magnets do not fall out during use as was the case with Magnetix and Polly Pocket dolls. However, the standard does not require the magnet warning on toys with larger components and still allows toys with loose swallowable magnets to be sold. In my opinion, no toy that contains small magnets, accessible or not, should be sold without the warning for parents. And CPSC should weigh the dangers of small candy shaped magnets and consider a ban of particular shapes and sizes based on the large number of incidents.

Read the stories of the children who survived and you'll see what a devastating injury these little magnets cause. Most of the children injured were above the age limit on the toy. Those that weren't usually got the magnets when they broke loose from the toy—not from lack of supervision. In fact, the recent CPSC recall of more Magnetix sets documents at least 1,500 reports of magnets coming loose—compared with one death and 28 injuries—luckily, parents are supervising their children. But supervision can't be the only line of defense between our children and defective products.

When CPSC finally took action, it was too little too late. They "recalled" some Magnetix sets, but left the ones on the store shelves—even though they had no proof that there was any difference between the ones in homes and the ones on shelves. In fact, the manufacturer never used the word recall—they called it a replacement program and said "if you bought it for a child under age 6 (it was marketed for 3 and up) and were uncomfortable with having it in your home, you could return it for another product"—nothing to give the parent going to the site a sense of urgency about getting the product out of her home.

But CPSC apparently could do nothing more and that weak-kneed recall stood for a year, while children continued to get hurt from old Magnetix, new Magnetix, other magnetic toys and magnetic jewelry. The recall was announced on March 30, 2006. That fall, Jonathan Midgett from CPSC published *Gastrointestinal Injuries from Magnet Ingestion in Children—United States 2003–2006* in MMWR weekly of the CDC. And in November, 8 months after the initial recall and almost a year after Kenny's death, magnets were mentioned by the CPSC for the first time in a general safety warning—not related to a specific product. Too long in our opinion—there was no restriction on CPSC announcing the general hazards of these strong magnets when it was first brought to their attention—but lack of staff or funding or will kept it on the back burner until a child had died and dozens more were injured.

The story of Kenny's death and injuries from magnets in toys is horrific. KID urges parents to keep all toys with strong magnets away from children under six and from all children who have a tendency to mouth objects. In addition to Magnetix, CPSC has recalled 4.4 million Polly Pocket dolls after 3 injuries requiring surgery and 170 reports of loose magnets, 40,000 Magneblock toys, 30,000 magnetic

puzzles and almost 9,000 townhouse toys because of the hazards the magnets pose. Jewelry with magnets can also pose a real risk to any age child.

As Patricia Callahan of the Tribune put it; this is not just the story of one family's grief or the hazards of one type of toy, but "emblematic of how a weakened federal agency, in its myopic and docile approach to regulation, fails to protect children."

First, as highlighted in the Chicago Tribune article, early reports of dangers from the magnets were overlooked or ignored by CPSC and the manufacturer. So often I hear from parents that they report a problem to the CPSC and are never contacted again. As the injuries piled up, no effort was made to reach out to the public to highlight this emerging risk. Again, as someone who spends her days learning about and trying to prevent childhood injuries from nursery products and toys, I was unaware of this specific risk of swallowing or inhaling magnetic pieces. If I'm not aware of it, I can assure you that parents trying to supervise their children are even less aware of it. CPSC needs to take its mandate to protect the public from hazardous products more seriously and Congress needs to give them the funding and staffing they need to do a better job.

Secondly, when a recall was announced, the resulting release and replacement program was so confusing that it is amazing any parent took advantage of it. Parents could tell that the product they had in their home was no different than the ones still on the shelves of some stores—making them unsure about the need to return their product. The press release obfuscated the real hazard the toys posed, gave contradictory messages and downplayed the danger. Not because CPSC wanted it that way, but because Section 6(b) of the Consumer Product Safety Act creates a situation where the company has the upper hand. CPSC must have the power to draft their own press releases about dangerous products without the red pen of the manufacturer scratching out their every attempt to get the danger across.

Third and this is a strength of CPSC, the dedicated engineering and career staff worked hard to identify the danger and present information to the ASTM subcommittee to draft a strong voluntary standard. It was CPSC staff along with consumer representatives who, although vastly outnumbered on the task group, kept pushing to create a stronger standard. CPSC needs increased funding to keep these dedicated professionals and increase their ranks—we would then be able to identify more hazards prior to injury rather than waiting until someone gets hurt.

Finally—not enough was done to make sure the recalled products were off the shelves. Even after the Tribune's expose, the recalled items remained on shelves here in Illinois. The Illinois Attorney General, armed with the Illinois Children's Product Safety Act and her own commitment to keep children safe has taken a strong role in monitoring retailers here in Illinois. CPSC really should be taking the lead on this and making manufacturers take the steps needed to reach every retailer and every consumer possible. They know how to reach us when they want to sell their products, they can use those same methods to reach us to retrieve the dangerous recalled products.

So you ask, are children's products safe? My answer to parents is "we can't be sure." Most parents believe that children's products and toys are tested for safety before they are sold and if there is a recall, the companies will make every effort to reach them—wrong on both counts. Here is our wish list to improve children's product safety:

#### *Manufacturers*

Test your products before they are sold. Make sure they meet all voluntary and mandatory standards before they are sold and test for likely hazards not yet addressed by a standard.

If you can't guarantee the safety of products you have manufactured overseas, then bring your factories back to the United States. More than 30 years after lead paint was banned in the United States there is no excuse for products meant for children to be coated in lead. Just last week, Thomas the Tank Engine toys, a staple for millions of children, were recalled because of lead paint. This is unacceptable.

Take human factors into account. Consider how the product is actually going to be used, not your ideal circumstances. Expect your designers and engineers to think about safety as they develop a product, not as an afterthought when the product is almost ready for the market. KID would be happy to send our Teach Early Safety Program for undergraduate engineers to use as a refresher course for product designers.

Be open about product hazards and react quickly. Don't dismiss incidents reported by consumers. Remove unsafe products quickly from the store shelves, spend money to retrieve recalled products effectively and look carefully at other product lines to make sure more products don't have the same hazard.

*Retailers*

Get it off the shelves. When you are informed of a recall, make sure every unit of the product is removed and returned to the manufacturer. Products taken off the shelves, but left in the back rooms often mistakenly end up back on the shelves.

Post notices online and in stores. Let your customers know that they can get up to date safety information from you.

Contact as many consumers as possible. If you have contact information, use it to let your customers know they may have a dangerous product.

Require your manufacturers to show proof of pre-market testing. Every shipment of children's products you receive should have some certification that it was tested to all relevant mandatory and voluntary standards and additional certification that the paint or substances used are lead free.

Report returns to the manufacturer and CPSC. CPSC often only learns of defects after the product has left the store shelves, be a reliable source of information on unsafe products to CPSC.

*CPSC*

Advocate for your agency and your mission. Request the money needed to adequately protect consumers, especially children, from dangerous products. CPSC has a smaller budget to oversee more than 15,000 product types than the FDA has to oversee animal medicine.

When the statutes under which you operate prohibit you from publishing information about a hazard and naming specific companies, don't miss the opportunity to warn parents about the general hazard.

Take your obligations under the Freedom of Information Act seriously. Simply not responding or "losing" the file is not acceptable. Investigative journalists, consumer advocates and even lawyers can be your allies in getting the message out about product safety—we are not the enemy.

*Consumers*

Follow age guidelines and recommendations on all products. Don't take them as a challenge, as in "my 2 year old is as smart as an average 3 year old!" They are there for safety reasons.

If you have a problem with a product that you believe could be unsafe, report it both to the manufacturer and the Consumer Product Safety Commission.

Check all the products you use with your children at [cpsc.gov](http://cpsc.gov) and sign up for email alerts about recalls—either from the CPSC or monthly from Kids In Danger.

Tell your friends and family about the need to check all products, especially hand me downs, for recalls. Find more information about keeping children safe at [www.KidsInDanger.org](http://www.KidsInDanger.org).

*Congress*

Give CPSC the funding it needs to keep our children safe. We need more dedicated staff members to participate in voluntary standard setting, investigate reports of dangers and enforce corrective actions.

Remove the cap on civil penalties. Fines should be unexpected and painful—not something a company can write into its budget. Serious violations of safety laws deserve serious fines.

Remove section 6(b)—don't censor public safety. If CPSC doesn't have the funding or mandate to take action against companies, arm consumers with the information they have so we can protect our own children. No other federal safety agency is subject to this provision, with no observable negative effect on the drug industry, auto companies or other regulated companies. I can get more information on safety concerns about a baby stroller in the customer comments at Amazon.com than I can from our federal safety agency. Congress should change this by denying manufacturer's veto power over safety alerts.

Ask CPSC for annual reporting on recall effectiveness, FOIA request fulfillment, investigations of death and more. Hold them accountable. It is impossible to find out if a product recall is effective. When requesting this information I have been told everything from "that file is lost" to simply being ignored, even though supposedly monthly reports are filed with the agency. Congress can ask for this information—simply making it public will have a positive effect on the recall return rate.

Support pending legislation to require pre-market testing of durable children's products. CPSC has no authority to make companies prove their products are safe before they are sold. 177 children were injured and six killed before dangerous products recalled just last year could be removed from the market place. Looking back 5 years, over 1,200 children were injured by products before they could be recalled. Requiring manufacturers to test their products before they are sold and having a



certification seal from CPSC that parents could look for would greatly improve the safety of our children. Simply put, it is what most parents already believe to be the case.

Support pending legislation to require product registration cards for durable children's products. Perhaps they are not all returned, perhaps a product is no longer with its original owner, but this information could still vastly improve the likelihood that a parent will learn of a dangerous product before their child is injured.

Kids In Danger was founded by grieving parents who believed that the company who made the deadly crib and the CPSC failed to protect their son from death. I can't tell you how it adds to their grief to know that almost 10 years later, more families are put through similar tragedies because of the inadequate response by manufacturers, retailers and regulators. Thank you for holding this hearing and we can only hope that with renewed public scrutiny, additional funding and staff and a renewed commitment to safety, CPSC can be effective in protecting children from harm.

Senator DURBIN. Carter Keithly head of the Toy Industry Association.

**STATEMENT OF CARTER KEITHLY, PRESIDENT, TOY INDUSTRY ASSOCIATION, INC.**

Mr. KEITHLY. Thank you very much for giving us the opportunity to provide comments about the important subject of consumer product safety in general and about the safety of toy products in particular.

I'm Carter Keithly, the president of the Toy Industry Association (TIA) of about just a little more than 1 year ago. The Toy Industry Association is a not-for-profit trade association with more than 500 members, and our members account for about 85 percent of U.S. domestic toy sales. Because our market consists of one of the most vulnerable segments of our population, our children, our number one priority and the number one priority of our members is to assure that our products are safe.

Our industry has lead the world in developing toy safety standards. We are proud of our record of accomplishment and the respect that we have earned from the safety authorities. Decades ago, under the auspices of the National Bureau of Standards, the TIA led the development of a safety standard for toys, and in 1996 the standard was republished as an ASTM consensus standard. Consensus standards such as a standard for toys are developed under the auspices of standards development organizations, and the development of such standards involves participation by consumers, CPSC, industry experts, retailers, safety consultants, testing labs and academics.

They are developed in an open and transparent process and are more quickly implemented than rulemaking which can take years. Bringing all interested parties together to develop safety standards has made America the leader in safety standards around the world.

The system is expeditious, flexible, and effective. It avoids the slow, bureaucratic processes of governments and allows for constant review and revision to accommodate changes in products and technology. It enables industry and safety organizations to react quickly to emerging and unforeseen issues, and as a consequence of the merits and success of this system, Congress wisely emphasized a preference for reliance upon what it termed voluntary safety standards in the Consumer Product Safety Act.

The system deserves the continued support of Congress. Our toy standard is under constant review, and a revised version of the toy

safety standard was published just last month. The revisions contain important new provisions to address magnets individually or as components in toys. Products containing magnets as loose parts are required to include labeling, safety labeling, and toys containing magnets as components may not liberate magnets during use or abuse. The ASTM work group developed a standard for magnet in toys in record time. ASTM approved the standard as published and directed that the work group continue to evaluate potential hazards and refine the standard if needed over the next year.

In addition, CPSC is this very day conducting a forum at the headquarters to indicate to the industry and others about the standard.

In addition to the design specifications prescribed by toy safety standards, manufacturers must submit their toys for safety testing to reduce or eliminate potential hazards during normal use or abuse. The tests include requirements addressed mechanical, electrical, thermal, chemical hazard. Thanks to the toy safety standard and testing process, toys are extraordinarily safe. In spite of the remarkable process in improving the safety of children in America over the past year, children unfortunately today still face significant risks, but those risks are mostly unrelated to toys. Tragically, often avoidable injuries take the lives of more than 1 out of every 10,000 children in the United States annually. It includes children who die in motor vehicle accidents or drown in bathtubs. I have provided you data on the primary causes of children's deaths.

CPSC's annual report indicates that of 15 commonly used household products, toys had among the lowest number of incidences of injury and death. It is still heartbreaking when accidents with toys occur, but we react quickly and vigorously when any pattern of hazard emerges relating to toys. Unfortunately, attention continues to focus on the small risks associated with toys while some very big risks remain unaddressed. The net result is that we often waste scarce resources in areas of minimal risk such as toys at the expense of allocating them efficiently to make children's lives truly safer.

An enormous number and variety of consumer products are sold in the United States, and thousands of new toy products alone are created for sale in America.

Any governmental system of standards of testing for such a vast number of consumer products could never cope with the sheer volume. That is why our system of consensus standards has worked so successfully. The CPSC does a very effective job with a modest budget. We commend the Commission and its hardworking staff for their successful work on behalf of the American public, and we believe there are ways the Commission can become even more effective and efficient.

Toward that end I'd like to offer the following recommendations: First, we support dynamic new partnerships between stakeholders and the Commission to promote safety and safe consumer practices. Second, we support the Commission's involvement in private standards activities as authorized in the current statute. Third, there is a need for better guidance and education from the Commission on the implementation of section 15 product hazard reporting provisions. The current law implementing regulations is still vague and

ambiguous, and it is difficult for manufacturers, especially small businesses, to determine when reporting corrective action are necessary. Fourth, in the global economy we note the importance of the agency's international engagement to ensure greater import with fines with safety standards.

And, finally, we believe the CPSC does not lack authority to implement its congressional mandates. However, it requires greater resources to implement its support. Thank you for providing me the opportunity to testify. The Commission is an important agency, and we fully support its mission. It can and should have the funding and resources it needs.

[The statement follows:]

PREPARED STATEMENT OF CARTER KEITHLEY

Chairman Durbin, thank you for the opportunity to provide comments about the important subject of consumer product safety in general and about the safety of toy products in particular. I am Carter Keithley, President of the Toy Industry Association (TIA). TIA is a not-for-profit trade association with more than 500 members. Our members account for 85 percent of U.S. domestic toy sales. While there are a few very large toy manufacturers, over 75 percent of our members are companies with under \$5 million in sales.

Because our market consists of one of the most vulnerable segments of our population, our children, our number one priority, and the number one priority of our members, is to assure that our products are safe. Together with the U.S. government, recognized standard development organizations, independent toy safety experts and others, the toy industry has led the world in the development of globally recognized toy safety standards. We have invested heavily in child development research, dynamic safety testing, quality assurance testing, risk analysis and basic anthropometric studies of children. For decades, TIA has worked tirelessly for toy safety and we are proud of our record of accomplishment and our relationships with the National Safety Council (NSC), National Bureau of Standards (NBS), American National Standards Institute (ANSI), ASTM International and the International Standards Organization (ISO). To help assure the effective implementation of toy safety standards, we provide comprehensive and accurate information on toy safety 24 hours a day, through a special area on our website: [www.toy-tia.org/consumer/parents/safety/4toysafety](http://www.toy-tia.org/consumer/parents/safety/4toysafety).

THE SUCCESS OF THE CONSENSUS SAFETY STANDARD SYSTEM

In 1976, under the auspices of NBS, TIA led the development of a voluntary safety standard for toys. In 1986 the standard was revised and published as an ASTM consensus standard.

Consensus standards, including the standard for toys, are developed under the auspices of international standards development organizations such as ASTM International. The development of such standards involves the participation of consumers, consumer organizations, CPSC, industry experts, retailers, safety consultants, testing laboratories and academic institutions. In the ASTM standards process, consensus of all participants and ASTM is required prior to enactment. ASTM standards are developed in an open and transparent process, with a balance of participants. Consensus standards, such as the ASTM Toy Standard are more quickly achieved than rulemaking, which can take several years.

The system of bringing all of the interested parties and subject matter experts together to provide guidance and direction in the development of safety standards has made America the leader in safety standards around the world. The system is expeditious, flexible and effective. It avoids the slow, rigid bureaucratic processes of government. It allows for constant review and revision to accommodate changes in products and technology, and enables industry and public safety organizations to react quickly to emerging and unforeseen safety issues.

As a consequence of the merits and success of this system, Congress wisely emphasized a preference for reliance upon "voluntary" safety standards in the Consumer Product Safety Act. Section 7(b) of the Act provides: "The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be sub-

stantial compliance with such voluntary standards.” The consensus standard system deserves the continued support of Congress.

As one of the largest standard development organizations in the world, we are proud to have ASTM as the publisher of the toy safety standard. The current standard, ASTM F963-07 Consumer Safety Specification on Toy Safety, is under constant review, and a revised and updated version of the toy safety standard was published at the beginning of last month. The revised Standard contains important new provisions to address certain types of hazardous magnets, individually or as a component in toys or craft sets intended for children from 3 to 8 years of age. Products containing such magnets as loose parts will be required to include safety labeling on their packaging and instructions. The labeling shall contain, at a minimum, the following text or equivalent that clearly communicates to parents:

“WARNING: This product contains (a) small magnet(s). Swallowed magnets can stick together across intestines causing serious infections and death. Seek immediate medical attention if magnet(s) are swallowed or inhaled.”

The Standard also addresses the potential for release of magnets during reasonably foreseeable use or abuse of toys. Under the new standard, toys should not liberate magnets during use or abuse.

ASTM commended the efforts of the Magnets Work Group in developing a standard for magnets in toys in record time. The ASTM Subcommittee on Toys approved the standard as published, with the intent that the Subcommittee’s Magnets Work Group would continue to evaluate the potential hazards and the standard, refining it, if needed, over the next year. In addition, CPSC is this very day conducting a forum at the agency headquarters in Bethesda, MD to educate industry on the new magnet standard.

TOYS ARE TESTED FOR SAFETY

In addition to the design specifications prescribed by the toy safety standards, manufacturers must submit their toy products for testing to reduce or eliminate potential hazards during normal use or reasonably foreseeable abuse conditions. These include, but are not limited to, testing requirements addressing mechanical, electrical, thermal and chemical hazards. For example, testing involves simulated use-and-abuse tests, testing for accessible sharp points and edges, small parts, projectiles, heavy metals in paint and other surface coatings, flammability, toxicity, and even noise level restrictions.

Many 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. Major retailers duplicate this process on product orders.

THE TOY SAFETY STANDARD IS EXTRAORDINARILY SUCCESSFUL IN PROTECTING CHILDREN

In spite of remarkable progress in improving the safety of children in America over the past century, children today still face significant risks, but those risks are mostly unrelated to toys. Tragically, often-avoidable injuries take the lives of more than 1 out of every 10,000 children in the United States annually. This includes infants that die before their first birthday in motor vehicle accidents and many who drown in bathtubs. Here are the data relating to primary causes of the death of children annually in the United States:

ESTIMATED ANNUAL MORTALITY RISK FOR CHILDREN UNDER AGE 10

[Number of deaths per million children]<sup>1</sup>

	Number
Motor vehicles .....	46
Guns .....	5
Drowning .....	20
Poisoning .....	2
Suffocation .....	17
Bicycles .....	2
Fire .....	16

## ESTIMATED ANNUAL MORTALITY RISK FOR CHILDREN UNDER AGE 10—Continued

[Number of deaths per million children]<sup>1</sup>

	Number
Medical care .....	2

<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.

CPSC's annual report indicates that of fifteen commonly 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 with other products. The actual rate of children's deaths related to toys would be about the same as the rate of suicide for children under 10, which is extremely rare! Of course accidents still occur, and we react quickly and vigorously when any pattern of hazards emerges relating to our products.

Unfortunately, media attention continues to focus on the small risks associated with toys while some very big risks remain unaddressed. In a world where perception is reality, where misinformation often drives perception, and where new, scary and uncertain hazards receive widespread attention, it is no wonder that policy makers and parents lack context for understanding and managing children's risks. The net result is that we often waste scarce financial resources in areas of minimal risk, such as toys, at the expense of allocating them efficiently to make children's lives measurably safer.

## CPSC'S VITAL FUNCTION

CPSC's mission is to protect children and families against an unreasonable risk of injury and death from more than 15,000 types of consumer products from a wide range of product hazards. Their work addresses consumer product hazards through a framework of mandatory product safety standards where appropriate; engagement in the voluntary or consensus standard-setting process; compilation of consumer injury data; issuance of safety guidelines; information and education programs to proactively avoid injuries; and product recalls and corrective actions when necessary.

In 2006, CPSC completed 471 product recalls involving nearly 124 million product units that either violated mandatory standards or presented a potential risk of injury to the public and negotiated civil penalties of approximately \$2.3 million. In addition, the CPSC compliance staff has continued to refine its Retailer Reporting Model implemented in 2005 and used by two of the nation's largest retailers. This provides additional complaint data for evaluation by the staff, which supplements manufacturer and consumer reporting.

An enormous number and variety of consumer products are designed, manufactured, imported and sold in the United States. Thousands of new toy products alone are created for sale in the United States, nearly half of which are sold in just the last quarter of the year. Any governmental system of standards or testing for such a vast number of consumer products could never cope with the sheer volume. That is why our pluralistic system of consensus standards has worked so successfully to promote prosperity and consumer satisfaction while assuring safety in America. Consumer product companies also recognize the value of responsible corrective action to address patterns of injuries or misuse that may indicate a problem with their products. This alertness accounts for most of the product recalls conducted in cooperation with the Commission.

The CPSC does a very effective job with a relatively modest budget. We believe that their budget request of \$63,250,000 for fiscal year 2008 should be granted. We commend the Commission and its hard-working staff for their successful work on behalf of the American public, and we believe that there are ways the Commission can become even more effective and efficient. Toward that end, I would like to offer the following recommendations:

*Collaborative Information and Education Programs*

First, we support dynamic new partnerships between stakeholders and the Commission to promote safety and safe consumer practices. Consumer information and education does not substitute for the essential responsibility of manufacturers to provide safe products, but it can help with a large percentage of accidents due to improper or irresponsible conduct or lack of supervision of minors. The Commission

is fully authorized to embark on such programs, but encouragement and additional funding from Congress should be provided.<sup>1</sup>

*Continued Involvement in Consensus Safety Standards and Activities*

Second, we support the Commission's involvement in private standards activities as authorized in the current statute. These standards are the bulwark of our national and even international safety system, and the Commission plays an important role in providing comments and proposals.<sup>2</sup> However, we believe the Commission needs to better manage and supervise its internal process, particularly staff input to standards organizations, to ensure an opportunity for public comment and to prevent proposals which lack technical merit or otherwise cannot be justified as federal standards. This is why we support the Commission's stated strategic goal to improve the quality of CPSC's data collection through 2009 by improving the accuracy, consistency and completeness of the data.

*Continued Efforts to Engage and Educate Small Manufacturers*

Third, there is a need for better guidance and education from the Commission on the implementation of the Section 15 Substantial Product Hazard Reporting provisions. Manufacturers with defective products that could create substantial product hazards are obliged to report to the Commission and, if needed, to take corrective action including recalls. However, the law and implementing regulations are vague and ambiguous. It is difficult for manufacturers, especially small businesses, to determine when reporting and corrective action is necessary. We support the Commission's efforts to clarify guidance on reporting and penalty computation by issuance of guidelines, which were subject to prior publication, comment and review prior to adoption.<sup>3</sup>

*A Strong Role in Setting and Enforcing Safety Standards in a Global Economy*

Fourth, in a global economy, we note the importance of the agency's international engagement to ensure greater import compliance with U.S. safety standards and harmonization of standards to promote export opportunities for American businesses and the elimination of non-tariff trade barriers. CPSC has entered into Memorandums of Understanding (MOU) with a number of foreign governments to provide for a greater exchange of information regarding consumer product safety. We note by the end of 2008, CPSC expects to have MOUs with 17 countries. These activities are becoming increasingly important in helping to ensure consistent hazard-based, harmonized global safety standards.

*Existing Regulatory Framework is Effective, But More Resources are Needed*

Finally, we believe that the existing authority granted to the Commission under the Consumer Product Safety Act and related Acts, together with existing implementing regulations, are sufficient for the CPSC to execute its mission in an effective manner. The CPSC does not lack the requisite authority to implement fully its congressional mandate "to protect the public against unreasonable risks of injury associated with consumer products." However, it requires greater resources to implement such authority. Recently the Consumer Federation of America noted that this is the most important action that Congress can take. We agree that funding is necessary to insure staffing levels are maintained and laboratory equipment is kept up to date.

Thank you for providing me the opportunity to testify. The Commission is an important agency and we fully support its mission. It can and should, have the funding and resources it needs to effectively function and we look forward to working with the Committee to this end.

<sup>1</sup> CPSC has been increasingly effective at using electronic media and websites. The creation of [www.recalls.gov](http://www.recalls.gov) and enhancements to their website has resulted in a rapid growth from 200,000 visits in 1997 to what is expected to be almost 25 million visits by the end of the year. Product safety information is increasingly available in Spanish and other languages. In addition, outreach activities such as the Neighborhood Safety Network; collaborative efforts with FEMA and public information education initiatives with NGOs and industries have resulted in increasingly effective communication about fire and carbon monoxide hazards, disaster preparedness, hazards associated with recreational vehicles, proactive holiday safety messaging, poison prevention, pool drowning risks and back to school safety programs.

<sup>2</sup> CPSC has worked with stakeholders to develop effective consensus standards completing approximately 10 times as many voluntary standards as mandatory standards (CPSC assisted in completing and developing 352 voluntary safety standards while issuing 36 mandatory standards from 1990 through 2006).

<sup>3</sup> Federal Register, Vol. 71, No. 142, pages 42028-42031 and proposed interpretive rule, Federal Register, Vol. 71, No. 133, pages 39248-39249.

Senator DURBIN. Mr. Keithly, your testimony I've read over leads one to believe that extensive testing takes place before toys are put on shelves in American retail establishments.

Mr. KEITHLY. Yes, sir.

Senator DURBIN. So you're saying that the toys that we're discussing this morning were tested through the process that you've described?

Mr. KEITHLY. Yes, sir.

Senator DURBIN. And so can you explain to me how a Thomas the Tank train could have lead paint on it and be sold in the United States when we have known for decades that lead ingested by children is a danger?

Mr. KEITHLY. No, sir. I can't explain it, and it should not happen, and there needs to be consistent constant monitoring and enforcement of compliance of these standards.

Senator DURBIN. What about these tiny rare earth magnets which turned out to be so dangerous for Ms. Henry's son and for Kenneth Sweet and so many others? Are you telling us that your industry tested those magnets ahead of time and envisioned the possibility that they would be ingested and still included them in products sold in the United States?

Mr. KEITHLY. Sir, I don't believe anybody envisioned the possibility that they would be ingested, and when the industry learned, and, particularly, the company learned that this problem and hazard, that's when the industry moved quickly.

Senator DURBIN. So let me ask you how quickly you moved. Since we learned that in April 2004 we had the first report of danger to children, and it wasn't until May 2006 that there was a recall, do you consider that a quick response by your industry?

Mr. KEITHLY. Well, sir, the standard preparation practice here or system was set in motion in February I believe of 2006, and about 14 months later the standard was issued.

Senator DURBIN. And how many of these toys were sold in that 14-month period of time while you were working up to a recall?

Mr. KEITHLY. I don't know, sir. I could try and determine that for you.

Senator DURBIN. Do you understand that as they were being sold with these dangerous magnets you were endangering the life of children with those toys?

Mr. KEITHLY. Well, sir, I think that—I don't know that we were endangering the lives of children. I think that truly the industry cares and the industry needs to and has consistently worked toward toy safety.

Senator DURBIN. I don't understand that. If you were arguing that these toys were not endangering the lives of children, then you're defying all the evidence we have that these magnets, and this is a brand new version of the toy which is a little safer I might add, but in its original version these tiny little magnets could pop out. Let me ask you. I don't know if you're a parent or whether you have small children.

Mr. KEITHLY. I am, yes.

Senator DURBIN. Do you consider it an unreasonable likelihood that a child seeing a tiny little magnet would swallow it?

Mr. KEITHLY. Well, a small child, yes, sir. That's why these toys are not sold for small children at all.

Senator DURBIN. So what age group are they sold for?

Mr. KEITHLY. Above three.

Senator DURBIN. Above three. So you're saying that children above three would not swallow these things.

Mr. KEITHLY. Well, sir, I don't know if that's the right standard or not. The standard is being continually analyzed.

Senator DURBIN. That's why when you testify about this extensive testing and all the different things that are done on the toys, and then I ask you some basic questions about lead paint and swallowing magnets, I'm afraid it's not a confidence builder that your testing is really protecting me. Now, let me ask you about China. If one-half of the products being investigated by the Consumer Product Safety Commission come from China, do you pay special attention in your industry to toys that are coming in from China? Have you been forewarned that there are some problems?

Mr. KEITHLY. We do indeed, and, in fact, every year for the past 11 years and coming up again next month we have hosted toy safety standard seminars for Chinese manufacturing operations, and we have invited and made provision for participation by the CPSC in those seminars.

Senator DURBIN. How would you describe the level of cooperation and compliance by Chinese manufacturers with what you consider to be normal safety standards for toys sold in America?

Mr. KEITHLY. I believe it's gotten very good, sir. Mistakes are made from time to time, but, as was testified earlier, most of the safety testing laboratories that are headquartered here in the United States have a huge staff in China to make sure that there is compliance.

Senator DURBIN. You said mistakes were made. Is this one of the mistakes?

Mr. KEITHLY. I don't know, sir. Mistakes were made apparently in the lead and paint situation, but I'm not sure that—that product was most likely made before the standard was established, before it was learned what the hazard was.

Senator DURBIN. Congressman Rush.

Mr. RUSH. Ms. Cowles, we only have a few moments. I just want to ask you in your testimony you mentioned the weak-kneed recalls.

Ms. COWLES. The original Magnetix recall, and I again have been working on this issue since 2000, was really one of the weakest recalls I had ever seen. It basically did not require that the products be taken off the shelves, and so while there was no indication on the packaging, what the difference was was the one you bought on March 29 versus the one that was still on the shelf on March 31, there was no apparent difference. One was so-called recalled and the other wasn't, and yet if you went to the website of the company, they don't even call it a recall. They basically said, "If you bought this and you're uncomfortable with it in your house, feel free to return it for a replacement item." They never mentioned the safety hazard. They really did not get across to parents the very severe injury Ms. Henry here can attest to.



This is a horrific injury to a young child, and that danger did not come across from the recall specifically because of the negotiating that CPSC has to do to say anything about a product even when it's caused a death.

Mr. RUSH. So are you saying then that there are different types of recalls?

Ms. COWLES. Because each one is negotiated with a company and whoever their lawyer is, and the language, you get a wide variety. You get companies that comply. They want the dangers to be known. They post it on their website. They do a great job. Or you get someone like this or the ATV. There was a recall last week of children's ATV that the CPSC says is horrendously dangerous, and yet because they're foreign they said they can't do anything about it, so there's not even a recall.

We should not be so dependent on the good graces of the companies who make the dangerous products to begin with. The CPSC needs to have the power to do it.

Mr. RUSH. And then like notices for a recall. Can you explain from your perspective—

Ms. COWLES. The only requirement that CPSC has is that the company put out with them a press release that announces the recall. Again, they may negotiate more with different companies. I've been surprised to learn over the past few years that in fact retailers aren't even notified necessarily about a recall. Sometimes I've had people from Amazon tell me they learn of the recall the same way I do. They open the web page in the morning and look to see what was recalled the night before. That's simply wrong. There has to be more done than simply a press release. If it's not a big news day, no one's going to hear it about. So we think that more needs to be done.

Again, these manufacturers know how to reach us to sell us a product. They need to use same technique to reach us when a product proves dangerous.

Mr. RUSH. Mr. Keithly, how can your association address and help strengthen the recall mechanisms that we depend on?

Mr. KEITHLY. We can be doing this here. In fact, we helped publicize information about the new—I believe there's new Illinois law, and we helped publicize information about that to the retailers. We work hard to try and get the information out. We want our children—

Mr. RUSH. But what about the negotiation? How do you as an industry or an association, do you think that you have a right to negotiate the notice of recall, the press releases from the Consumer Product Safety Commission?

Mr. KEITHLY. Well, sir, "negotiation" sounds as if it's trying to relieve a company of liability when in fact I think what is going on is to assure that safety information gets out there without simply condemning a company for a product simply on the basis of an accusation rather than proven—

Mr. RUSH. If it's not accusation, what would a recall be based on then?

Mr. KEITHLY. Well, it certainly would be based on proven hazard.

Mr. RUSH. Proven hazard. And so you think that your agency or your association and your membership should have the authority

and the right and the power to negotiate notice of recalls, press releases that go out to the American public—

Mr. KEITHLY. No. No. We don't engage in negotiations.

Mr. RUSH [continuing]. And insist on it.

Mr. KEITHLY. We don't engage in negotiations.

Mr. RUSH. Don't you insist on it?

Mr. KEITHLY. Do we insist on the right to negotiation?

Mr. RUSH. Don't you insist on collaboration and agreement in the issuance of press releases and on notices of recall that the CPSC initiates?

Mr. KEITHLY. Well, sir, we want to be sure that justice is done in all respects.

Mr. RUSH. You don't think that the CPSC is accountable to the American public much more so than the members of your association?

Mr. KEITHLY. Well, sir, I don't know if they're more accountable than members of our association.

Mr. RUSH. Don't they have the legal authority—don't the American people depend on the CPSC to protect it in the final analysis?

Mr. KEITHLY. Yes, and I think they depend on our companies to protect them too, and they can depend on our companies.

Senator DURBIN. Congressman Rush, thank you for your participation in this hearing, your leadership in Washington working on the organization, working on the corporation side, and I thank this panel for joining us today.

I'm sorry we don't have more time. Ms. Henry, thank you. I wish Deron the best and hope everything turns out just fine for him after what he's been through. Ms. Cowles, thank you as well. Dr. Quinlan, and I would just like to say we now live in a global economy. There are products coming in from all over the world. The American consumers mistakenly assume that if it's on the shelf it's safe. They think their Government is their watchdog, their Government is going to protect them. If you've listened to the testimony today, the convoluted long-term process that you have to go through to take a dangerous toy that is killing children like this little toy off the shelves, you understand Government's not doing its job.

Now, part of that has to do with Congress. Republican Congress are crawling with special interest groups that are trying to make sure that they protect the people that make the products.

The halls of Congress are not crawling with representatives of consumers and families across America who want to make sure that that Christmas toy doesn't turn out to be a tragedy for a child like Deron Henry, and that is exactly why we end up with laws that are so weak and convoluted that when a company is making a dangerous toy, they can drag out the process for 2 years forcing the Consumer Product Safety Commission to negotiate every word of the press release that goes out to warn the public. That's the reality of what we face today. This agency has been downsized because they don't want more cops on the beat in the industry. They don't want more people watching, and, as a result, terrible things occur whether it's pet food or toothpaste or Thomas the Tank trains or magnetic toys, unfortunately, consumers had better beware.

Many times they're in a position where they're buying things they assume are safe, and the Government is not doing its job.

That starts with us. We have to change the laws in Congress, appropriate the money to get it done. We have to demand of everyone who sell to the public that they be responsible whether their company is in the United States or in China or in any other place. We fell down. The system fell apart when it came to this toy.

I want to salute Patricia Callahan who wrote the series that called my attention to this toy in the Chicago Tribune and urge those involved in the media to help us do our job. Shine the light on these abuses and put the responsibility where it belongs—elected Members of Congress, Presidents, administrations and people who serve on these commissions. Congressman Rush, would you like to make a closing statement?

Mr. RUSH. Mr. Chairman, I concur with your closing statement. Ms. Henry, I'd also share my concern and my well wishes to you and to Deron. I apologize. I think that the American Government has failed your child and millions of other children across this Nation.

I intend to work very, very hard with my colleague Senator Durbin to make sure that we strengthen this agency and strengthen its ability to protect America's children. I intend personally to do all that I can in Congress to make sure that we strengthen the CPSC by giving it more resources, by giving it more authority and more power.

I believe that, again, that the toys that our innocent children play with, that those toys should have the utmost scrutiny before those toys end up in our homes, so I concur with the comments of Senator Durbin. I just want you to know that I am committed. We will leave no stone unturned. It's a tragedy, and it's shameful that the CPSC as we sit right now does not have a quorum to conduct the American public's business. That's totally, totally uncalled for and unacceptable that we can't even get a third Commissioner in place to conduct the affairs of this worthwhile and important agency.

We intend to make sure that CPSC no longer is a bit player in Government, that it becomes not a minor league player but the major league player in the affairs of the lives of our citizens and the safety of our children. Thank you very much, and thank you, Mr. Chairman. You've exhibited fine leadership here, and I certainly am proud and honored to be a part of this.

Senator DURBIN. Thanks, Congressman Rush.

The record will remain open for questions to be asked of the witnesses.

Senator DURBIN. I hope that you'll help us cooperate by making a complete record.

#### SUBCOMMITTEE RECESS

This meeting subsequently stands recessed.

[Whereupon, at 11:41 a.m., Monday, June 18, the subcommittee was recessed, to reconvene subject to the call of the Chair.]



**ENHANCING THE SAFETY OF OUR TOYS:  
LEAD PAINT, THE CONSUMER PRODUCT  
SAFETY COMMISSION, AND TOY SAFETY  
STANDARDS**

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**WEDNESDAY, SEPTEMBER 12, 2007**

U.S. SENATE,  
SUBCOMMITTEE ON FINANCIAL SERVICES  
AND GENERAL GOVERNMENT,  
COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 11 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.  
Present: Senators Durbin and Brownback.  
Also present: Senators Bill Nelson, Pryor, and Klobuchar.

STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Good morning. I want to thank all of our witnesses for being here. We will have Consumer Product Safety Commission (CPSC) Acting Chairman Nancy Nord, who has been busily involved in negotiations with Chinese officials, will be testifying.

Today we'll be hearing from three panels. First a panel of my colleagues from the Commerce Committee, and I welcome my colleague from Arkansas, Senator Mark Pryor, as well as Senator Bill Nelson. I believe Senator Klobuchar will be here shortly. I believe they're all—Senator Pryor chairs, and they're all members of the Subcommittee on Consumer Affairs, which has the authorizing jurisdiction over the issues that we will discuss today.

After their testimony, these members and other members from Commerce are welcome to join us at the dais here to ask questions. This is in the nature of a joint hearing, and I hope it will serve our needs to learn a lot more about this important issue.

We have quite a few important witnesses before the panel today, including Consumer Product Safety Commissioners, and outside witnesses from the toy industry, Toy Industry Association, from the consumer groups and testing organizations.

We have a lot to cover in a limited amount of time. I will try to make my opening remarks brief and to the point, and hope my colleagues will do the same.

My interest in this issue was sparked when I read a Chicago Tribune front-page series just a few weeks ago. It was written by Patricia Callahan. She talked about a toy called Magnetix. I knew all about this toy because I had bought it for my grandson. He has this huge box of Magnetix. Luckily, he's old enough not to be in

danger. But we learned in that series, that the tiny little rare earth magnets that look like little pieces of candy, when swallowed or inhaled by toddlers or children—if more than one is inhaled or swallowed—can lead to serious complications, requiring surgery, and at least in one tragic case, resulting in death.

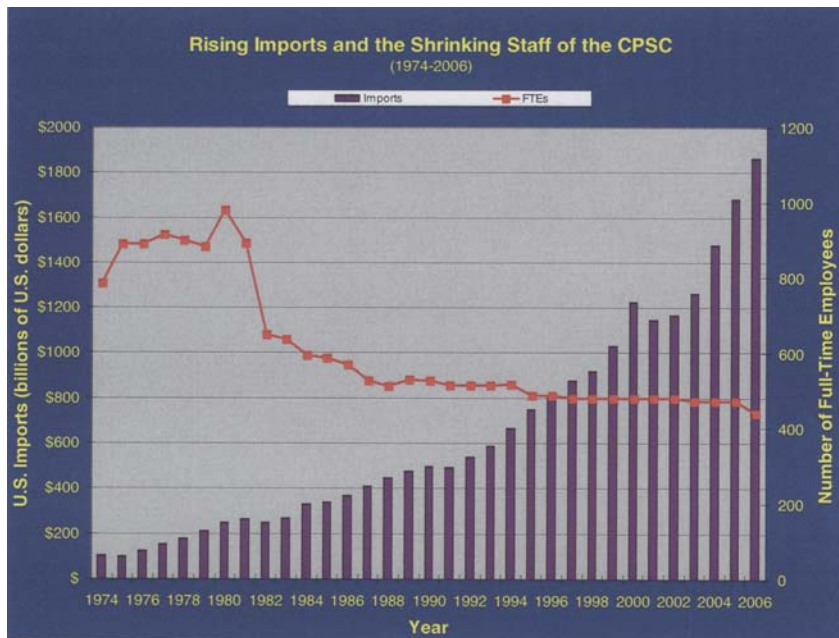
That series and other publications have documented a real need for improvement in our safety standards in America. Our toy safety system is not as strong as it should be. I can tell you that I've gone home—and I'm sure Senator Brownback can say the same—and had families with toddlers come up to me and say, "What is safe to buy for Christmas? For the holidays?" It's a legitimate question, with all of the headlines about lead paint and magnets, and loose parts of toys that can cause serious problems.

I've introduced the Consumer Safety Modernization Act (CSMA), and shared it with my friend, Senator Pryor, because he has the responsibility for writing the reauthorization of the Consumer Product Safety Commission. I had a field hearing in Chicago, and continue with our effort today.

The Consumer Product Safety Commission is an agency which, many people may not have noted until this recent controversy, is one that flies below the radar most of the time. But it has an important responsibility for the safety of products that are sold in America—not just imports—but all products sold in America.

Tragically, the Consumer Product Safety Commission has been neglected and underfunded for years. Since its inception in 1973, its staffing has decreased by almost 60 percent, going from a high of 978 full-time employees in 1980, to a current low of 401. This has occurred at a time when the volume of products—just imports, not just those made in America, but imports—has increased dramatically.

In 1974, the United States imported \$104 billion worth of products. In 2006, that number was \$1.8 trillion—a 15-fold increase in that 32 year period of time.



Let me show a chart here—the chart with the bar graphs—that shows the increase in value of U.S. imports. The red dots that you note here are the number of people working at the Consumer Product Safety Commission. As the volume of work has increased, the number of people responsible for the safety of the products has decreased.

The budget of this Commission is about \$62 million; it passes through this subcommittee. We're going to increase it, and we're going to make a dedicated effort to make the Consumer Product Safety Commission a better Commission, with more inspectors, more technical capability, and a better track record in terms of protecting American consumers.

In the past 3 years, agency staff levels have been reduced 15 percent. The field division responsible for investigations and compliance—35 employees. This doesn't tell the whole story, but a couple of pictures might.

The Consumer Product Safety Commission has one person responsible for toy safety. Its lab is staffed by 30 technicians and engineers, housed in a 1960s missile station. The entire compliance staff has 146 inspectors, 4 less than at the beginning of the year. This Commission is significantly understaffed.



What you are looking at here is an employee of the Consumer Product Safety Commission, who is responsible for helping to test toys. What you see is the scientific impact test on whether toys will break up. The line on the wall, 4 feet, 5½ inches at the higher level, 2 feet 11½ inches at the lower level—toys are dropped to see what happens to them. That is the scientific test of the toys by the Consumer Product Safety Commission.





The next photo I'd like to show you looks a lot like my work bench in my basement in Springfield. This is the toy safety testing lab at the Consumer Product Safety Commission. This is totally inadequate. It is not up to the task of building any kind of confidence among American consumers that we are really watching out for them.

When American families go into a store, they expect whatever's on the shelf is safe. And yet, if we don't have enough people, if we don't have enough resources, if we don't have enough technology, we are not meeting our responsibility. And that is part of this hearing that we will discuss.

Of course, at ports of entry, enormous quantities of products are coming in—not just toys, but all sorts of different products. This Consumer Product Safety Commission has jurisdiction way beyond toys; when you consider all of the possible things that they could be looking at, you can imagine the volume that they have to deal with.

In the area of southern California, around Long Beach, it's my understanding that they have six inspectors on call—six—who are sent from time to time to different places to look at imports.

We have to change this Commission and the work that it does. Senator Pryor is going to be leading that effort on reauthorization. We have to reduce the amount of time that a company has to respond to information—from 30 days to 15, or even shorter. We need to increase the maximum fine, so that the Commission can issue such a fine to a firm that violates the law, and it has to be a fine that catches the attention of multi-million dollar companies. We need to expand to make it a crime to sell recalled products.

The last thing I want to mention here is imports. And I had a meeting this morning with some representatives of the Chinese Government who, I believe, are in the audience here, if I'm not mistaken. They were invited in; I hope they made it through the queue outside. But, among those I met with today was the vice minister in charge of AQSIQ, which is the Chinese agency responsible for inspecting products—both food and non-food products—Mr. Wei Chaunzhong, and I'm sorry if I mispronounced that. We had a lengthy meeting. He, incidentally, told me that his agency has 210,000 employees; 30,000 are assigned to exports. They have 1,800 laboratories. So, it is hard for me to preach to them about dedicating more resources to making sure that the products that they export are safe, when you see what we are dealing with here in the United States.

But I can tell you, that what we know now gives me concern. Mr. Chaunzhong told me that there is zero tolerance for lead in products exported from China. Having said that, we know there's lead paint on toys. We'll have testimony a little later from Mattel and from Toys "R" Us, and we'll hear firsthand about some of the bitter experiences they've had with lead paint on toys exported from China.

We also know that one in five sampled articles of children's jewelry tested positive for excessive lead levels. Most of those were Chinese imports.

Other contaminated products from China have included, this year, pet food—which I know very well has caused concern among millions of American families as innocent animals, dogs and cats, died from contaminated food—toothpaste containing anti-freeze, seafood recalls, many, many more.

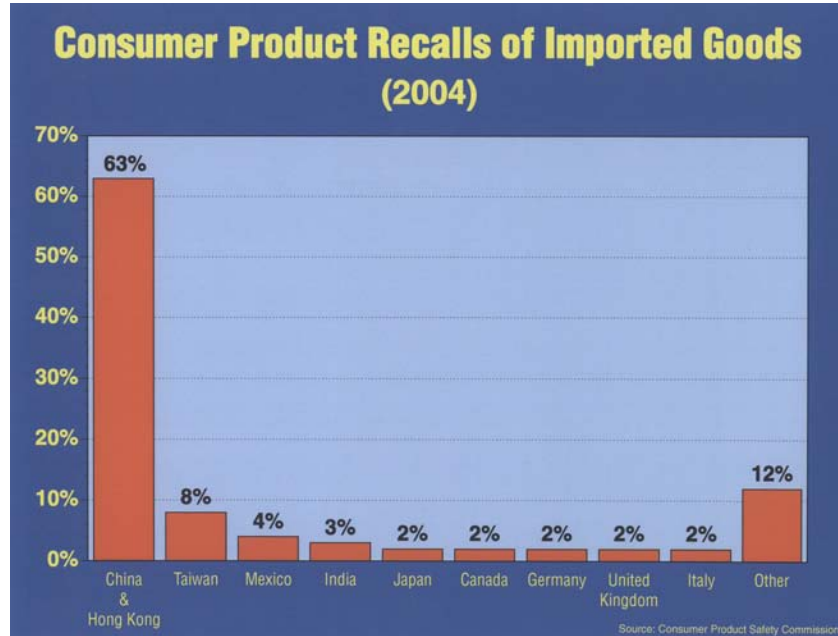
Now that I've met with this delegation from China, I think we need to follow through. We need to make it clear to those in China who are in the export business, America will never compromise the health and safety of our consumers and our families. Our standards of health and safety have to be followed.

We're going to make certain that we move forward with the Toy Industry Association and others represented today, to try to deal with this season's problems. As we face a holiday season where toys are a major product, families are concerned, companies are responding—it is unlikely that Government will be able to do much to restore confidence. But we will learn a bitter lesson from the holiday season of 2007, and I hope we'll apply that lesson to passing new authorization in 2008 for this Commission, putting more resources in this Commission, and restoring the confidence of families across America.

Let me turn it over to my ranking member, Senator Brownback of Kansas.

#### STATEMENT OF SENATOR SAM BROWNBACK

Senator BROWNBACK. Thank you very much, Mr. Chairman. I appreciate you holding this hearing, and appreciate those that are here to testify. I look forward to a good exchange and a good dialogue.



I won't recover—or I won't cover, again—the same statistics, but I do want to put up an initial chart, because I think it does show some of the problems that we're dealing with that we've heard anecdotally about—whether it's the toy problems, or toothpaste or pet food. But, just look at this chart, on consumer product recalls that we've had from countries. And you can see the big one, and it is China. Far and away, the most number of consumer product recalls that we've had from December 2006 to August 2007.

Unfortunately, as some others have already noted, "Made in China" has now become a warning label. And we're seeing this in the charts, and we're seeing this in the products, and it's got to stop. And we're not going to let this continue to take place.

The American consumer is the most discerning consumer in the world, and I believe that given the imminent and potential harm to American consumers, and the real harm by these products, their purchasing power will act as a powerful deterrent and disciplining mechanism for these products.

At the same time, the regulatory agencies must aggressively do their part. Given the sheer volume of defective products coming from one main source, more than 70 percent of the defective products that we're seeing coming from China, we have a big regulatory challenge. As the chart showed, this is a troubling and dangerous picture.

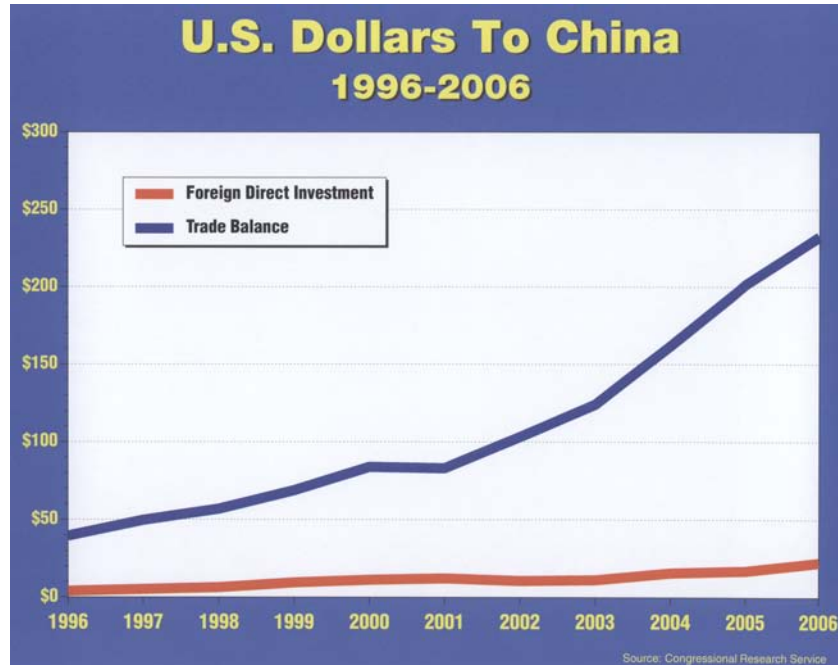
I agree with you, Mr. Chairman, the Consumer Product Safety Commission could and should provide additional oversight and inspections and the independent testers—like an Underwriters Laboratory for Toys, I believe, as one of the panelists is going to suggest, would give consumers more confidence. I think that's a good idea. But, I firmly believe that the problems we're now seeing with

Chinese-made toys and other consumer products is just a symptom of a much larger problem that must be dealt with in a swift and vigorous way.

I think it's fair to say that an open and transparent system of government, like ours, is less likely to produce defective products, and it is more likely to catch those that are. As one expert put it to me, the democratic countries are better at producing safe products than non-democratic ones. And one of the ways a non-democratic country, like China, is usurping the way in which business is being conducted around the globe, is through manipulation of its production system, and particularly of its currency.

Now, I realize that finance is a convoluted topic, but in this case, I think it's quite simple. Ever since we granted the Chinese Government PNTR back in 2000, the Chinese Government has implemented capital controls to manipulate its currency, as a matter of state policy.

With an increasingly and alarmingly higher number of consumer goods being made in China, as much as 80 percent of the items in retail chains like Wal-Mart and Target, a currency that is undervalued by 40 percent relative to the dollar is a systematic, systemic danger to the U.S. economy, if not to the international financial system. By unfairly keeping the yen undervalued, the Chinese Government has boosted China's exports, and has unfairly sucked foreign direct investment in export production facilities, much of which comes from the U.S. firms.



This chart that I'm putting up now shows how \$1.3 trillion have rushed into China over the past decade, through foreign direct investment and trade. Every year, we buy more goods than we sell,

and every year more American investment dollars are sucked into China. This is not surprising, given that the currency—Chinese currency—is held at these artificially low levels. You can see these trends on that chart.



Mr. Chairman, I wanted to show another chart that is extremely troubling, as well, and I think it's part of the overall symptom here. As hundreds of billions of U.S. dollars flow to China every year, China, in turn, sends support to bad actors around the world—like Iran, Sudan, Burma, Zimbabwe, and North Korea. As we know, these are dictatorships which commit acts of genocide and promote terrorism.

China's Arms Sales of Recent Concern (unclassified)	
Recipient	Types of PRC-Made Arms
Iran Transferred to Iraq and the Taliban in Afghanistan	<ul style="list-style-type: none"> <li>● HN-5 Shoulder-fired anti-aircraft missiles</li> <li>● Landmines</li> <li>● Rocket-propelled grenades</li> <li>● Armor-piercing ammunition</li> <li>● Components for roadside bombs</li> <li>● Sniper rifles</li> <li>● Ammunition.</li> </ul>
Iran	<ul style="list-style-type: none"> <li>● Chemicals used to make solid fuel for ballistic missiles</li> <li>● Shipment intercepted by Singapore in transit from China to the Shahid Bagheri Industrial Group in Iran.</li> </ul>
Sudan	<ul style="list-style-type: none"> <li>● 200 military trucks made by the Dongfeng Automotive Import and Export Company</li> <li>● Arms and ammunition (\$24 M)</li> <li>● Aircraft equipment (\$57 M)</li> <li>● Helicopters and aircraft parts (\$2 M)</li> <li>● K-8 jet trainers</li> <li>● K-8S flight simulators</li> </ul>
Zimbabwe	<ul style="list-style-type: none"> <li>● 12 K-8 jet trainers (\$240 M)</li> </ul>
Burma	<ul style="list-style-type: none"> <li>● 2 diesel engines destined for a Naval frigate (\$4.3 M)</li> <li>● A main propulsion system (\$8.1 M)</li> </ul>

*Source: Congressional Research Service*

Most disconcerting is that the Congressional Research Service (CRS) has confirmed that China's sales of weapons, small arms and munitions to Iran, have ended up in the conflicts involving U.S. forces in Afghanistan, and in Iraq.

The chairman and I are both concerned about what's taking place, particularly, in Sudan, and the genocide in Darfur, and strongly promoting divestiture campaigns for those countries and those companies investing in Sudan, the lead of which is China. And, I think we have to point out that that is taking place, as a part of this overall symptom and problems.

Do we really want to stand idly by as the Chinese Government manipulates its currency, to give itself an unfair economic advantage, to suck in this foreign capital, to support other bad regimes around the world, and sell defective products to the United States? I don't think so. Do we really want to keep the floodgates open, as unsafe Chinese products, made under coercive labor conditions, enter this country? I don't think so. And, do we really want U.S. consumer and direct investment dollars going to support Chinese sales of weapons to dangerous dictatorships around the globe? Some of these weapons we're facing on the battlefield today? I don't think we want to continue to see that taking place.

I think we need to do more on consumer safety products here, I think we must require it of Chinese products, but I don't think we can stop there. There are clearly other things that are happening, and that have been happening for some time. While I support this hearing, and I'm delighted to see it taking place, I hope we don't

just focus on one narrow issue, but go at the broader issues of what is being done by the Chinese Government.

Mr. Chairman, it's time to end the status quo, the business as usual relationship with China. We must act to apply U.S. counterveiling laws to non-market economies, and to make exchange rate manipulation actionable under such laws.

Some will cry out that we can't afford to take such actions as these, they may say that such actions will hurt American consumers by increasing prices.

I say we can't afford not to take such actions. American consumers have already been hurt, in the worst way. Their lives and their children's lives have been put at risk by unsafe products produced in Chinese manufacturing plants that are so suspect that they keep American inspectors out.

American consumers have been hit over the head with a 2 by 4. We can't allow this to continue to take place.

I look forward to the comments by my colleagues, and by those involved in the industry, and I look forward to us addressing this problem, consumer safety problem, and underlying problems, as well.

Senator DURBIN. Thank you, Senator.  
[The statement follows:]

PREPARED STATEMENT OF SENATOR SAM BROWNBACK

Good morning. Thank you Chairman Durbin for calling this hearing. It's an important and timely issue.

I would like to ask that my longer statement be made a part of the record. So, I will not go through the same troubling statistics that the Chairman helpfully reviewed for us this morning. What I will say is this: shoddy, defective and dangerous products being made in China and sold to American consumers has simply got to stop. I hope that we will not wait for legislation for that to happen. It's simply unacceptable.

The American consumer is the most discerning consumer in the world and I believe that given the imminent and potential harm to American consumers by these products, their purchasing power will act as a powerful deterrent and disciplining mechanism for these products. In short, those who continue with shoddy manufacturing practices will not be in business much longer.

At the same time, the regulatory agencies must aggressively do their part.

Given the sheer volume of defective products coming from one main source—more than 70 percent from China—we have a big regulatory challenge. As this chart shows, the vast majority of defective consumer goods come from China. It is a very troubling and dangerous picture.

I agree with you, Mr. Chairman, the Consumer Product Safety Commission could and should provide additional oversight and inspections and that independent testers—like an Underwriter's Laboratories for toys—would give consumers more confidence.

But I firmly believe that the problems we are now seeing with Chinese-made toys is just a symptom of a much larger problem that must be dealt with in a swift and vigorous way.

I think it's fair to say that an open and transparent system of government like ours is less likely to produce defective products and is more likely to catch those that are. As one expert put it to me, democratic countries are better at producing safe products than non-democratic ones.

And one of the ways in which a non-democratic country like China is usurping the way in which business is being conducted around the globe is through manipulation of its currency. I realize that finance is a confusing and convoluted topic for most, but in this case, it's very simple. Ever since we granted the Chinese government PNTR back in 2000, the Chinese government has implemented capital controls to manipulate its currency as a matter of state policy.

With an increasingly and alarmingly higher number of consumer goods being made in China—as much as 80 percent of the items in retail chains like Wal-Mart and Target—a currency that is undervalued by 40 percent relative to the dollar is

a systemic danger to the U.S. economy, if not to the international financial system. By unfairly keeping the Yuan undervalued, the Chinese government has boosted China's exports and has unfairly sucked foreign direct investment in export-production facilities, much of which comes from U.S. firms.

This chart shows how \$1.3 trillion have rushed into China over the past decade through foreign direct investment and trade. Every year, China buys more goods than we sell them and every year more American investment dollars are sucked into China. This is not surprising given that the Chinese currency is held at an artificially low level.

Mr. Chairman, I want to show another chart that is extremely troubling.

As hundreds of billions of U.S. dollars flow to China every year, China, in turn, sends support to bad actors like Iran, Sudan, Burma, Zimbabwe, and North Korea. As we know, these are dictatorships which commit acts of genocide and promote terrorism. Most disconcerting is that the Congressional Research Service has confirmed that China's sales of weapons, small arms, and munitions to Iran have ended up in the conflicts involving U.S. forces in Afghanistan and Iraq.

Do we really want to stand idly by as the Chinese government manipulates its currency to give itself an unfair economic advantage in the world?

Do we really want to keep the floodgates open as unsafe Chinese products made under coercive labor conditions enter this country? And do we really want U.S. consumer and direct investment dollars going to support Chinese sales of weapons to dangerous dictatorships around the globe?

Mr. Chairman, it is time to end the status quo, "business as usual" relationship with China. We must act to apply U.S. countervailing laws to non-market economies and to make exchange rate manipulation actionable under such laws.

Some will cry out that we cannot afford to take such actions. They will say that such actions will hurt American consumers by increasing prices.

I say that we cannot afford not to take such actions. American consumers have already been hurt in the worst way. Their lives and their children's lives have been put at risk by unsafe products produced in Chinese manufacturing plants that are so suspect that they keep American inspectors out.

American consumers have been hit over the head with a two-by-four. We cannot allow it to continue.

Senator DURBIN. Senator Mark Pryor of Arkansas is chairman of the Commerce Subcommittee on Consumer Affairs. Welcome Senator Pryor, and please give us your opening statement.

#### STATEMENT OF SENATOR MARK PRYOR

Senator PRYOR. Thank you, Mr. Chairman, and thank both of you for having this very important hearing on consumer products safety—specifically on toy safety. There's been an unprecedented number of toy recalls this year. Of course, we know the statistics, all the toy recalls are from China, and from our standpoint, that highlights a larger problem, and that is, the Consumer Product Safety Commission is not equipped to handle the challenges that it faces today in the American marketplace. The Consumer Product Safety Commission, back in the 1970s, had 900 employees, today it has less than one-half that.

In the meantime, we see 10,000 new products that have come on the U.S. marketplace since the 1970s, and we've also seen major changes in the global marketplace. We see a Federal agency that has been withering on the vine—they have smaller budgets, they have less staff, they have inadequate labs. And this morning, Senator Inouye and I introduced legislation to overhaul and revamp the Consumer Product Safety Commission. This is much broader than toys—it really covers the entire scope of the CPSC, but for the benefit of today's hearing, I would like to mention four areas that we address in the proposed legislation.

One is resources. Senator Durbin mentioned that a few moments ago—our bill would move this agency from the 401 employees that



it has today, up to 500 employees by 2013—nowhere close to the 900 it once had, but nonetheless, we acknowledge that we're in a difficult budget situation, and we've talked to CPSC and others, and we think that that will get us on the way to where we need to be.

Also we include money in there for upgrading the testing facilities, and upgrading our port inspection capabilities—that's been a real problem that the CPSC has just not been able to keep up with.

Second thing I want to highlight, is the bill would—the proposed bill would ban all lead in toys. And, I think every parent, every pediatrician in America would agree that we should just ban lead in all children's toys.

Third thing I wanted to mention is the bill includes an independent, third-party safety certification. Senator Bill Nelson and Senator Durbin have been working very hard on that language and trying to make sure that that makes sense, and that parents and grandparents have assurance that all the toys they buy here in the United States meet U.S. safety standards.

And the fourth thing I wanted to say about the legislation that we filed today, is it puts—it stiffens the penalties, it puts teeth in the current legislation, in the current law, that the current law just doesn't have in it, in order to get the attention of the wrongdoer—especially those who are repeat offenders, and those who are just unscrupulous, and don't care about the safety of our people in this country. So, we're putting that in there so they understand that there will be significant pain when they violate U.S. consumer safety law.

Last thing I wanted to say before I turn it over to my colleagues here, is I need to publicly thank Senator Durbin for his efforts earlier this year, before there was all of the media scrutiny and all the attention on toys, but earlier this year to work very hard to get an additional \$8 million for the Consumer Product Safety Commission, just to stop the bleeding in the interim while we have time to fix this agency. So, Senator Durbin, thank you for doing that.

Senator DURBIN. Thank you, Chairman Pryor.

[The statement follows:]

PREPARED STATEMENT OF SENATOR MARK PRYOR

Good morning Mr. Chairman, Senator Brownback, members of the committee. I am excited to be here this morning to talk about an issue that is very important to me and the millions of American parents across the country—product safety, and more specifically toy safety.

In recent months, we have seen an unprecedented number of toy recalls, ranging from Barbie dolls to magnet building sets to trains with lead paint. This massive proliferation of dangerous children's products on U.S. retailers' shelves highlights problems that I have been concerned with for some time—the efficacy of our consumer product safety standards, the resources we allocate to those agencies charged with preventing dangerous products from getting on shelves and into consumers' homes, and our ability to prevent dangerous imported products from penetrating our domestic markets.

It is no secret that I believe we can and should be doing more to protect parents and children from dangerous products. The primary government agency charged with this important task, the Consumer Product Safety Commission (CPSC), though well-intentioned, has been hamstrung for many years by an inadequate budget, staff reductions, and by arcane rules and regulations. In order to ensure that the products on our shelves are safe for American families, I believe we must not only greatly increase the Commission's resources, but we must also overhaul the Commission's

responsibilities and authority to reflect the 21st century marketplace, where many products come from overseas.

This is a problem that the Committee has recognized. Earlier this year, I offered an amendment to the budget to increase the resources available to the CPSC. This Committee responded by providing an \$8 million increase to the Commission's fiscal year 2008 budget. I would like to thank the committee, along with Senator Durbin, who has long been a strong consumer advocate, for their foresight. I appreciate your leadership and insight on this issue, and I look forward to working with you to ensure that these vital resources make it through the Senate and into law.

As the Chairman of the Commerce Committee Consumer Affairs Subcommittee I also appreciate the input and ideas you have offered for a CPSC reauthorization bill. I have incorporated several of these ideas into my own reauthorization bill, which I will address shortly.

As I have said, increased resources are an important piece of the puzzle when it comes to product safety—but it is not the only one. With that in mind, this morning I and Senate Commerce Chairman Inouye introduced legislation to provide a comprehensive overhaul of the Consumer Product Safety Commission. I plan to work with my friends on both sides of the aisle toward quick committee action with the hopes of having the bill available for action by the full Senate by the end of September. As Chairman of the Subcommittee, this is my number one priority.

Although my bill will provide a comprehensive overhaul of the CPSC, I would like to briefly address four parts of my bill most relevant to our meeting here today.

*Resources.*—The CPSC is in serious distress. Its budget has been significantly slashed at the same time counterfeit and dangerous imports have been flowing into our country. The agency is responsible for over 15,000 consumer products, in addition to emerging technologies, such as nanotechnology. Since its inception in the 70's, CPSC staff has shrunk from over 900 full time employees (FTE's) to around 401. President Bush has recommended further budget cuts. We cannot expect this overburdened agency to prevent dangerous toys and products from ending up on store shelves in its current condition. To address this, my bill authorizes \$759 million over the next seven years, an increase of 58 percent over current levels. This increased funding would restore CPSC to at least 500 FTE's by 2013, beef up CPSC presence at our ports of entry, and allow them to update their antiquated testing facilities.

*Removing lead from children's products.*—Congress should make it clear that lead in children's products is unacceptable. In recent weeks, we have seen the recall of hundreds of thousands of children's products in which lead was contained in the paint on these products. It is an unnecessary risk for us to take with the lives of our children. My legislation proposes an outright ban on lead in any children's products—from lunch boxes to toys. A brighter color Elmo or more durable Big Bird is simply not worth the risk.

*Third party certification of children's products.*—It is vital that Congress and American companies restore the public's confidence in the goods they are purchasing. We can make strides in accomplishing this by requiring testing by government-certified third parties that children's products are safe and in compliance with government standards. With the holidays fast approaching, parents have a right to know the toys under their Christmas trees will be safe for their children. My legislation would require manufacturers of children's products to issue a certificate that their products conform to consumer product safety standards and require testing of these products to ensure their continued compliance.

*Penalties for Repeat Offenders and Unscrupulous Importers.*—Congress must send a strong signal to bad actors placing the public at risk. When it comes to safety, insignificant fines for violations should not be a part of the cost of doing business. My bill will increase civil fines up to \$250,000 per violation with a cap of \$100 million from a current level of \$8,000 per violation with a \$1.825 million cap. Criminal violators would be subject to up to 5 years in jail. Increasing civil and criminal penalties is a necessary step to encourage companies to value consumer safety above their bottom line.

Though these are four integral aspects of my bill, other provisions of the legislation comprise an expansive mechanism for restoring consumer confidence in the American marketplace and ensuring their and their family's safety. Through a multi-prong approach of providing incentives to companies to protect the public, enhancing penalties when they do not, streamlining product safety rules and procedures, and ultimately ensuring that only safe products are entering the marketplace, we can restore the CPSC to a robust and proactive Commission for consumer safety.

It is my hope that the committee and the Senate can act swiftly to pass this important legislation, and I would ask all of the members of the committee for their

support in this endeavor. I want to thank the members of the subcommittee for giving this important issue your time, and I look forward to working with you as we move forward on this issue. I thank you for your leadership and for the opportunity to testify this morning.

Senator DURBIN. Senator Bill Nelson of Florida has been—we've been working together, not just on toys, but children's products—I thank you for joining us. Senator Nelson.

STATEMENT OF SENATOR BILL NELSON

Senator NELSON. Thank you, Mr. Chairman.

We support what Senator Pryor is doing in his subcommittee. Hopefully, we can produce this out of our full Commerce Committee and get it moving.

Senator Durbin, there is no excuse that the CPSC has a laboratory that looks like that. And a large part of what Senator Pryor has just outlined will address that.

With regard to toys—it's very interesting what China just announced yesterday. China signed an agreement to prohibit the use of lead paint on toys exported to the United States. Well, what about all of the toys exported elsewhere? Let me show you some of these toys.

That's good that they're saying that they've agreed to prohibit the use of lead paint in toys, but that's not the only problem with the toys. And certainly it's not the solution to the problem of lead paint elsewhere in the world.

I went to one of our children's hospitals, and I asked them about these toys. They have a "Laugh and Learn" bunny that has a nose that comes off. That nose is just about that big. Guess what happens when a child swallows something that big? And the doctors were telling me about the operations that they had to conduct to extract those components of toys.

The Magnetix building set—the doctors told me about what magnets inside a child's digestive system can do. Then, of course, you've got Thomas the Train. Again, it's the lead paint.

I think Senator Klobuchar is going to show you an example of what happens when it gets into a child's mouth. And we know the effects of the lead paint. And then you have these Barbie accessories, again with lead paint.

This just shouldn't be happening in America. And why is our CPSC letting it happen? If the Chinese Government is not going to police it, and if the Chinese industry isn't going to police it, then there's an easy way for us to insist—since 80 percent of all of our toys sold in America are coming from China—there's an easy way to do it. And that is, go to an independent third party that sets safety standards, such as Underwriters Laboratory, or the American National Standards Institute, something like that, that is recognized, and get them to do the safety certification.

Thank you, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF SENATOR BILL NELSON

Mr. Chairman, Members of the subcommittee, thank you for inviting me here today to speak with you about efforts to improve the safety of imported toys.

As you are all aware, over the past few months the news has been filed with numerous reports of unsafe imported toys and consumer products.

From children's jewelry containing toxic levels of lead to toys with detachable magnets that can cause fatal intestinal obstructions, this country has literally been flooded by a sea of dangerous products.

Over the summer I was able to see some of the impacts of this first-hand.

In July, I visited with a team of emergency room doctors in Tampa who had treated children with intestinal obstructions due to magnets that had detached from toys.

In some cases, the doctors noted that the intestinal obstructions were so severe that the children had to undergo surgery to remove the obstructions.

Invasive surgery like this is scary for most adults—so you can probably only imagine what it is like for a 4 or 5-year old to have to go through something like this.

In August, I also visited with a family in Jacksonville who left two of their children in a room with a disco ball toy. The disco ball toy later overheated, caught fire, and emitted enough carbon monoxide to kill both children. Two young children are dead from playing with a seemingly innocuous toy.

These incidents just shouldn't be happening—and it's time to finally take action to protect our kids from toxic toys.

I'm encouraged by the early reaction from the Consumer Product Safety Commission and the toy industry to this problem.

I think everyone now realizes that we must move quickly to restore confidence that imported consumer products—and in particular toys—are safe.

The real question now is how we move to address this problem.

On Monday, we received a policy report from the Administration's Import Safety Working Group.

On Tuesday, the Consumer Product Safety Commission also announced a Memorandum of Understanding with the Chinese Government on toy safety.

I appreciate the work that was put into both of these endeavors.

However, I think now is the time to move beyond policy statements and aspirational goals—and pass real legislation to stop dangerous products before they get to the United States and into the hands of children.

That's why I have introduced S. 1833, the Children's Products Safety Act of 2007.

This legislation would require all toys and other products intended for children 5 years of age or under to be tested by a independent, third-party entity to ensure that they meet all applicable U.S. consumer products safety standards.

Products that pass testing would receive a certificate of compliance that they meet safety standards.

Products that fail would not, and would be prohibited from either importation or sale in the United States.

It's one thing for exporters to state that they are complying with our safety regulations.

What we need to do now is actually verify that they are complying.

This legislation will do just that.

Furthermore, we need to ensure that the Consumer Product Safety Commission has the funding and regulatory tools to identify new threats to children's safety.

That's why I am also proud to be an original co-sponsor of Senator Durbin's legislation, S. 1847, which will re-authorize and reinvigorate the Consumer Product Safety Commission.

Taken together, these two pieces of legislation will help to restore consumer confidence in children's toys and other consumer products.

I look forward to working with my colleagues in the coming weeks to advance these items as soon as possible.

Senator DURBIN. Senator Klobuchar of Minnesota. Thank you for your interest in this issue, and your testimony today.

#### STATEMENT OF SENATOR AMY KLOBUCHAR

Senator KLOBUCHAR. Well, thank you very much, Senator Durbin, and thank you for your work in helping to build the CPSC and working to provide more resources. I don't think one guy in an office like that should be charged with ensuring the safety of \$22 billion worth of toys. We clearly need change.

And I also am proud to be on the Commerce Committee with my two colleagues who are working so hard on this issue.

This issue hit home to us in Minnesota, when a little 4-year-old boy named Jarnelle Brown died when he swallowed a little heart-

shaped charm. And this charm was given to him for free with a pair of tennis shoes—he didn't buy it, his mom didn't buy it. And he didn't die from swallowing it, he didn't die from choking on it, he died when the lead leaked into his bloodstream. It fatally poisoned him, it took a number of days. And when the Minnesota Department of Health tested that charm, it was 99 percent lead. It came from China, and his blood level contained three times the amount of lead that health officials consider dangerous. This was preventable. This little boy should never have had that charm in the first place.

As the parent of a 12 year old, like everyone else, I'm alarmed about the reports that have been coming out about toys. And you look at this Thomas the Train toy set, with—over 1 million pieces of this toy recalled. This has got to stop.

My daughter is 12, as I said, and I've got to tell you, she was sort of embarrassed by my interest in this issue, Mr. Chairman, because she didn't care about Sponge Bob, or Thomas the Train set. It was sort of embarrassing. But, when she heard that the Barbies were recalled, she came into the kitchen, and said, "Mom, this is really getting serious."

And this is getting serious, and it's time for us to take action. These toys shouldn't be on our shores, they shouldn't be in our stores.

I've introduced two pieces of legislation that have been incorporated into the bill that Senator Pryor referenced. The first is to effectively ban lead in children's toys. We looked at what was going on with the Consumer Product Safety Commission. Right now, what happens is they have a voluntary guidelines standard, and then after that, if it doesn't meet that standard, they have to go through a number of tests. There are proposals out there for rule-making. But we decided, Mr. Chairman, it would be easier just to ban lead, allowing trace levels of lead at a level that's actually lower than what the CPSC uses. The amount of lead allowed would go lower, to .02 percent for jewelry, which is important in cases like we've seen with the little boy in Minneapolis.

For 30 years, we've been aware of the dangers posed to children by lead paint. It's time to change our current system of voluntary guidelines, use the force of law, and have an actual, Federal standard.

The other piece of legislation that I introduced which is also incorporated into this bill will make it easier for parents to identify recalled toys. Now, imagine, if you're a parent, you've got a toy box, and you're trying to figure out, when you hear that Thomas the Train set has been recalled—which one? Is this the caboose? Is this the box car? Or you've got a Barbie, and you're trying to tell the difference between Barbies—it's nearly impossible.

So, our legislation requires that batch numbers or identifications be on these toys, so when there is a recall, it's easier for parents to tell what that recall is. It also requires that it be on the packaging, because while larger retailers are able to put things into their computer systems and stop the sale right when it occurs—and we've worked with the retailers on this—some of the smaller operations or online services wouldn't be able to do that. So, that's the other piece of the bill.

Finally, the legislation makes it illegal to sell a recalled toy, taking action against those bad actors who are out there. We've seen too many headlines, we've had too many deaths, for one little boy in Minneapolis, and for the others that could be prevented. We have to stop just bemoaning the recalls, and we have to act now.

Thank you for your leadership.

Senator DURBIN. Thank you, Senator Klobuchar.

[The statement follows:]

PREPARED STATEMENT OF SENATOR AMY KLOBUCHAR

Good morning. First, I would like to thank you, Chairman Durbin, for holding this hearing today and thank you for all of the good work you have been doing to protect American consumers. I also thank this Subcommittee for its work to provide more resources to the Consumer Product Safety Commission to do its job. One guy sitting in an office charged with ensuring the safety of \$22 billion worth of toys just isn't going to work.

I would also like to acknowledge the work of my Commerce Committee colleagues. I applaud Chairman Pryor's efforts to provide the Consumer Product Safety Commission with the tools it needs to ensure that it can properly protect consumers, and I am pleased to have joined with Senator Nelson in cosponsoring legislation that would require third party testing of children's products.

This issue has hit home in our state in a very tragic way. Last year, four-year-old Jarnell Brown died after swallowing a heart shaped charm he received for free with a pair of shoes. He didn't die from swallowing the toy; he didn't die as a result of choking on it. He died because the charm was composed almost entirely of lead—enough lead to fatally poison him. In fact, the charm contained so much lead that tests later revealed that the charm was ninety-nine percent lead. His blood lead level was three times higher than what health officials consider dangerous. That charm—that free charm—was made in China. What is most tragic about this little boy's death is that it was preventable. He never should have had access to the toy he was playing with in the first place.

As a parent of a 12 year old, I am alarmed by recent reports showing a significant increase in the number of toys manufactured in China found to be unsafe. For months, news of recalled toys—like these Thomas the Tank Engines I have right here—has dominated our headlines. As a mom and a former prosecutor, I find it totally unacceptable that toys containing a known toxin are continuing to make their way into children's hands. This shouldn't happen in this day and age. Or as my twelve-year-old daughter said when her favorite Barbies were recalled—“Mom, this is serious.”

It is clear that we must take action to remove these toxic toys from our shores and from our stores. Parents have the right to expect that toys are tested and problems found before they reach a toy box.

To achieve this goal, I have introduced two pieces of legislation: the first makes it easier to identify recalled products and illegal to sell them. The second will effectively ban lead from children's products.

My legislation provides that lead in any children's product shall be treated as a “banned hazardous substance.” As millions of toys are being pulled from store shelves for fear of lead contamination, its time to make it crystal clear that lead has no place in children's products. The bill would set a ceiling for a trace levels of lead and empowers the CPSC to lower this ceiling even further through rule-making as science and technology allow. This legislation will set clear standards for manufacturers, and speed the enforcement process for the CPSC.

For thirty years, we've been aware of the dangers posed to children by lead paint. It is time to change our current system of voluntary guidelines and use the force of law to get the lead out of the hands and mouths of our children. Lead has no place in children's products.

The other legislation I have introduced would make it easier for parents to identify a recalled toy already in their home. Countless parents have approached me to ask how they could possibly identify a toxic toy, and as a Mom I can tell you it is hard to tell one Barbie from another. A simple stamp added to the packaging and the toy itself will make it easy for parents to pick up the toy and match the stamps, recognize, and remove that unsafe toy from their child's hands.

The legislation will also make it illegal to sell a recalled toy, taking action against those bad actors out there who are knowingly leaving recalled products on their shelves or placing them for sale online.

We've seen too many headlines this summer to sit around and think this problem is going to solve itself. We can't just sit around bemoaning the recalls—it is time to act.

Senator DURBIN. Senator Pryor, what do you think is a realistic timetable on your reauthorization bill in the Commerce Committee?

Senator PRYOR. Well, we're going to try to move it as quickly as we can because we wanted to go ahead and get it filed before we really circulated it with co-sponsors, and to have it working. Just yesterday I started to talk about it to Senator Sununu about some of the specifics, and we're providing that to his office today, and trying to start that process.

So the goal is to move as quickly as possible—we'd love to get broad-based, bipartisan co-sponsors on it, so I would love for members of this subcommittee to consider co-sponsoring that when the time is right.

Senator DURBIN. Thank you.

Senator Nelson, of course our bill relates, not only to toys, but all children's products, geared for kids under the age of 5, they're going to have to go through some sort of independent testing. And I can tell you, I know you've had a chance to speak to some toy companies and retailers—they get it. They understand something has to be done. And third-party, certified laboratories would be a good way to move resources in, quickly. So, I'm hoping that we can move along those lines.

And, please tell Abigail that we're going to do our best to make Barbie safe.

Senator KLOBUCHAR. Very good, Senator, thank you.

Senator DURBIN. Thank you, Senators, I appreciate it.

And you're all welcome to join us, if you have time, here. And we're going to proceed—Senator Brownback, do you have any questions of the Senators?

Thank you all for being here today.

While the next panel comes forward representing the Consumer Product Safety Commission, these are of course, what this hearing is all about—as innocuous and small as they appear, the Magnetix toys and others that we've been discussing here today—as I said, I can recall giving these to my grandson, and playing with them over a holiday season.

This little tiny magnet that I have here is really one that I've seen—as tiny as this is, you can imagine a toddler swallowing it, and swallowing two of these can be very dangerous, if not lethal. And they are incorporated in these toys, and can pop out and break.

I'd like to thank the Acting Chairman of the Consumer Product Safety Commission, Nancy Nord, and Commissioner Thomas Moore for joining us. It was my understanding—correct me if I'm wrong—but Mr. Moore has to leave for a dental appointment, and would like to speak first? So, is that right?

Mr. MOORE [continuing]. I do have to leave for an appointment with my oral surgeon.

Senator DURBIN. Well, I'll let you and Ms. Nord decide the order of speaking, but invite you at this point.

**STATEMENT OF HON. NANCY A. NORD, ACTING CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION**

**ACCOMPANIED BY THOMAS H. MOORE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION**

Ms. NORD. Thank you. My colleague is such a consummate gentleman, and I have to tell you that I enjoy our working relationship, so thank you so much, Commissioner.

Mr. MOORE. Thank you, thank you.

Ms. NORD. I'm very pleased to be here to talk about toy safety. And because you can't really talk about toy safety without talking about the whole question of imports, what I would like to do is—in my oral remarks to you—give you a report of the second United States-China Safety Summit that was conducted here in Washington over the past 2 days. I have expanded on the whole subject of toy safety in the written comments that I have submitted to you, that will be made part of the record, I trust.

And I am pleased to report that this summit has marked a significant step forward in advancing consumer product safety with regard to toys and other products imported from China.

I've just left a post-summit meeting with the Canadian delegation to be here with you this morning to give you this report. And I'm going to be returning to our Bethesda offices this afternoon for continued conversations with other foreign delegations.

I'm especially pleased to report to you that the CPSC has come to an agreement with our counterpart agency in the Chinese Government—the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)—to take immediate steps to stop the use of lead paint in the manufacture of toys.

Furthermore, AQSIQ has also agreed to increase their inspections of products destined for export to the United States, and to assist the CPSC in tracing hazardous products to the manufacturer, distributor, and exporter in China.

Additionally, the summit has launched new work plans for our four ongoing product working groups: fireworks, lighters, and electrical products, in addition to toys. These are significant achievements, and these agreements signal that the Chinese Government is serious about working with the CPSC to keep dangerous products out of American homes.

We are pleased by these agreements, and appreciate China's responsiveness to our proposals. But, we will of course take heed of the advice of our 40th President, and that is, "Trust, but verify."

CPSC's formal relationship with its Chinese counterparts began over 3 years ago, when few in Washington were talking about the safety of imports. The relationship that was initiated then, is paying dividends now. While we have much, much, much more work to do between our two nations, we have made great progress this week in the area of consumer product safety. And I look forward to our continuing work with the Chinese to achieve concrete, measurable results.

I'd also like to note that the Toy Industry Association has, this past week, announced a new initiative to enforce toy safety standards. The toy industry was one of the first groups that I reached out to when I was named a Commissioner, just 2 years ago. We've



had many discussions since then, and I have commended them on this initiative.

CONSUMER PRODUCT SAFETY COMMISSION MODERNIZATION

Mr. Chairman, I believe that we have to look at, what I would call, organic changes to the CPSC, if we are to continue to tackle the challenges of the 21st century. That involves engaging, not only China, but our other trading partners, as well, in this global economy. And in an effort to do that, we have signed memoranda of understanding with 10 other nations in addition to China, as well as the European Union.

Organic change also involves making use of state-of-the-art technology. As you know, I've requested additional money in our budget request for upgrading our IT infrastructure, and I thank you very much for those additional funds, and more. I can assure you that they will be put to good use.

Organic change also involves changes to our statute. As you know, Commissioner Moore and I have submitted proposals to the Congress in this regard, and I'm delighted to hear that Senator Pryor has now introduced his legislation. I am looking very much forward to the opportunity to sit down with Senator Pryor and the other members of the Commerce Committee to talk about the changes that need to be made to our statutes.

I appreciated hearing your report of your conversation with Vice Minister Wei this morning, and I want to thank you for emphasizing the important safety messages that we discussed with him these past 2 days. He—during our conversations—asked that I help organize a delegation trip to China to look at the toy manufacturing region in China, and I told him I would do so. So, with that, I will be following up with your staff to try to carry out that request that he made to me.

I want to thank you for giving me the opportunity to update the subcommittee this morning. I know that your time is very limited, so I will keep my opening remarks to these, and I will look forward, very much, to answering your questions, sir.

Senator DURBIN. Thank you very much, Chairman.

[The statement follows:]

PREPARED STATEMENT OF HON. NANCY A. NORD

Good morning, Mr. Chairman. I come before the Committee today to discuss the important issue of consumer product safety and specifically recalls of children's products, the Consumer Product Safety Commission's work to improve the safety of imported toys, and important proposals to modernize the agency's statutes.

As you know, the U.S. Consumer Product Safety Commission (CPSC) is a small, independent and bipartisan agency established by Congress and charged with protecting the public from unreasonable risks of injuries and death associated with more than 15,000 types of consumer products under the agency's jurisdiction. Since its inception in 1973, CPSC's work has contributed substantially to the decline in the rates of injury and death related to the use of consumer products.

While we are proud of the agency's many achievements, consumer product safety is never a completed task but always an ongoing process of research, standards development, enforcement and public education. Ever more technologically complex products, expanding retail sales over the Internet, and an unprecedented surge of imports, especially from China, are a few of the new dynamics that are continuously challenging the Commissioners and the professional staff at the agency.

In recent years, about two-thirds of all U.S. product recalls are of imported products, and the large majority of those products are manufactured in China. A 2007 study showed that the value of U.S. imports from all countries of consumer products

under CPSC's jurisdiction was \$614 billion in 2006. Of this amount, the value of U.S. imports of consumer products manufactured in China was \$246 billion, comprising approximately 40 percent of all consumer products imported into the United States. From 1997 through 2004, the share of all U.S. imports of consumer products from China increased by almost 300 percent.

I would like to report to you in more detail today on the initiatives that the CPSC has undertaken in recent years to address the growth in imports and to relate to you what actions we are planning for the future.

First, I am pleased to report to the committee that this week's long-planned U.S.-Sino Consumer Product Safety Summit has marked a significant step forward in advancing product safety with regard to toys and other imports from China.

In a cooperative effort to ensure the safety of children's toys, the CPSC yesterday announced an agreement with its product safety counterparts in the Chinese government aimed at stopping the use of lead paint in the manufacture of toys and addressing other product safety issues. China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) has agreed to take immediate action to eliminate the use of lead paint on Chinese manufactured toys exported to the United States. Lead paint on toys sold in the United States has been banned since 1978.

In addition to the lead paint agreement, the two agencies announced work plans for cooperation in four product categories: Toys, Fireworks, Cigarette Lighters, and Electrical Products. The Work Plans provide a roadmap for bilateral efforts to improve the safety of these products, which represent some of the most frequent hazards under CPSC's regulatory jurisdiction.

This is an important signal from the Chinese government that it is serious about working with the CPSC to keep dangerous products out of American homes. We will be looking for meaningful cooperation on the ground—that means not just with the Chinese government, but also with industry at both ends of the supply chain.

The Summit also resulted in an agreement by AQSIQ to increase their inspections of consumer products destined for the United States and to assist CPSC in tracing hazardous products to the manufacturer, distributor and exporter in China. The two agencies will review the plans' effectiveness within one year to identify possible areas for improvement.

The Summit is a part of CPSC's four part action plan on Chinese imports. The issue of Chinese imports cannot be adequately addressed by any one remedy but rather requires a multi-pronged approach to the problem. The CPSC's plan of action includes: dialogue and initiatives with the Chinese government; working with the private sector including Chinese manufacturers directly; increased surveillance and enforcement activities at the borders and within the marketplace; and modernization of our governing statutes.

#### INITIATIVES WITH THE CHINESE GOVERNMENT

Historically, CPSC has not actively engaged in international activities. However, in 2004, recognizing the continuous and significant increase in the number of imported consumer products entering the American marketplace from China, my predecessor became the first Chairman of the CPSC to travel to that country. That first step was the genesis for a formal relationship between the CPSC and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), our counterpart agency in China, and it resulted in the signing of a Memorandum of Understanding (MOU) between our two nations later that year. Since becoming Acting Chairman in July 2006, I have viewed the task of building upon that foundation as one of my highest priorities.

In 2005, at the first U.S.-Sino Product Safety Summit, the CPSC signed an Action Plan on Consumer Product Safety with AQSIQ. The Action Plan outlines specific cooperative actions to be taken by CPSC and AQSIQ to improve the safety of consumer products: training; technical assistance; a mechanism to provide for "urgent consultation" when necessary; information exchanges; and the creation of Working Groups to address issues in four priority areas—fireworks, lighters, electrical products and toys.

The tasks of the Working Groups are to develop strategies to address safety problems; to be able to respond quickly to urgent product safety issues; to exchange information on changes to safety standards; and to exchange laboratory and inspection personnel in each other's respective facilities. At the beginning of this year, we identified and communicated to our Chinese counterparts specific problems and proposed actions to address these problems with respect to each of the four product categories covered by the Working Groups. In May 2007, I traveled to China with a

delegation of top CPSC officials for in-person discussions of the issues identified by this process.

This work culminated in this week's Second Biennial U.S.-Sino Consumer Product Safety Summit on which I reported at the beginning of my testimony, and I am looking forward to our continued work with the Chinese as we implement those agreements.

Another program recently implemented is notification to Chinese government officials and the involved Chinese manufacturer of a consumer product that was recalled in the United States. The agency sends letters to the Chinese government and the Chinese manufacturer, in both English and Mandarin, briefly explaining the recall and enclosing a copy of the CPSC press release announcing the recall. I believe it is critical that the Chinese government be notified formally of the recall and, where known, the identity of any Chinese manufacturer whose product is the subject of a safety action.

#### PRIVATE SECTOR/MANUFACTURERS INITIATIVES

The second prong of our plan to address Chinese imports is to work with the private sector including Chinese manufacturers. One of the Commission's first initiatives in responding to the growth in imports was to establish the Office of International Programs and Intergovernmental Affairs to support a comprehensive effort to ensure that imported consumer products complied with recognized American safety standards. The mission of CPSC's International Programs Office is to coordinate the agency's work with other countries regarding safety standards development and harmonization, as well as inspection and enforcement activities.

A major emphasis of this program is working with foreign manufacturers to establish product safety systems as an integral part of their manufacturing process. We have found that many overseas manufacturers, particularly those from the developing world, are either ignorant of existing voluntary and mandatory standards or simply choose not to design and manufacture their products to those standards.

As part of our plan to address this problem, in 2005 the CPSC published the Handbook for Manufacturing Safe Consumer Products underscoring our message that safety must be designed and built into consumer products in conformance with safety systems planned, established and implemented at the direction of executive management. The Handbook presents a comprehensive systematic approach to manufacturing safe products and has been published in Mandarin and distributed in China.

In 2006 CPSC facilitated the translation of the identification and scope provisions that summarize the requirements of nearly 300 U.S. mandatory and voluntary consumer product safety standards into Mandarin to assist Chinese manufacturers in understanding what U.S. product safety standards require when manufacturing various products. CPSC determined which standards would be translated primarily by analyzing what imported Chinese products were recalled in the largest numbers and selecting the corresponding U.S. mandatory or voluntary standards for translation. The translation of the identification and scope provisions of U.S. product safety standards facilitates Chinese manufacturers understanding of what is required of them when they manufacture products for the U.S. market. The translations of the identification and scope provisions of the selected standards are available at [standardsportal.org](http://standardsportal.org), a website operated and maintained by ANSI.

The CPSC has also conducted industry-specific safety seminars and retail and vendor training seminars in China. Staff has conducted a number of other safety training activities in China dealing with toy safety, electrical product safety, fireworks safety and a supplier safety seminar for retailers.

Finally, we are undertaking conversations with specific industry groups to encourage testing and certification programs. For example, ANSI and other standards, industry and retail groups are considering the development of testing and certification programs. We have also talked with the toy industry which is planning to move forward with such a program.

#### INCREASED SURVEILLANCE AND ENFORCEMENT

The third prong of our plan of action for Chinese imports is increased surveillance and enforcement activities. Although the Commission was without a quorum for over six months, the agency has been active in addressing the challenge of imported products, not only directly with the Chinese government, but also here in the United States. In fiscal year 2006, the CPSC announced an all-time record number of recalls of defective products. These recalls represented a wide range of consumer products and product hazards. Over two-thirds of these recalls were of imported products, primarily from China.

CPSC's Compliance staff working in conjunction with U.S. Customs and Border Protection (CBP) undertakes both routine and targeted surveillance and sampling of products at U.S. ports of entry. CPSC recently began participating in the Automated Commercial Environment (ACE). ACE is the new U.S. CBP processing system that allows CPSC to facilitate the efficient collection and analysis of records of incoming consumer products to identify likely shipments of violative products before they can be introduced into the stream of commerce. Our early experience with using the ACE system indicates that it will provide us with better data at an earlier point in the process so that our port inspection activities can be precisely targeted and thus more effective.

CPSC obviously attempts to keep dangerous products from entering into the country in the first instance. However, in the event a defective product does enter the stream of commerce, CPSC has been taking stronger measures to effectively remove such products from the marketplace. For example, after a product has been recalled, CPSC has stepped up the number of recall verification inspections of the recalling firms to ensure the product is being removed from the marketplace. CPSC has also adopted a new practice of notifying major retailers of all CPSC recalls, as well as routinely conducting internet searches for sales of recalled products.

CPSC staff is also working with various domestic and international associations and standards groups to assure that a strong message is being delivered to Chinese manufacturers and exporters.

#### STATUTORY MODERNIZATION

The fourth prong of our plan of action for Chinese imports is the modernization of our governing statutes to better allow us to address the large influx of imports. Congress was farsighted when it crafted the Consumer Product Safety Act, the CPSC's governing statute. When the law was written in 1973, Congress recognized that the agency could not impose U.S. law in foreign countries against foreign manufacturers, so our statutes hold everyone in the product's stream of commerce in the United States responsible and potentially liable. In brief, the American importer, as well as the domestic retailers and distributors, are held responsible when we cannot reach an overseas manufacturer.

However, what Congress could not foresee 34 years ago was the flood of exports that would be entering the United States in the 21st Century. That is one reason that I believe it is in the best interest of consumer product safety to modernize CPSC's statutes and to strengthen the agency's hand in protecting the American public.

As you know, Mr. Chairman, the CPSC was last reauthorized in 1990. Clearly, the dynamics of the marketplace have changed dramatically since that time. In that regard, I would like to submit for the record a copy of a working paper that describes proposed revisions to CPSC's statutes that I believe will help the agency respond to the 21st Century challenges of growing imports, emerging hazards and modern retail technology. For example, it would address obvious gaps in our statutes by making it unlawful to sell a recalled product in commerce.

Mr. Chairman, the CPSC is determined to make certain that imported consumer products meet the same high standards that we require of products manufactured in America. While the CPSC historically has been a relatively small agency, I believe that with the proper tools we can continue to accomplish our mission of making certain that the products American families bring into their homes and playgrounds are safe and sound.

I look forward to answering your questions and working with the Committee on these important issues.

Senator DURBIN. Commissioner Moore.

#### STATEMENT OF THOMAS H. MOORE

Mr. MOORE. Mr. Chairman, ranking member, and members of the subcommittee—

Senator DURBIN. Would you pull the microphone closer to you there, please?

Mr. MOORE. There it is.

I want to thank you for providing me with this opportunity to present testimony today on the important issues surrounding the improvement of consumer product safety in our country. As I've said before, I'm gratified by the very clear signals given by both the

House and the Senate authorizers and appropriators, that they understand the very difficult position that the Consumer Product Safety Commission finds itself in.

For the first time since I came to the Commission over 12 years ago, I have the sense that there's a realization of the need for both a substantial and sustained increase in our funding level, as well as the need for important changes in our statute.

The key to an effective regulatory and enforcement body is sufficient resources to carry out its responsibilities and mission. The CPSC is a staff-intensive organization. I've always expressed that—at the heart of CPSC's operation is its staff, without question, our greatest and most important asset. Over the last few years, because we have achieved our budget-required staff reductions through non-targeted means, such as attrition, early outs and buyouts, we've lost some very key staffers. The experience we have lost will take years to recover.

The result is that the Commission is at a crossroads. Any additional reductions in staff or resources will ultimately place the Commission in a position where it will no longer be an effective force in consumer protection.

The first step that must be taken is to reject the administration's staffing and budget proposal for fiscal year 2008. Fortunately, Congress—both the House and the Senate, have done just that. I support an incremental approach to increasing our budget and staff. Since we require a yearly increase of about 3 to 4 percent to keep current with increases in salary and other operating costs, yearly increases in the range of 10 to 15 percent would—in my mind—provide the Commission with a good growth pattern.

This growth pattern would also allow the Commission to do a yearly assessment of where the areas of needs most exist.

This summer has been the summer of toy recalls. There have been several, highly publicized recalls of children's products made in China for importation and sale, by well-established, and long-trusted domestic toy manufacturers. Thus far, in 2007, CPSC has recalled a record number of hazardous imported products from China, including toys and children's jewelry. The safety issue associated with this increase in imports has created new challenges for our Commission. We would like to have additional resources to increase surveillance and enforcement activities at the ports, and in the marketplace. And we are working with interested congressional members to modernize our governing statutes, to give us more leverage through the regulatory process, and our enforcement activities.

#### LEAD IN CHILDREN'S PRODUCTS

As far as the lead in children's products issue—I wish that the Commission had the authority to find it unacceptable for any—any—amount of lead, or any other toxic substance, to be in a child's, or be in children's products. However, our statute requires us to assess the accessibility of the lead, and this is a key measure under the Federal Hazardous Substances Act.

The Commission did issue a guideline document, back in January 1998, which went so far as to urge manufacturers to eliminate lead in consumer products. In response to that guidance, in August

1998, the Toy Manufacturers of America pledged to eliminate lead from their products.

Yet, here we are, nearly 10 years later, facing the same problems. Even before several recent highly publicized recalls this summer, Members of both the House and the Senate, had indicated an interest in reinvigorating the Commission through the reauthorization process.

I have strongly supported increasing our staff, and facilities resources, and various changes to our statutes over the years. I have submitted to both the House and the Senate proposals for consideration during this process of looking at reauthorization of the Commission. Acting Chairman Nord has also put forth her proposals, many of which I agree with. Some of which—in one form or another—I have advocated for years. Thus, for the first time in a long time, there's bipartisan support for the Commission to make major changes to the Commission's statutes.

Again, I am gratified by the attention that Congress is paying to the Commission, and I'm hopeful that we see significant results from all of our efforts. I know that the American public will be thankful. Thank you, and I'll be happy to try to respond to questions.

Senator DURBIN. Thank you, Commissioner Moore.

Mr. MOORE. Thank you.

[The statement follows:]

PREPARED STATEMENT OF THOMAS H. MOORE

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for providing me with this opportunity to present testimony today on the important issues surrounding the improvement of consumer product safety here in the United States. As I have said before, I am gratified by the very clear signals given by both the House and the Senate Authorizers and Appropriators that they understand the very difficult position that the Consumer Product Safety Commission (CPSC) finds itself in. For the first time since I came to the Commission, over twelve years ago, I have the sense that there is a realization of the need for both a substantial and sustained increase in our funding level as well as the need for real and important changes to our statutes which could give us new authorities and clearer direction in achieving our mission.

In March of this year, in a written statement to the Senate Committee on Commerce, Science, and Transportation, I spoke about the problems associated with any perception of our modern, sophisticated marketplace of today effectively regulating itself for product safety. "Simply stated, competition and voluntary actions of today's businessmen do not always suffice to safeguard the public interest. Competition does not and will not inevitably take the form of a rivalry to produce the safest product. The role of the CPSC in today's consumer product marketplace remains compelling, substantial and relevant."

We now sit here less than six months later because of the growing alarm about possibly unsafe consumer products, some produced in violation of current, long-standing regulations, cheaply manufactured in foreign facilities and now flooding our marketplace and providing a risk of harm to those consumers who purchase them. We want to know who is to blame and what steps we can now take to address this problem.

The short and easy answer to the first question is that we are all to blame—the administration, the Congress, the regulators, the manufacturers, importers and retailers, and anyone else who may have been active or inactive participants in enabling the policy decisions and priorities that have led us to this point. The only blameless ones are the unsuspecting consumers who unwittingly place their confidence in a system designed to protect them from the unreasonable risk of harm from the products that they find in their marketplace.

The second question does not have as short or easy an answer.

## RESOURCES, RESOURCES, RESOURCES

The key to an effective regulatory and enforcement body is sufficient resources to carry out its responsibilities and mission. The CPSC is a staff intensive organization. I have always expressed that at the heart of CPSC's operation is its staff, without question, our greatest and most important asset.

Over the last few years, because we have achieved our budget required staff reductions through non-targeted means such as attrition, early-outs and buy-outs, we have lost some very key staffers. We did not want to have to do a reduction in force (RIF) to accomplish the staff reductions and, having a number of older employees, we felt it was likely we would have enough employees willing to take advantage of incentives to be able to avoid a RIF, which was in fact the case.

Over time we hope to be able to train replacements, but the experience that we have lost will take years to recover. Moreover, the lack of sufficient resources has severely limited our ability to do succession planning and severely limited our ability to have depth of personnel behind our key positions. In addition, dwindling resources and staff reductions have had some negative impact on our agency's ability to attract high level qualified candidates for our critical vacancies as well as our ability to retain some of our own top level employees.

The result is that the Commission is at a crossroads. Any additional reductions in staff or resources will ultimately place the Commission in a position where it will no longer be an effective force in consumer protection. The first step that must be taken is to reject the administration's staffing and budget proposal for fiscal year 2008. Fortunately, Congress, both the House and the Senate, have done just that. This Congress has sent clear signals that it understands that the Commission needs more funding to increase its staff and to be able to do work on rulemakings and other projects that have been shelved or slowed down because of lack of resources. It is crucial that we have a period of stability, to move away from what has been a pattern of trying to see how we can manage with less and to begin a process of determining what more we need to have in order to ensure that we do our job more effectively.

However, I must point out that it would not serve the Commission or the public well to just indiscriminately throw resources at the Commission in response to the public alarm surrounding some highly publicized recalls. It has taken years for the Commission to get to its present position and it will take years to correct. I support an incremental approach to increasing our budget and staff. Since we require a yearly increase of about three to four percent to keep current with increases in salaries, rents and other operating costs, yearly increases in the range of 10 to 15 percent would, in my mind, provide the Commission with a good growth pattern. This growth pattern would also allow the Commission to do a yearly assessment of where the areas of needs most exist at the Commission therefore allowing the Commission to address its needs in the light of the current consumer product safety problems.

## IMPORT PRODUCT SAFETY

Again, in March of this year, I informed the Senate Committee on Commerce, Science and Transportation about my concerns with the growing numbers of possibly harmful imported consumer products coming into our country. "In the future, the problems associated with increasing numbers of possibly dangerous imported products will present the Commission with more and more of a challenge. Increasing numbers of U.S. companies are either importing finished products or component parts made in other countries or establishing their own production plants outside of the United States. In most cases, domestic companies are not going to have the same degree of control over these products as they would have if their products were being made in this country. This inability to have constant hands-on supervision can result in products entering this country that do not meet U.S. safety standards."

This summer has been the summer of the toy recalls. There have been several highly publicized recalls of children's products made in China for importation and sale by well established and long trusted domestic toy manufacturers. Thus far in 2007, CPSC has recalled a record number of hazardous imported products from China including toys and children's jewelry. The safety issues associated with this increase in imports have created new challenges for our Commission. The Commission is currently looking at ways to address the developing issues surrounding imported product safety. We are involved in some activities such as dialogue and initiatives with foreign governments and the private sector, including domestic and foreign manufacturers. We would like to have additional resources to increase surveillance and enforcement activities at the borders and in the marketplace and we are working with interested Congressional members to modernize our governing stat-

utes to give us more leverage through the regulatory process and our enforcement activities.

However, I think that it is very important that in whatever we do collectively—through efforts at the Administration level, Congress and the Commission—to address import product safety, we must send a clear, unequivocal message to manufacturers, importers and retailers who bring and offer for sale in this country products which present a substantial product hazard or that do not comply with a U.S. product safety standard. That message should be that, “you will be held accountable.” The Commission must have the sufficient resources, the adequate authority and the internal willingness to deliver that message.

#### STATUTORY AND OTHER MODERNIZATION

Some of the highly publicized recalls have involved children’s products that contain lead or lead containing paint. Toys or other articles intended for use by children that bear “lead containing paint” are banned hazardous products. It is a prohibited act to introduce or deliver for introduction into interstate commerce a banned hazardous substance. Any person who violates this law could be subject to both criminal and civil sanctions. Prior to 2007, we had been averaging four recalls a year for children’s products with “lead containing paint.” This year we have already had 15. This regulation banning children’s products that have “lead containing paint” has been on the books for 30 years and there is absolutely no excuse for a violation of this regulation. Violators should be held “accountable” to the maximum extent for their non-compliance.

As far as children’s products such as jewelry or vinyl baby’s bibs containing accessible lead, I wish that the Commission had the authority to find it unacceptable for any amount of lead (or any other toxic substance) to be in a children’s product. However, our statute requires us to assess the accessibility of the lead and this is the key measure under the Federal Hazardous Substances Act (FHSA). The Commission did issue a guideline document back in January of 1998, which went so far as to urge manufacturers “to eliminate lead in consumer products.” In response to that guidance, in August of 1998, the Toy Manufacturers of America pledged to eliminate lead from their products. Yet here we are, nearly ten years later, facing the same problems.

We know that exposure to lead can elevate blood lead levels and that such exposure could bring about developmental problems in children. I am absolutely certain that parents would agree that if we could require the elimination of lead in children’s products, we should. I understand that some members of Congress are interested in this issue and I hope that through their efforts we can address this problem and get it resolved in favor of thoroughly protecting our children from unnecessary exposure to lead containing products.

Testing of products on the market to determine compliance with safety standards is also an important part of our responsibilities. I can’t tell you how troubling the picture of our toy testing facility in the New York Times article was to me. We have been trying to obtain funds to modernize our lab since before I arrived at CPSC in 1995, yet we have never received any significant funding for that goal. We have been working with GSA on a modernization plan since at least 1999. The Lab Modernization Feasibility Study, completed jointly with GSA in 2005, formed the basis for a capital project submitted to OMB by GSA as part of their fiscal year 2007 budget. However, other national priorities precluded the project from being funded. There certainly has been a level of frustration associated with the process. We have been forced to accept a band-aid approach to fixing the lab, when what we really need is a major modernization commitment.

I have seen other testing labs, such as those at Underwriters Laboratories, which are much more sophisticated, spacious and up-to-date than our lab. Given that we are the federal agency designated to protect consumers from product hazards and that our laboratory testing plays a key role in making hazard determinations, I think the state of our lab should concern everyone. However, whenever I go to our lab I am constantly amazed at the ingenuity of our lab staff in overcoming space and resource limitations. We often talk about the agency making do with what it has and nowhere can that be seen more strikingly than at the lab. I would like to see a real investment made in upgrading our lab so that we can do more testing in our own facility rather than having to contract the work out and so that tests don’t stack up because of a lack of adequate space or other resources, which prevent us from doing simultaneous testing on various products.

We are currently looking at different “real estate” solutions with GSA that would give us a better physical plant. However, these solutions may or may not allow us to function at the same capability we currently have and they would not include any



modernization of equipment. It was estimated back in 2005, that the cost to truly modernize our lab, if we were to stay on the current site, would be somewhere around \$30 million. This would expand our capabilities plus give us new equipment and a physical plant that is both energy efficient and an effective use of space. A modern facility would also put us in a better position to deal with emerging technologies, such as nanotechnology. It is difficult for us to even contemplate how we would assess potential product-related nanotechnology hazards when we struggle to provide the basic lab capabilities to meet our current needs.

#### CONCLUSION

Even before several recent highly publicized recalls, members of both the House and the Senate had indicated an interest in reinvigorating the Commission through the reauthorization process. I have strongly supported increasing our staff and facilities resources and various changes to our statutes over the years. I have submitted to both the House and the Senate proposals for consideration during this process of looking at reauthorization of the Commission. Acting Chairman Nord has also put forth her proposals, many of which I agree with, some of which (in one form or another) I have advocated for years. Thus, for the first time in a long time, there is bi-partisan support on the Commission to make major changes to the Commission's statutes. Some of the suggested changes could help the Commission's enforcement efforts with respect to the type of problems we have been seeing with the safety of imported products.

Again, I am gratified by the attention that Congress is paying to the Commission and I am hopeful that we see significant results from all of our efforts. I know that the American public will be thankful.

#### UNITED STATES-CHINA AGREEMENT

Senator DURBIN. And if you do have to leave early for your dental appointment, it's understood. I thank you very much for your being here today.

Chairman Nord, I want to reflect, for a moment, on the agreement yesterday with the Chinese. When I met with Minister Wei, he told me that China had a zero-tolerance policy now, when it came to lead paint. We, in the United States have banned all but the tiniest amounts of lead paint for over 30 years—so, what's new? This agreement that you say has been reached reaffirms what has been the law in the United States for 30 years, and what is already the policy in China. Are you saying that the Chinese have now adopted a new and different standard when it comes to lead paint?

Ms. NORD. I think, sir, that that's a question you would really need to put to the Chinese, I—

Senator DURBIN. But you entered into the agreement with them.

Ms. NORD. Yes. And the Chinese have committed to take immediate action to eliminate all lead paint used in toys exported to the United States. Why it is there is a very legitimate question to put to the Chinese, and to put to the toy industry that is going to be following this panel. And I would hope that you would put it to them, and I would be very, very interested in knowing their answer to it.

Senator DURBIN. You don't know whether this agreement represents a change in the lead standards for products exported from China?

Ms. NORD. What I know, sir, is that we have banned lead paint in this country for 30 years. And as I have told you before, and as I told Senator Klobuchar very recently—we will not tolerate it, and we will enforce the law. And why it is showing up in toys manufactured in China is a very, very serious and legitimate question, and I hope you put it to the manufacturers. And I'd like to know their answer to it.

## CHILDREN'S JEWELRY

Senator DURBIN. I think we all would.

When it comes to children's jewelry, we know that we have a serious problem here, and the Consumer Product Safety Commission has acknowledged that, with significant recalls of 150 million pieces of children's jewelry in 2004.

Ms. NORD. Yes.

Senator DURBIN. Recent stories indicate that we are still receiving lead jewelry from China. What steps has the Consumer Product Safety Commission taken to stop these shipments, to inspect these shipments, and to protect American families from exposure to this lead-based children's jewelry coming from China?

Ms. NORD. I outlined a number of steps that the Commission has taken in a recent letter to you.

The Commission started its activity in 2004, of course, well before I was there, and—are you leaving?

Mr. MOORE. Yes, I've got to go.

Ms. NORD. Can I come with you?

Senator DURBIN. You're facing your own dentist here.

Ms. NORD. It's a sad day when you'd rather go to the dentist.

Senator DURBIN. Is it safe?

Ms. NORD. The Commission initiated activity in 2004 dealing with lead jewelry, and again, I detailed this in a recent letter to you. The Commission was very concerned about this. They did a rather non-scientific survey of what was out there, and as I reported in my letter to you, they found significant numbers of pieces of jewelry that had lead in it. When I say significant, sir, I'm meaning most of it. Unfortunately, because that survey was done in a rather unscientific way, I'm not going to—in this setting—get into the numbers, but basically most of it was lead jewelry. Because of that, the agency initiated an enforcement policy which we put out there that said that if we see lead at above the .06 parts per million standard, we will consider that a de facto substantial product hazard, warranting a recall. And that has been the policy in place since 2005.

In October 2006, we did another nonscientific survey of the marketplace. Frankly, we were pleased that we only saw 20 percent, but obviously 20 percent is a whole lot higher number than it should be—

Senator DURBIN. It was 20—

Ms. NORD [continuing]. It had gone from virtually all, to 20 percent.

Senator DURBIN. Does 20 percent represent millions of pieces of—

Ms. NORD. Yes.

Senator DURBIN [continuing]. Children's jewelry, still coming into the United States with lead?

Ms. NORD. Absolutely, absolutely.

Senator DURBIN. So, what actions are you taking now to stop those products from reaching the shelves of American stores?

Ms. NORD. We have initiated rulemaking which would basically just ban the importation of jewelry with lead in it.

In order to take action, we need a legal basis on which to do it. The enforcement policy was a good tool. But if we are going to be able to take effective enforcement policies, we need to have the underlying regulation in place, and that's what we're doing.

Senator DURBIN. When did you initiate the rulemaking?

Ms. NORD. I became acting Chairman in July 2006, and this was one of the very first things I initiated.

Senator DURBIN. And so—

Ms. NORD. And we got the ANPR issued—just before we lost our quorum in January 2007.

Senator DURBIN. And so, as a result of that rulemaking, how many of these dangerous lead jewelry products has the CPSC recalled and removed from the shelves?

Ms. NORD. Sir, I would have to get back with you—I just don't—

Senator DURBIN. Any? Have you recalled any?

Ms. NORD. I'm sure we have, but I'm going to have to come back to you with those details.

Senator DURBIN. If you would, please.

Ms. NORD. I just don't have them off the top of my head.

[The information follows:]

#### CHILDREN'S METAL JEWELRY RECALLS—FEBRUARY 3, 2005 TO OCTOBER 10, 2007

The U.S. Consumer Product Safety Commission (CPSC) announced a new enforcement policy to reduce the potential health risks from lead in children's metal jewelry on February 3, 2005.

Between that date and October 10, 2007, the CPSC has announced 37 recalls of children's metal jewelry involving 17,692,170 units of jewelry products.

Three of these recalls were accountable for over 72 percent of the units recalled:

- (1) Stravina Operating Company
  - Children's metal necklaces and zipper pulls
  - 6,000,000 units
  - November 30, 2005
- (2) A&A Global Industries
  - Children's bracelets
  - 4,000,000 units
  - April 3, 2007
- (3) Hirschberg Schutz & Company
  - Metal charms
  - 2,800,000 units
  - March 3, 2005

#### CONSUMER PRODUCT SAFETY COMMISSION'S LABORATORY

Senator DURBIN. You've seen this photo, it's probably familiar to you.

Ms. NORD. It surely is, sir.

Senator DURBIN. And, could you explain to me, when most Americans feel that their Government is there to help them out, protect them from dangerous products—could you explain to me what we're looking at here, and what this reflects in terms of the toy safety inspection capacity of the Consumer Product Safety Commission?

Ms. NORD. Yes, but I think actually that photo represents a bigger question.

The Consumer Product Safety Commission's laboratory in Gaithersburg, Maryland is a 1950s-era Nike missile testing site. It is

an incredibly inefficient facility. We've got a number of different buildings, some of them—I hate to admit—do not even meet code.

The CPSC's laboratory must be modernized. And we've been talking to the Congress for a number of years about that.

This situation cannot continue, sir. And, we are—as I discussed with our authorizers in March—we are trying very hard to work through some issues with the General Services Administration (GSA), in order to modernize our facilities, and I am frankly, not happy with the progress that is being made. I was very, very pleased that the staff of both the Appropriations Committee and the Commerce Committee were able to go out to our laboratory about 2 weeks ago, to see firsthand, the situation there.

However, having said all that, generally—with respect to toy testing, that is a piece of our toy testing facility. We do a number of tests out there. There has been quite a bit of press play about our lonely toy tester, single toy tester—I think you showed a picture of him.

He basically spends his time doing small parts testing, drop testing. If there are other issues dealing with toys, for example—lead testing or electrical testing—there are obviously other people in the laboratory that do all that. But, Bob's our small parts guy.

Senator DURBIN. Thank you.

Senator Brownback.

#### LEAD PAINT

Senator BROWNBACK. Thank you, Mr. Chairman.

Chairman Nord, I want to make sure I understand—you're saying serious actions will take place if the Chinese do not comply with the lead paint rule that you're putting in place, is that correct?

Ms. NORD. No, what I said was that we reached agreement that the Chinese would take immediate steps to eliminate the use of lead paint, and at our summit over these last 2 days, the Chinese went through and listed a number of actions that they intend to take, and I'd be happy to—

Senator BROWNBACK. What I want to understand from you is that if lead continues to show up in toy products, what will your Commission do?

Ms. NORD. Well, I think that we have to address not only this issue, but the whole question of unsafe imports with respect to toys in—as I said earlier—in an organic way. You can't look at one kind of activity and say, "That's going to solve the problem," because this is a problem that needs to be solved on a number of different levels. I've outlined—

Senator BROWNBACK. Chairman, I want to hear you say, "These products are not going to enter our stores." If that's what you continue to find.

Ms. NORD. Well, I'm happy to say that. That, sir, almost goes without saying. We have been trying to enforce this lead paint ban, and that's why you have seen these recalls. However, in order to more effectively address the question of unsafe imports, what we want to do is make sure that the product is manufactured safely in the first place. And that requires, first of all, the Chinese Government getting together with us, and backing this. And I'm hope-

ful that our activities over the last 2 days resulted in that, or at least pushed it forward. We've got to make sure that Chinese manufacturers and exporters understand their legal obligations, we need to make sure that the toy industry is working on this, and then we have to enforce the law.

Senator BROWNBACk. But isn't it best to say, "Look, if there is any lead in any of these products, the products don't enter America, period."

Ms. NORD. Well, that is the law on lead paint.

Senator BROWNBACk. And that that's what you're going to enforce.

Ms. NORD. That's absolutely correct, sir.

Senator BROWNBACk. Okay, and including just identifying factories that are producing products like this, and saying, "No more products coming from here until you clean this problem up."

Ms. NORD. That's part of what was agreed to over these past couple of days.

Senator BROWNBACk. Well, here's where I've got a little problem.

Ms. NORD. Okay.

#### ENFORCEMENT

Senator BROWNBACk. I worked in the trade field in 1990, 1991. And then we were pushing the Chinese to protect our intellectual property rights. Saying, you know, we put a movie out, and before it's shown here, is being sold on the streets in Beijing. I've actually been in Beijing, and been offered a movie for sale by a counterfeiter, before the movie came out here. So, I've actually experienced this.

And we started this back in the early 1990s, and they said, "Yes, yes, we'll enforce your intellectual property rights," and here we are in 2007, and they still don't honor our intellectual property rights.

But now we're on something that has a consumer safety issue with it. This is about the safety of the children, the safety of the consumers, the safety of pets in this country. And we should have zero tolerance, and I think we need to start pulling the club out. And say, "We're going to start shutting all of these down." If these products are coming in, and we can't be sure that the ones that are imported are good. I think, you have to just really pull the heavy club out, and say, "That's the way it's going to be. And I'm going to use every tool I've got to make sure that happens."

Ms. NORD. Well, sir, I think I gave you a very long-winded answer to get to that point. That's exactly what we're trying to do.

Senator BROWNBACk. And it's what you will do.

Ms. NORD. You have my commitment, sir.

Senator BROWNBACk. And if you need any additional legislative authority from us to do it, let us know.

Ms. NORD. Sir, I greatly appreciate that. I sent up to the Hill a proposal, and I hope that we will see forward action on legislation.

Senator BROWNBACk. And, let us know of any personnel that you may need.

Ms. NORD. Of course.

Senator BROWNBACk. Are you having any trouble getting into Chinese manufacturing facilities to review products? Or do you even have that authority and capacity?

Ms. NORD. We don't have that authority, we don't have that capacity, sir—we don't have people.

Senator BROWNBACk. Would you like to have that?

Ms. NORD. We don't have people in China.

Senator BROWNBACk. Would you like to have people in China—do you think that is important, because you've said we need to get at the base of the manufacturing—do you need to be able to inspect the plants there?

Ms. NORD. Well, we wouldn't have the authority to inspect the plants there, but certainly I have been talking, actually, internally for some time, about what we could do to get some presence in China.

Senator BROWNBACk. Do you want that? Do you believe you need the authority to enforce these standards that you've articulated?

Ms. NORD. Legally, I'm not sure how we would be able to do that. Our statute allows us to enforce our law against importers—everyone in the stream of commerce within the United States. But, I don't think that we would legally be able to go in and enforce a manufacturing standard in China itself.

Senator BROWNBACk. Well, that's what I'm asking, whether that's something we should look at.

Ms. NORD. Well, we don't have that authority now, sir.

Senator BROWNBACk. Mr. Chairman, I'd like another round if we could?

Senator DURBIN. Senator Klobuchar.

#### CHANGES TO THE CONSUMER PRODUCT SAFETY COMMISSION'S STATUTES

Senator KLOBUCHAR. Thank you, Senator Durbin.

Thank you, as a freshman Senator, thank you for allowing me to serve on the Appropriations Committee for 2 hours.

And I appreciate, Chairman Nord, you being here, and the work you're doing to try to fix this problem.

You and I have talked about the need to remove lead from children's products, and make sure we don't have these kinds of toxic toys in our country. And I think you've expressed your frustration, both in committee hearings and to me, about the process, and the rules, and how they work, and how it's difficult for you, and how you would prefer—and I don't want to put words into your mouth—but some kind of legislative ban that's clearer than having to go through various stages that you do, that delays things.

And could you talk a little bit about what would help you, statutorily, to make it easier to make sure that we can immediately ban these products?

Ms. NORD. Yes, I'd be happy to. Earlier this summer, I sent up to the Hill a legislative proposal that laid out things that I thought that the Commission should have—tools the Commission should have in order to do our job better. Included in that was the authority to require a certification to our safety standards, across all of our statutes.

Right now, we enforce five different statutes. Only the Consumer Product Safety Act has a provision that allows for certification. So, that means when somebody is manufacturing, selling a product that is subject to a certification—or, a mandatory safety standard, they have to—as a part of the law—certify that they are meeting it. And that’s a very useful tool for us to have.

But that authority doesn’t exist across the other statutes, and the Hazardous Substances Act is the act where we regulate toys. So, we don’t have that authority now, and I would very much like to have that authority.

The other thing that is very interesting, and this may be getting down in the weeds a bit, so I apologize—our lead paint ban is under the Consumer Product Safety Act, not under the Hazardous Substances Act. I just told you, there’s a certification provision there?

Senator KLOBUCHAR. Yes.

Ms. NORD. The way the statute is written and past Commissioners have interpreted it, is it only goes to standards, it doesn’t go to bans. So, we don’t have an existing requirement right now that importers certify that there is no lead paint in their toys.

I have asked the General Counsel to advise on, whether under some other provisions of the statute, we might be able to require that, and if so, to put together a briefing package for the Commission, so that we can put in place that requirement. Why it has never been acted on prior to this time, I don’t know. Commissioner Moore might have been able to expand on that, but I do not know.

Senator KLOBUCHAR. Okay, thank you, and again, I hope you look at our legislation, where we’ve basically put that ban in place, with some trace levels, which are actually lower than the lead paint levels that are allowed, and then looked at a lower level for jewelry, which I know you’ve been working on. Because it’s my understanding the rulemaking process can take them over 2 years, and we’re just trying to give you the tools to act quickly.

#### CONSUMER PRODUCT SAFETY COMMISSION’S RECALL PROCESS

The recall process—could you talk about what you do now to make sure that these recalled products aren’t for sale? Because there have been reports about this. We’ve worked very well with Target, Toys “R” Us, and some of the big retailers who’ve worked with us to talk about how they make sure that these products aren’t sold, and we appreciate the work they’re doing. But I’m talking about when things are in the stream of commerce, or they’re up on the web, or they’re on eBay. What can you do, and what tools could help you with that?

Ms. NORD. Well, again, one of the things that I asked for in my earlier legislative proposal was making it illegal to sell a recalled product, and I think that would be a very helpful tool for the Commission to have. Right now, what we do is, once a recall is initiated and announced, we undertake a number of surveillance activities, including going into the stores, going on the web, doing secret shopping kinds of things, trying to purchase recalled items. We have a relationship with the major online auction houses, and have agreement with them that they will not sell recalled products. But again, you know—

Senator KLOBUCHAR. Would it help to have the batch numbers on the packaging or on the toys?

Ms. NORD. Anything that provides traceability is very helpful.

Senator KLOBUCHAR. Okay, thank you.

And can I just ask, since I'm not on the Appropriation Committee, and it looks like you need enormous more resources, and you talked about revamping things—has the administration been coming in, every year, asking for more resources to fix these things?

Ms. NORD. Well, every year our budget request has been a little bit higher than the last year, but—

Senator KLOBUCHAR. Has it been of the extent that you would need to revamp a lab like this?

Ms. NORD. You know, again, the lab modernization issue is something that we have been talking to the Congress and to the administration about for some time. I think everyone understands that the lab needs to be modernized.

What the problem is, is that we've got this facility out there. What GSA was looking at initially was, either demolishing the whole thing and rebuilding—which would have been enormously expensive. What we've been doing in the past is just Band-Aid-type activities to try to keep it somewhat current, but you know, that isn't very cost effective, either. So, we are now talking with GSA about some real estate solutions that I hope will get us into a facility that is modern, and that does the job that we need to have done.

Senator KLOBUCHAR. Thank you.

#### UNITED STATES-CHINA AGREEMENT

Senator DURBIN. Thank you, Senator.

Chairman Nord, going back to my earlier questions. When I asked you if the new agreement meant that there would be a new lead standard for products exported from China, you said I should ask the Chinese.

Ms. NORD. I'm sorry—I didn't understand that to be your question, sir.

Senator DURBIN. Well, go ahead, then—can you tell me, does your new agreement with China, mean that there is a new standard, in terms of lead and lead paint for products exported to the United States from China?

Ms. NORD. Sir, there is both a statutory and a regulatory ban on lead paint coming into the United States—I'm not sure how we would make that tougher.

Senator DURBIN. No, you—please. I'm asking you about the Chinese standard. Have the Chinese agreed to a new standard when it comes to lead and lead paint for exports to the United States?

Ms. NORD. Sir, what I am concerned about are products that are being exported to the United States. I do not want to see any lead paint in those products.

Senator DURBIN. I understand.

Ms. NORD. What the Chinese do internally is up to the Chinese.

Senator DURBIN. Now, wait a minute. If this is a memorandum of understanding, an agreement with the Chinese, what they do internally is not up to the Chinese, if it comes to the United States. That's what this is about. I'm asking you if there's a new lead



standard, agreed to, in this agreement with China for lead or lead paint? I've said that three times. Is there, or isn't there?

Ms. NORD. Sir, the Chinese have agreed to eliminate any lead paint used in toys exported to the United States.

Senator DURBIN. Is this a new standard?

Ms. NORD. Sir, again, you will have to ask the Chinese what the state of the Chinese law is.

Senator DURBIN. Let me ask you about your quote in this morning's Wall Street Journal. This relates to the toy industry.

I might say that this article said that the most concrete aspect of the agreement—that we've referred to here—is the prohibition on using lead paint in toys. And, I'm trying to get down to whether the Chinese have agreed to a new standard, in terms of what they are going to export. But, I will ask the Chinese.

But let me ask you what you meant when you referred to the toy industry and said, "No longer can the industry tolerate an 'ask no questions' mentality," said Nancy Nord, the CPSC's Acting Chairman. "The stakes are just too high." Are you saying that that has been the practice in the past? That your Commission did not ask questions?

Ms. NORD. Well, certainly, sir, since I've been a Commissioner we've been asking lots of questions.

As I indicated in my opening statement, the very first group I reached out to when I became a Commissioner was the Toy Industry Association. And, I think I have a very strong record indicating a concern here, and a desire to work with you, with the industry, with consumer groups, to make sure that toys that are sold in this country are safe.

#### CHILDREN'S JEWELRY

Senator DURBIN. All right, let me ask you this—I return to the issue of children's jewelry. I want to give you a chance to clear up the record if there's any uncertainty.

Ms. NORD. Okay, thank you.

Senator DURBIN. I believe that you had acknowledged that your Commission found that there were dangerous lead in children's jewelry that led to a substantial recall in 2004. I believe that your earlier testimony was that you initiated a rulemaking in July 2006, relative to lead children's jewelry. Which, I think, goes without saying, is a hazard, if tiny parts can break off and children can swallow them or be exposed to them.

So, I want to know, as a result of that rulemaking, what action has been taken by the Consumer Product Safety Commission to stop the export, or to even examine the exports of dangerous children's jewelry to the United States.

Ms. NORD. Okay. What the Commission did in January in 2007 was issue a notice of proposed rulemaking. This is not a final rule. And what the Commission did over the period of time where we did not have our quorum, was analyze the comments that came back, and as I have told your staff, we intend to go to the next stage of rulemaking in the fall.

Senator DURBIN. This is—

Ms. NORD. I am not going to presume to predict the way that rulemaking will come out, that would not be administratively proper.

Senator DURBIN. So, for over 1 year, your Commission has been sufficiently concerned about dangerous lead content in children's jewelry, and from what you have told me, no direct action has been taken to stop imports of this dangerous jewelry into the United States?

Ms. NORD. Sir, we've done recalls.

Senator DURBIN. Well, I'm asking you, tell me about that?

Ms. NORD. There is no rule in place, that's what I'm trying to tell you, but we've got an enforcement policy that we are enforcing. I would like to have a rule, because that is a much stronger regulatory tool—until we get a rule in place, we will enforce our enforcement policy.

Senator DURBIN. Well, I can just tell you that what you've just said is no consolation to families across America, that you are somehow caught up in a rulemaking process, when you know that one out of five pieces of children's jewelry has dangerous lead content.

We expect—Americans expect our Government to act to protect families and children.

Ms. NORD. That's why we have an enforcement policy, sir—

Senator DURBIN. Well—

Ms. NORD [continuing]. And that's why we're in—

Senator DURBIN [continuing]. That's why I've asked you several times, to tell me what you have done to stop this jewelry from coming into the United States. And I've written you letters, asking you to do a risk analysis of these imports of children's jewelry, you said, "We don't have the authority, we don't do that." And if that is the case, then I think either the law or the Commission, need to change.

Ms. NORD. The law is what it is, sir. And I think I outlined in the letter where the holes are. So, I look forward to working with you and the Commerce Committee to address this situation.

Senator DURBIN. Thank you.

Senator Brownback.

#### INTERNATIONAL TRADE

Senator BROWNBACK. Thanks.

Chairman, you're hearing from us a great deal of frustration, it's just reflective of how much frustration there is around the country regarding this massive wave of products coming in from China, and the sense that we're losing a lot of the manufacturing base as a result of that. We have two 9-year-old children, and my daughter asked me, "Why is everything made in China?" And I said, "Well, it's kind of a long story," but there is this sense that there's been this huge wave of products flowing into the United States, and there is. When you look at major retailers that get 70, 80 percent of their products from China, and then you see these defects that are taking place, and China's a closed system, so it doesn't have a free press that's looking around at the factories and holding manufacturers accountable. The result of this is that we are recipients of defective products. And, there's this huge frustration that, we've

lost jobs, we're losing economy, they manipulate their currency, and now the products aren't even safe, and we're allowing all of this to take place. What are you doing about it? I hope you're sensing the real frustration that we're expressing to you, which is directly from the countryside.

We've got to actually do something, we can't just talk about it, that's why I talk about bringing the club out. Maybe it's putting tariffs or maybe it's shutting whole factories down, we just say, "We're not going to accept products from this factory."

Now, for instance, in other countries, and this is a bit of a lecture here, but I want to get it off my chest. We've had our food exports banned from several countries for some period of time. And, I've hosted Japanese inspection teams into beef-packing plants in my State. We say, "Look, here it is. Look at our system. It's an open system." And they'll keep throwing up another barrier and another barrier and another barrier, and it gets very frustrating.

Now, we're looking at China's selling us defective, unsafe products, and we don't know what's going on in the factory, and we're not even sure from what you're saying if they have any level of concern on lead. We tell them what you can send into here, but we don't know that they have any concern at all, there's not a free press there, it's a dictatorship government, and we're importing billions of dollars of products and many of them are bad. And it seems like somebody, somewhere along the line, ought to say, "Well, wait a minute! This isn't the way we're going to operate anymore." The only way you can get their attention is by shutting the market off.

And that's what happened to us on our beef exports, the markets were shut off, and we said okay—now wait a minute, now let's talk, you want to bring inspectors in, fine. And the Chinese, I would hope, would welcome inspectors into these plants. That they would ask you to send an inspection team. And I don't know if you would discover that much, but at least there could be some openness to it.

And, right now, I think we should do everything we can. Even if it's banning whole sets of products, until we are sure that there is no lead in any of them, period. And, if they say, "Well, you can't do that under your trade agreements," tell them, "Take us to the trade courts, then." Because that's what other countries do to us. We should get very stern and clear, and hit them where it hurts. Hit them in the markets.

I think this reflects a bigger problem that we have, where we've had all this cash, foreign investment that's flowing into China, and it's not a transparent system, whatsoever, and now you're seeing defective products come out the other end.

That's why I would hope that you would take every bit of aggressive action you can. If you need more statutory authority—and you've said you'll ask us for that. You should use it like a club, and we could move forward by putting tariffs on until they let their currency float; preventing their ability to artificially hold their currency down.

Work with us on this, because we've got to deal with it, the country's fed up with it, we're fed up with it. I'm sure you are, too. But, we've got to start using the club on this.

## CONSUMER PRODUCT SAFETY COMMISSION'S ACTIONS

Ms. NORD. Sir, may I respond to that?

Senator BROWNBACK. Yes, I'd be delighted if you would.

Ms. NORD. I so appreciate hearing your sentiments. And what I have been trying to convey to you is the fact that our very tiny agency has been working aggressively within our statutory constraints and within our resource constraints to address this. I can't emphasize to you enough how important it is for our committees to work cooperatively together here to make this happen.

Just as an example, sir, last year, in the Port Security Act, there was an amendment that, unfortunately, was deleted, that would have directed Customs and Border Protection (CBP) to work with us to put in place a training program so that the CBP people, and the CPSC people could work together in a better way. I think it's very, very unfortunate that that was dropped, because that would have been a very strong signal for this Congress to send, that they expect the Federal agencies to work across agency lines, to address the system holistically and systemically. We've got to do that. I just, appreciate hearing your remarks.

Senator BROWNBACK. Well, if I could, Mr. Chairman, as we do the mark on our bills moving forward, I hope in the appropriations process we can insert some of this language, so that we not only increase the funding for the agency, but we give it the authority necessary to fix the problem. This needs to move, it needs to go forward, and putting it on appropriations would certainly expedite the matter.

Senator DURBIN. Thank you, Senator.  
Senator Klobuchar.

## ENFORCEMENT

Senator KLOBUCHAR. Thank you.

Chairman Nord, as I'm listening to this, I'm thinking of my days as a prosecutor where we always knew the legislators would come and put in those tough laws, and unless they were enforced, it really didn't matter for the people in the neighborhoods. So, I'm trying to figure out how we got from nice little packaging, and this was manufactured somewhere in China, and it ended up in—Tamara Fucile, who works with me—her kid's toy box. And this is one of the recalled toys.

So, when we go back to the first instance you're talking about with the Chinese, and now you're reaching this agreement—how are you going to enforce these? How are we going to make sure that they are enforcing that these tests are done? Because, from what I've learned, it's not necessarily the quality of the tests that's a problem for us, it's the frequency of the testing. So, you'll have huge batches—1.5 million—of toys that come in, and somehow no one caught them. Not us, not the retailers, not the manufacturers, and not the Chinese laboratories.

So, starting at that point of entry, where these toys were first painted—how are we going to make sure that those laws are being enforced? Or that that agreement is being enforced?

Ms. NORD. I think that this requires activity and action on the part of a number of different entities. First of all, we've got to make

very clear that the manufacturers, the exporters, the importers, all have a responsibility here to make sure that they comply with the law. That they understand what the law is, and they comply with it.

Now, I am very pleased by some of the leadership that has been shown in the toy industry to step up to this problem, and I understand you're going to have a chance to talk to them, and I would hope that you would explore a little bit more fully with them, exactly what they're going to do, rather than me discuss it with you.

I've talked with you about the need for certification. We are working internally to see if we can stretch our statute to promulgate a requirement to require a statement from importers that they do not have lead paint on their products. But, frankly, clear legislative language would be more helpful.

#### CUSTOMS AND BORDER PROTECTION

Senator KLOBUCHAR. Well, that's what I'm trying to get at is how do we give you tools instead of stretching your statute so you can continue. So, are you working right now with the border people, for when this stuff comes in? Is there any work done between the CPSC and Customs at that point?

Ms. NORD. We have a good relationship with Customs, generally. We all understand that Customs' first responsibility is homeland security and they are pressed for resources—as are all of us. Under our statute, it's Customs' responsibility to stop the product at the port of entry if it doesn't comply. But, we do work with Customs—

Senator KLOBUCHAR. But there's not any testing going on there?

Ms. NORD. There is no testing being done at a port. What would happen is that it would have to be sent back to Washington, so that we would have to test it.

Now, we are trying to integrate into our 2008 budget the acquisition of some new technology that would allow CBP and CPSC people to do more spot checking, there is some new—

Senator KLOBUCHAR. Do you know what percentage of the toys get tested now?

Ms. NORD. Get tested for lead paint?

Senator KLOBUCHAR. Yes, or for—

Ms. NORD. No, I don't.

Senator KLOBUCHAR. Or loose parts? Anything? Can you get those numbers for us? I'm just trying to figure out—since I've learned in the last few months looking at this, that the frequency of testing is important, how you do that from the area where it's first manufactured, how you do that on the retail level, and how you—as an agency—are testing it. And, I'm trying to increase the frequency of testing, and it's hard to do that when you don't know the baseline.

Ms. NORD. Let me try to put this in context. I think in Commissioner Moore's statement—and it's been widely reported—that the Food and Drug Administration (FDA) has some 1,300, 1,400 inspectors, and they inspect 1 percent of what is brought in. I know at our June hearing, Senator Durbin asked what did we do? Did the CPSC have the ability to do that? And I responded to him, saying

that if we did that, this agency would be a very different agency, and a much larger agency than it is. Of course we don't do that.

When your staff was out at our lab, that question was put to Bob, the small parts guy. And his response, I think, was really, really interesting. Because what he said was, "You really ought to go out to Long Beach, and you ought to see the acres and acres of warehouses out there loaded with products. And then look beyond Long Beach and see the ships that are lined up, full of containers of products, waiting to be imported into the United States." And, so the notion of having one inspector in Long Beach, or three inspectors in Long Beach is really not what we should be talking about. We need to be talking about a more systemic way of dealing with this.

The CPSC is trying to do that, we have relationships with CBP, we are a part of their ACE System, which is helping us immensely. We now have 14 people trained to do ACE, but there are many other things that we should be doing. It requires working across agency lines to look at how we get a handle on this bigger picture.

Senator KLOBUCHAR. Thank you. But, remember that heart got in that little boy's stomach, and it killed him. I appreciate the bureaucracy and the resource issues, but as we look at this, there's got to be a way to stop that from happening. And, I think a piece of it may be the enforcement, and making clear there are penalties when these things are sold, penalties in our law that just aren't there right now. Because people just aren't taking this seriously if they're letting products come in like this.

Senator DURBIN. Thank you, Senator Klobuchar.

Chairman Nord, thank you for your testimony.

Ms. NORD. Thank you.

Senator DURBIN. The third panel, which we will now invite to the table, includes Jerry Storch, Chairman and Chief Executive Officer of Toys "R" Us, Bob Eckert, Chairman and Chief Executive Officer of Mattel, Inc., Sally Greenberg, Senior Products Safety Council, with the Consumers Union, Carter Keithley, President of the Toy Industry Association, and Joe Bhatia—I hope I didn't butcher that too badly, Joe—President and CEO of the American National Standards Institute.

Thank you all for joining us today, you have all submitted written statements, which will be made a part of the official record. In the interest of moving to questions and exchanges, we hope that you'll keep your opening remarks 5 minutes or less. I know that's hardly enough to do justice to an issue of this complexity, but we hope our questions will also lead in that same direction.

The first person on my list is Jerry Storch, the CEO of Toys "R" Us.

Is the green light on your microphone?

**STATEMENT OF JERRY STORCH, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, TOYS "R" US, INCORPORATED, WAYNE, NEW JERSEY**

Mr. STORCH. Third time is a charm.

Good morning, Mr. Chairman, and members of the subcommittee. Thank you for the opportunity to provide a retailer's perspective on this important subject.

First and foremost, however, I speak to you as a parent. My wife, Jacquie and I have five children, and they are the most important part of our lives. On a very personal level we understand the passion we parents have about toy safety.

Toys “R” Us is the largest dedicated toy and baby products retailer in the United States. Children are in our DNA and helping parents keep their kids safe is part of our brand mission. Safety is core to who we are—and that was so long before this year’s events.

Given the current focus on toy safety, our position is unique. We are the touch point for the customer and the conduit between them and the manufacturers. We recognize that the issue of toy safety goes well beyond business and directly to the well-being of the families we serve. We have reiterated that simple—this single fact—to our employees, suppliers, and business partners. We will not acquiesce, we will not tolerate products that do not meet our rigorous safety standards.

As the recalls this year unfolded, it became clear to us all that change was needed. It is our belief that a combination of strong safety practices when toys are manufactured, and reinforcing Federal legislation, can help assure consumers that toys are safe.

We also believe a strong, well-financed CPSC is needed, rather than a patchwork quilt of potentially contradictory State legislation.

As the only retailer here today, I thought it might be helpful to share what happens at Toys “R” Us when a recall is announced, and our thoughts, and how we can get at the issue of reducing—or eliminating—the very need for recalls at all.

When a recall takes place, we act immediately, rapidly, and decisively, to ensure the safety of our consumers. We have strict, and non-negotiable, procedures in place, which include immediately removing items from our systems, and instituting a systems-enforced “stop sale” so that the item may not be sold at the register, or leave our warehouses for stores.

We’ve implemented a system to help customers return recalled products immediately and efficiently. This is regardless of whether the recalled toy was even purchased at Toys “R” Us. When it comes to products recall returns, we have a “no quibble” policy.

This week, we are announcing further enhancements that will ensure our customers receive the most rapid and detailed information regarding toy safety issues. These include launching a dedicated toy safety micro-site, introducing an email notification system for recalls, and adding bilingual recall notices to our communications protocols. However, we believe the recall process could still be improved in two ways.

First, we support the proposed shortening of timeframes between identification of a problem, and the eventual recall of that product, so that toys are still not being sold when someone else knows they may have a problem.

And second, production code stamping of products and packaging would significantly help in tracing potential safety issues, would make it easier for us—as retailers and for parents—to identify recalled product.

Ultimately, though, the objective should be to reduce and prevent recalls in the future. As you know, most of this year's recalls were for lead violations, and this is something the manufacturers should be able to eliminate.

There are three prongs to effective prevention of these problems—standard-setting, comprehensive testing to ensure compliance with those standards, and deterrence—through real consequences if standards are violated.

On standards, these have been clear—from the CPSC, and from retailers. In terms of deterrence, we have long held our vendors accountable for meeting strict safety standards. If a vendor does not meet our standards, we take immediate action, including—when warranted—termination of our relationship with them. We have terminated two vendors this year alone.

To strengthen deterrence even further, we support the concepts in proposed legislation of increasing penalties for non-compliance. So, if the standards have been clear, and there has been deterrence, what went wrong? To our knowledge, based on the recalls this year, the problem was not that testing wasn't happening, or that testing wasn't being done properly, or that testing was not done frequently enough.

Therefore, while we have long-required testing from our vendors, we are moving now to require that our vendors submit to us certification of testing for each batch coming to Toys "R" Us, and we've been told by many vendors that they are already moving to this practice. To reinforce this direction, we strongly support strengthening third-party testing requirements. Specifically, we advocate for legislation requiring accredited certification of testing facilities.

Earlier this year, Toys "R" Us asked an independent testing lab to re-test products right off our store shelves, and, in recent months, we have substantially increased these efforts. We have told manufacturers that this targeted re-testing currently underway at Toys "R" Us will become a permanent part of our safety protocols.

Ultimately, more change is needed. And the Federal Government is a welcome and crucial partner in this effort. Mr. Chairman, we believe proposed legislation such as the Children's Products Safety Act and the Consumer Product Safety Modernization Act can play an important role in enabling us to make America's toys safer.

I would like to close with the following thought: Safety is, and has always been, the highest priority at Toys "R" Us. It is not a cause of the day. As you do your work, we'd like to be a resource to you and help in any way we can. With manufacturers, regulators, and retailers being ever-more vigilant about their processes and testing procedures, we believe that together we will make this the safest of holiday seasons for American consumers.

Thank you again for your leadership, and I look forward to answering any questions you may have.

Senator DURBIN. Thank you, Mr. Storch.

[The statement follows:]

PREPARED STATEMENT OF JERRY STORCH

Good morning Mr. Chairman and members of the Committee. I'm Jerry Storch, Chairman and Chief Executive Officer of Toys "R" Us. Thank you for the opportunity to provide a retailer's perspective on this important subject.



First and foremost, however, I speak to you as a parent. My wife Jacquie and I have five children, and they are the most important part of our lives. On a very personal level we understand the passion we parents have about toy safety.

Toys “R” Us is the largest dedicated toy and baby products retailer in the United States, with 842 Toys “R” Us and Babies “R” Us stores nationwide, and we employ approximately 65,000 Americans. Globally, we have retail stores in 35 countries and employ approximately 100,000 people directly. Children are in our DNA and helping parents keep their kids safe is part of our brand mission. Safety is core to who we are—and that was so long before this year’s events.

Given the current focus on toy safety, our position is unique. We are the touchpoint for the customer and the conduit between them and the manufacturers.

We recognize that the issue of toy safety goes well beyond business and directly to the well-being of the families we serve. We have reiterated that simple, single fact to our employees, suppliers, and business partners. We will not tolerate products that do not meet our rigorous safety standards.

And that is why I am eager to be here this morning to speak with you in support of change, and in support of many of the initiatives I understand you’re considering.

As the recalls this year unfolded, it became clear to us that change was needed. Like many of you, we were frustrated by some of the large recalls earlier this year, especially by what appeared to be an unacceptably long timeframe between discovery of a problem and the actual consumer recall. And so, as you know Mr. Chairman, we reached out to you and Senator Klobuchar after one of the recalls earlier this year.

We know consumers are asking how they can be sure the toys they buy for their families are safe. It is our belief that a combination of strong safety practices when toys are manufactured and reinforcing federal legislation can help provide the answer. We also believe a strong, well-financed Consumer Product Safety Commission (CPSC) is needed, rather than a patchwork quilt of potentially contradictory state legislation.

As the only retailer here today, I thought it might be helpful to share what happens at Toys “R” Us when a recall is announced, and our thoughts on how we can get at the issue of reducing or eliminating the very need for recalls at all.

#### *When Recalls Occur*

When a recall takes place we act rapidly to ensure the safety of our consumers. We have strict and non-negotiable procedures in place, which include immediately removing items from the sales floor, our stockrooms, our websites, and our distribution centers. Each of the pulled items must be properly accounted for in our systems and a stop-sale is instituted on the product. This ensures that the item may not be sold at the register, and that recalled items do not leave the warehouses for stores.

Our store managers are also deeply accountable for ensuring the recalled products are never on our shelves from the first day forward and also for on-the-ground communications with customers. Store managers are required to display recall posters on our Safety Boards and audit them daily for accuracy. We also post all recall information on the “Product Recalls” section of the Toys “R” Us website.

Finally, we have implemented a system to help customers return recalled products immediately and efficiently. This is regardless of whether the recalled toy was purchased at Toys “R” Us or another retailer. When it comes to product recall returns, we have a “no quibble” policy.

This week we are announcing further enhancements that will ensure our customers receive the most rapid and detailed information regarding toy safety issues. As the toy authority, we believe we can play an important role in communicating directly with customers about important safety issues. These enhancements include launching a dedicated toy safety microsite, introducing an email notification system for recalls and adding bilingual recall notices to our communications protocols.

Given the processes we have in place, we believe our response to CPSC recalls or manufacturer failures is immediate, rapid, and decisive. Our objective is perfect execution. However, we believe the recall process itself could be improved in two ways:

First, we support legislation shortening the timeframes during the period between identification of a problem and the eventual recall of that product. We are troubled by the possibility that we could be continuing to sell toys that someone knows may have a problem, while we remain unaware until we receive word that a recall is coming—usually just a day or two at most before the recall.

Second, we believe that production code stamping of products and packaging would significantly help in tracing potential safety issues. It would make it easier for retailers and parents to identify recalled product, and avoid the guessing game

when a mom or dad is trying to remember whether they bought the product before or after the recall date.

*Why recalls occur and how to reduce and prevent them in the future*

Ultimately, of course, the objective should be to reduce and prevent recalls in the future, so let me turn to that now.

As you know, most of this year's recalls were for lead violations, and this is something manufacturers should be able to eliminate. There are three prongs to effective prevention of these problems: setting standards, comprehensive testing to ensure compliance with those standards, and deterrence through real consequences if the standards are violated.

On standards, these have been clear—from the CPSC and from retailers.

In terms of deterrence, we have long held our vendors accountable for meeting strict safety standards. There is no room for compromise. And if a vendor does not meet our standards, we take immediate action, including, when warranted, termination of our relationship with them. We have terminated two vendors this year alone, and believe me, this is a strong message about the dire consequences of unacceptable performance.

To strengthen deterrence even more, we support the concept in the proposed legislation of increasing penalties for noncompliance—higher penalties will have a significant impact, and we need that.

So, if the standards have been clear, and there has been deterrence, what went wrong?

And that's where testing comes in. To our knowledge, based on the recalls this year, the problem was not that testing wasn't happening, or that testing wasn't being done properly, but rather that testing was not done frequently enough.

Prior to recent events, toy makers would test the initial batch of a product, then periodically re-test batches to make sure the factory was still complying. What appears to have happened in the recent cases is that someone replaced the compliant paint with non-compliant paint at an unknown point between tests.

Therefore, while we have long required testing from our vendors, we are moving to require that our vendors submit to us certification of testing for each batch coming to Toys "R" Us, and we have been told many vendors are already moving to this practice. To reinforce this direction, we strongly support strengthening third-party testing requirements. Specifically, we advocate for legislation requiring accredited certification of testing facilities. It is a sensible way for all of us—including retailers and consumers—to know that the manufacturers have or use quality testing facilities.

Earlier this year, Toys "R" Us asked Bureau Veritas, a world leader in independent testing, to spot-check and re-test products right off our store shelves—and, in recent months, we have substantially increased these efforts. We have alerted our manufacturers and advised them that this targeted re-testing currently underway at Toys "R" Us will become a permanent part of our safety protocols.

We understand that many manufacturers and others are re-testing both here and overseas. And so, I agree with the CPSC that I wouldn't be surprised if we see further recalls in the coming weeks as a result of all this re-testing of products. We should watch very carefully to distinguish between relatively limited recalls caused by the intensity of the re-testing—essentially cleaning up the market—and recalls which indicate larger, more systematic problems needing special action.

Ultimately, more change is needed. And the federal government is a welcome and crucial partner in this effort. Mr. Chairman, we believe proposed legislation such as the Children's Products Safety Act and the Consumer Product Safety Modernization Act can play an important role in enabling us to make America's toys safer.

I would like to close with the following thought: Safety is, and has always been, the highest priority at Toys "R" Us. It is not the cause of the day. As you do your work, we'd like to be a resource to you and help in any way we can. Recent events have catalyzed increased scrutiny in manufacturing, tighter controls and substantially more and more product testing. This is good news for us and our customers. Against this backdrop, and with the combination of these efforts by retailers, regulators, and manufacturers, we believe that together we will make this the safest of holiday seasons for American consumers.

Thank you again for your leadership, and I look forward to answering any questions you may have.

Senator DURBIN. Bob Eckert is the Chairman and Chief Executive Officer of Mattel. Mr. Eckert.

**STATEMENT OF ROBERT A. ECKERT, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MATTEL, INCORPORATED, EL SEGUNDO, CALIFORNIA**

Mr. ECKERT. Thank you, Mr. Chairman for inviting me here today to appear before you.

I'm here today as the CEO of Mattel, but also as a dad. I have four kids, my three daughters grew up playing with Barbies and American Girl, my son loved his Hot Wheels. So, when I first heard about these problems, I took action like a CEO, but I thought like a parent. "What's in the toy box? What do parents need to know? Are kids safe?"

One, I had two jobs—one to find out what happened and how to prevent it from ever happening again. Two, to tell consumers what they needed to know about the recalls, and how to keep their children safe.

This is a company built on trust. Parents have trusted our brands for generations. Our response to the lead paint recall must not only fix the problem, but earn back every parents' confidence.

On behalf of Mattel, I want to again, apologize sincerely to each and every parent. I can't change the past, but I am changing how we do things.

We will not rest until we know that you are confident Mattel's toys are safe. We've moved aggressively to ensure that we got our arms around the problem. We held all products in Asia. We initiated testing on a massive scale. We conducted sample lead paint testing on even the smallest part of each toy.

While we recalled for lead paint, less than one-half of 1 percent of the toys we produced over the last 12 months, that number should be zero.

We've also launched a worldwide campaign to communicate the details of the recalls to consumers, including paid national advertising, participation in television and media interviews worldwide. Posters in stores, launch of an 800 number, and extensive Internet reach.

I know this subcommittee and the American people want to know how lead got onto our products, and what steps we're taking to ensure that this doesn't happen again. Simply put—our systems were circumvented, and our standards were violated. We were let down, and we let you down.

But, how did lead paint get into some of our toys? Our own investigation, which is ongoing, has uncovered a few vendors who violated our rules. Some were careless, others deliberately broke rules. We've terminated relationships with some, and we're continuing to investigate others.

But, I felt we needed to do more to ensure our rules were followed. So, let me tell you the steps we're taking.

First, every batch of paint must not only be purchased from a certified supplier, but also re-tested before it's used, to ensure compliance with lead standards.

Second, paint on samples of finished products from every production run must be tested for lead before they reach store shelves.

Third, we've increased the frequency of unannounced inspections of vendors and subcontractors.

I can't say enough, how personally disappointed I am by what's happened. I want to reiterate my personal apology on behalf of Mattel, and renew our commitment to parents. The steps we've taken will strengthen the safety of our products, ensuring that safety is crucial to the longstanding trust this company has built with parents for more than 60 years. There is simply nothing more important to Mattel than the safety of children. My goal is to make sure this holiday season's toys are the safest ever.

Thank you.

Senator DURBIN. Thank you very much, Mr. Eckert.

[The statement follows:]

PREPARED STATEMENT OF ROBERT A. ECKERT

Good morning Mr. Chairman and members of the committee. My name is Robert Eckert, and I am the Chairman and CEO of Mattel. Thank you for inviting me to appear before you today to discuss the vital issue of the safety of our children's toys. We have made a priority of communicating openly and frequently about our recent recalls, and I welcome the opportunity to do so again today.

Like many of you, I am a parent. I, like you, care deeply about the safety of children. And I, like you, am deeply disturbed and disappointed by recent events. As to lead paint on our products, our systems were circumvented, and our standards were violated. We were let down, and so we let you down. On behalf of Mattel and its nearly 30,000 employees, I apologize sincerely. I can't change the past, but I can change the way we do things. And I already have. We are doing everything we can to prevent this from happening again.

What has made these events particularly upsetting is that Mattel has long had in place what we believe are some of the most rigorous safety protocols in the toy industry. The vendors who manufacture our products are contractually obligated to comply with the same safety standards that apply to the products that Mattel manufactures in our own plants, including, for example, those governing lead levels in paint.

For years, Mattel has: required vendors to purchase paint from a list of certified suppliers or test the paint that they used to ensure compliance with the established standards; audited the certified paint suppliers to ensure compliance with lead level standards; periodically audited vendors to ensure that they are complying with paint requirements; conducted lead level safety tests on samples drawn from the initial production run of every product; and had protocols for further recertification testing for lead on finished product.

Unfortunately, despite these many safeguards, some Mattel toys with unacceptable levels of lead paint made it into the marketplace. I know this subcommittee and the American people want to know how this happened and what steps we are taking to best ensure this does not happen again.

First, let me address the recalls. As you know, we conducted three lead paint-related recalls over the past several weeks. Each of these was a voluntary recall executed through the CPSC's fast-track process. We have worked closely, openly, and quickly with the CPSC to accomplish them, and I am personally grateful to the Commission for its prompt and professional handling of these matters.

We also moved aggressively to ensure that we had our arms around the issue. We held all products in Asia, whether made at a Mattel facility or vendor facility, and we undertook additional testing on a massive scale. With respect to the products in Asia, for example, we examined samples of the toys to ensure that we identified any products with paint that violated applicable lead standards. This testing was applied to even the smallest part of each toy to identify any non-complying paint, no matter how minor the use.

Out of an abundance of caution, Mattel decided to be over-inclusive in the products we recalled. We did not just recall those specific toys that tested positive for lead paint. Instead, we recalled additional toys where our investigation of the circumstances suggested that some of those toys might be affected by non-complying paint, even though the tested samples of those toys were fine. Even with this massive testing program and cautious approach to identifying non-compliant products, we have recalled due to lead paint less than one-half of one percent of the toys that we've produced over the last 12 months. I'd rather that number was zero.

One reason why I was so upset by recent events is that, as noted above, Mattel is well known for setting and maintaining some of the highest quality and safety

standards and procedures in the industry. They have been in place and worked effectively for many years. And yet here we are today. Why?

Our own extensive investigation, which is continuing, has uncovered that certain vendors or their subcontractors violated our well-established rules. In some cases, they appear to have been careless. In others, they appear to have deliberately avoided doing what they knew they were required to do. In several instances, vendors failed to identify subcontractors or facility locations, even though it was mandated that they do so. Some vendors failed to provide certified paint to their subcontractors, while another vendor did not perform the mandated test on paint. We have already terminated relationships with some vendors and subcontractors, and we are continuing to investigate others.

Obviously, we know that parents are looking to us to see what we're doing to improve our system to make people live up to their obligations and meet our standards. We have acted quickly and aggressively by immediately implementing a strengthened 3-point safety check system to enforce compliance with all regulations and standards applicable to lead paint:

First, every batch of paint must not only be purchased from a certified paint supplier but also be re-tested before it is used, to ensure compliance with lead standards. The sample tests must be performed either by Mattel's own laboratories or by laboratories certified by Mattel, with vendors making test reports available to Mattel.

Second, paint on samples of finished products from every production run must be tested for lead either by Mattel's own laboratories or by laboratories certified by Mattel to ensure applicable standards are met before toys reach store shelves.

Third, Mattel has increased the frequency of random, unannounced inspections of vendors and subcontractors for compliance with our quality and safety procedures, including the applicable lead paint standard. We have commenced and anticipate completing soon unannounced inspections of every vendor and subcontractor worldwide, and this program will continue.

Mattel is also implementing additional protections. Vendors and subcontractors must segregate all production for Mattel and have dedicated storage for paint used on Mattel products. No subcontractor may further subcontract out any part of a job to other locations. Before using a subcontractor's components in Mattel products, a vendor must test samples of such components for lead paint. Finally, as noted above, the vendor and subcontractor are both subject to unannounced audits and are held accountable for our rules and requirements.

As I said at the outset of my testimony, these recent recalls have been a personal disappointment to me and, I am sure, to all of the thousands of men, women and parents who have always taken great pride in working at Mattel. As an industry leader, with some of the world's best known and most trusted brands, we frequently help set new standards for the industry. We are by no means perfect. But we have tackled difficult issues before and demonstrated an ability to make change for the better, not only within our own company but for the broader industry. In this regard, we've created a new Corporate Responsibility organization reporting directly to me. The new organization adds an even greater level of accountability for adherence to the company's safety and compliance protocols.

Media coverage of the voluntary recalls we have announced has been helpful in spreading the news to consumers. Unfortunately, in the course of that coverage, some opinions regarding the law and the Commission were attributed to me that I've never held, let alone expressed. We were even accused of being "unapologetic" in a newspaper in which we'd run ads apologizing. I believe that our actions, in close cooperation with the CPSC, in quickly identifying and announcing these recent lead recalls demonstrate that we are committed to the Commission and its processes.

We know we can continue to improve how we process and report safety issues to the CPSC. In that regard, we had initiated a dialogue with the Commission prior to this summer's recalls to develop a new set of reporting protocols.

Mattel believes in the Consumer Product Safety Act and its goals, and we would like to work with members of Congress to strengthen the Commission. We fully support the Commission and the vital work that it does, and we recognize that more resources are needed for the organization to carry out its important duties. Mattel also supports proposals that would ensure laboratories used for testing toys are fully qualified and are accredited by independent organizations.

I would like to conclude by reiterating my personal apology on behalf of Mattel and to emphasize our commitment to parents. The steps we have taken will strengthen the safety of our products. Parents expect that a toy carrying the Mattel brand is safe. Ensuring safety is crucial to the long-standing trust this company has

built with parents for more than 60 years. There is simply nothing more important to Mattel than the safety of children.

Thank you for the opportunity to address these important issues with you today. I would be happy to answer any questions that you may have.

Senator DURBIN. Sally Greenberg, Senior Products Safety Council of the Consumers Union.

**STATEMENT OF SALLY GREENBERG, SENIOR PRODUCT SAFETY COUNCIL, CONSUMERS UNION, WASHINGTON, DC**

Ms. GREENBERG. Thank you.

Good morning, Chairman Durbin, and Ranking Member Brownback, and Senator Klobuchar. My name is Sally Greenberg. I serve as Senior Products Safety Council for Consumers Union, we publish the magazine Consumer Reports.

We appreciate the opportunity to be here this morning, and Senator Durbin, and Senator Klobuchar, certainly we wish to commend you both for your leadership in demanding a vastly improved product safety system, for American consumers—especially children.

I think the recent attention on toy safety will ultimately be good for consumers, good for the regulatory agency that oversees toys, and good for the toy industry, because the increased scrutiny will result in safer toys, I'm quite sure of that, and we've already heard some evidence of that here today from both a retailer and a major manufacturer.

I'd like to touch briefly on several points that I—in my oral statement which were gone into in more detail in the written statement.

First, the system in place for protecting consumers from unsafe products—especially children—has broken down. The recent avalanche of recalls of imported toys from China with excessive levels of lead paint has exposed millions of children to a highly toxic substance, and created a crisis of confidence among parents, who feel they can neither trust the toy industry, nor our Government, to keep their children safe.

This breakdown occurred for several reasons. First, the CPSC, the Federal agency in charge, has been starved for resources. When the agency opened its doors in 1974, it had a staff of 786, and a budget of \$34.7 million—the equivalent of about \$125 million today. The agency's projected budget for this year is \$63 million. The CPSC is a shadow of its former self. Acting Chairman Nord's official budget document for 2008 reads like a sad lament on the many functions CPSC would like to perform, but cannot because of resources.

The CPSC has many staff dedicated to the mission of keeping dangerous products out of the marketplace, but in recent years, the leadership of the CPSC has failed to carry forward that mission. Chairman Nord claimed recently the agency is doing more to protect consumers than it has in any time in history—we disagree. We believe the agency's leadership has failed to use the regulatory authority it has to impose serious fines on companies that violate its rules, has refused to request more funding and resources while admitting it cannot carry out core functions, and has opposed efforts by consumer groups and others to provide the agency with funding—the funding and regulatory tools it needs to keep consumers safe.

Companies that manufacture products abroad, as well, and import them into the United States, from China or other developing countries, have also fallen down on the job of conducting regular and thorough inspections of the factories that make their products. Inspections cannot be left to the Chinese factory owners. China suffers from the absence of a rigorous regulatory system, an endemic problem of corruption, and the lack of a free press, making it crucial that American companies doing business in China, undertake third-party, independent inspections, and set up certification systems, and make those systems transparent.

Yesterday, the Chinese Government signed an agreement with the U.S. Government to eliminate lead in toys exported to the United States. This is long overdue. Lead paint has been prohibited on children's toys since 1978. Enforcement of this agreement will be key to ensuring the problem with lead toys are addressed.

Here are our recommendations for addressing these problems.

First, the CPSC badly needs an infusion of funds, and I understand there's a consciousness about that among members of this subcommittee, and certainly among members of the Commerce Committee, as well. Senator Durbin, we support your schedule of increases, and would like to see CPSC's budget reach the equivalent of what it was when it opened for business in 1974—around \$125 million when adjusted for inflation.

Second, if we establish a certification program, the CPSC should administer that program, setting standards by which laboratories operate to certify toys. It's important to have some independent entity—like a CPSC—oversee the process of qualifying the labs to provide certification.

Third, we recommend lifting the cap on fines—I know you understand what that's about—but if you read the record at CPSC, you see company after company flouting the agency's rules, because it's more expensive to comply with the rules, than it is to pay the fines. So, we need to have—this agency has to stop being a paper tiger, and start getting some bark, and some bite. The limits on the agency's ability to find, I know, were addressed in your legislation, we appreciate that, and we support that.

Finally, CPSC's activities suffer from a lack of transparency. When a product is under investigation, unlike other safety agencies like the National Highway Traffic Safety Administration (NHTSA), for example, the CPSC, by statute, isn't permitted to share that information publicly, and yet it can be very critical information from consumers. And second, when products are recalled, CPSC won't publish what the recall rates are. NHTSA is required—once again, comparing another safety agency, the National Highway Traffic Safety Administration, to the CPSC—NHTSA has to publish that information for six quarters, about the rates of recall. This is critical information for consumers, and for consumer groups. We think the CPSC should be required to do the same.

We appreciate your interest and your leadership, your concern on all of these issues, we thank you for your time, and we look forward to your questions.

Senator DURBIN. Thank you, Ms. Greenberg.

[The statement follows.]

## PREPARED STATEMENT OF SALLY GREENBERG

Good morning, Chairman Durbin and Ranking Member Brownback. Consumers Union,<sup>1</sup> (CU) publisher of Consumer Reports, appreciates the opportunity to testify before the Subcommittee this morning on the subject of toy safety standards and the Consumer Product Safety Commission (CPSC). Congressional oversight such as the kind the Subcommittee is doing today will be a critical factor in ensuring that the CPSC uses its resources appropriately to fulfill its mission to protect the public from current and emerging product safety hazards.

We wish to commend you, Senator Durbin, for your outstanding leadership in speaking out on behalf of American consumers—and particularly children—who have been exposed to hazardous levels of lead in their toys and to magnets that can, and have seriously harmed or killed children who have swallowed them. Your meetings with toy industry leaders, the CPSC and the field hearing you organized in Illinois have helped to steer the debate in the right direction. Finally, thank you for your efforts to steadily increase the CPSC's budget, with an increase to \$70 million for fiscal year 2008. This badly needed influx of funds to an agency that has been starved of resources comes at a critical time. However, we urge you to provide an even larger appropriation for this safety agency commensurate with any expanded responsibilities that might come with the passage of newly proposed legislation.

*Consumer Product Safety Commission*

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. The CPSC's viability is of critical importance to the safety of children, because the Commission has jurisdiction over so many children's toys, clothing and products like baby walkers, high chairs, and cribs.

Unfortunately, the system in place to protect consumers—especially children—from unsafe products has broken down. The recent avalanche of toy recalls, involving Chinese-made toys made with excessive lead levels in the paint, has exposed millions of children to a highly toxic substance and created a crisis of confidence among consumers who feel they can trust neither the toy industry, nor our government to keep their children safe.<sup>2</sup> Indeed, concerns about product safety extend to any country where quality control and safety standards are lacking.

Overall, the number of products made in China being recalled in the United States by the CPSC has doubled in the last five years, driving the total number of recalls in the country to 467 last year and involving millions of products.

Chinese products now account for two-thirds of the products the CPSC regulates. At the same time, Chinese products represent 60 percent of all product recalls, compared with 36 percent in 2000.

Over \$22 billion worth of toys are sold in this country each year, with toys made in China making up 70 to 80 percent, according to the Toy Industry Association. Yet, despite the enormity of the industry and the surge of imports from China, the budget for the agency charged with ensuring that what enters this country meets our safety standards has been slashed by more 10 percent in the past two years alone.

Never in its history has the CPSC been so challenged as an agency. Acting Commissioner Nord claimed recently that, "The commission is currently doing more to protect consumers than it has at any prior time in history."<sup>3</sup> We disagree. In fact, we believe the agency's leadership has failed to use the regulatory authority it has

<sup>1</sup>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.

<sup>2</sup>According to a July 2007 poll by Harris Interactive, nearly two-thirds of U.S. adults lack confidence in the safety of a variety of products produced in developing nations, including over-the-counter medications, prescription drugs, herbal remedies and nutritional supplements, and packaged or prepared foods. [http://www.harrisinteractive.com/news/newsletters/wsjhealthnews/HSJ\\_HealthCarePoll\\_2007\\_v06\\_i1\\_2.pdf](http://www.harrisinteractive.com/news/newsletters/wsjhealthnews/HSJ_HealthCarePoll_2007_v06_i1_2.pdf) An August Gallup Poll found 65 percent of Americans "saying that they are making an effort to avoid buying products made in China. Nearly the same percentage—64 percent—indicates a willingness to pay up to twice as much for a product made in the United States as they would pay for a similar Chinese-made product." <http://www.gallup.com/content/?ci=28552>

<sup>3</sup>"Safety Agency Faces Scrutiny Amid Changes," New York Times, September 4, 07, page 1.



to fine companies that violate its rules, has refused to request more funding and resources even while admitting it cannot carry out core functions,<sup>4</sup> and has opposed efforts by consumer groups to provide the Commission with the funding and tools it needs to keep consumers safe. In addition, further exacerbating the CPSC's weakened state, the current Administration has instead imposed additional cuts on the already woefully underfunded and understaffed agency.

#### *CU's History of Support for CPSC's Work*

Consumers Union supported the creation of the CPSC and has worked closely with the agency since it opened its doors in 1974. The CPSC began operating with a staff of 786 and a budget of \$34.7 million, the equivalent of about \$125 million in today's dollars. By 1977, CPSC had a budget of \$39 million and a staff of 900. Today the CPSC is a mere shadow of its former self. Its budget is \$63.25 million this year—and the Commission's staff has plummeted to an all time low of 401 employees.

By comparison, the National Highway Traffic Safety Administration, which oversees auto and highway safety, and works to reduce the fatalities on our roadways (approximately 43,000), has a budget this year of \$833 million. The CPSC estimates that 27,000 people die each year from product hazards under its jurisdiction. If CPSC's budget were equivalent to NHTSA's relative to the fatality rates each is confronted with, the CPSC's budget would be \$523 million.

CU commends the Appropriations Committee for successfully passing an increase to CPSC's budget of about 10 percent for fiscal year 2008. We also appreciate that your bill, Senator Durbin, S. 1847, provides for budget increases for the CPSC, reaching \$100 million by 2012. These steady increases are consistent with recommendations made by CPSC Commissioner Thomas Moore, giving the agency time to absorb the additional staff. However, we recommend that Congress set a goal of funding the CPSC at least to reach 700-plus employees, the agency had when its doors opened in 1974.

#### *Toy Industry Proposal*

On September 6, 2007 the Toy Industry Association (TIA) announced that its Board of Directors had approved a three-point program for toy testing and inspection programs:

- First, the industry supports the concept of a federal requirement to make safety testing and inspection mandatory.
- Second, TIA is working with the American National Standards Institute (ANSI) to develop and standardize procedures that will be used industry-wide to verify that products comply with stringent U.S. safety standards. ANSI is a private non-profit organization that administers and coordinates the U.S. standardization and conformity assessment system.
- Third, TIA is also working with ANSI to develop criteria to confirm and certify that test laboratories are independently qualified to conduct the prescribed testing.

Consumers Union commends the toy industry, including retail giants such as Toys R Us, for embracing the idea of third-party testing and inspecting, and for welcoming the federal regulatory involvement in making testing and inspection mandatory.

On July 18 of this year, Consumers Union provided a statement at a Senate Commerce Committee meeting<sup>5</sup> proposing eight steps that should be taken to help safeguard the health and safety of American consumers from the onslaught of unsafe Chinese-produced consumer products and foods. That list included the following steps:

- Provide increased resources to government safety agencies to prevent unsafe products from crossing our borders.

<sup>4</sup><http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf> CPSC's 2008 Budget Performance Document states on numerous occasions that the lack of resources is cutting into the agency's ability to carry out its mandate. "While the agency's size has been reduced, the challenges facing CPSC continue to grow in both size and complexity." P. vii. ". . . the 2008 funding level will challenge the Commission's ability to maintain its existing level of standards development, enforcement, public information and international activities." P. vii. "In 2008, we set ambitious targets given the proposed reduction in staff. After further analysis by the Commission and based on actual funding, targets may have to be adjusted in the 2008 Operating Plan." P. 13. In addition, as the New York Times found in its September 4, 2007 article on CPSC, "a lone employee is charged with testing suspected defective toys from across the nation."

<sup>5</sup><http://www.consumersunion.org/pub/2ndcorrected071707Testimony%20of%20Donald%20Mays%20-%20Final%20-%20Chinese%20Products1.pdf>

- Hold suppliers, importers, distributors, as well as manufacturers accountable for bringing unsafe products to the market by requiring pre-shipment inspections and testing to ensure product safety.
- Develop U.S. government-administered, third-party safety certification programs for all products.
- Develop a product traceability program for both country-of-origin labeling for food and consumer products as well as for all components and ingredients.
- Require that importers post a bond to ensure they have sufficient resources to recall their products should they prove dangerous or defective.
- Give all agencies with enforcement authority the power to levy meaningful civil penalties for manufacturers, importers, distributors, and retailers who fail to comply with regulations, and criminal penalties for those who knowingly and repeatedly jeopardize public safety.
- Authorize mandatory recall authority for all government agencies.
- Require all government agencies to publicly disclose information pertaining to safety investigations and reports of adverse events.

Although we agree with TIA about the need for government mandated third-party safety testing—and we applaud the trade association for proposing this testing—in order to be effective, it must be given real teeth. Specifically, third-party certification should include pre-qualifying any factory that makes the product, having inspectors visit the factory unannounced a set number of times each year to check for compliance of the product with the safety standards, and applying a safety certification mark similar to the UL-listed or USDA mark.

#### *Banning Lead in Children's Products*

Mattel's three recalls over this past summer of millions of toys containing lead paint alarmed parents and caregivers. Consumers Union believes that children should not be exposed to lead from products intended for their use and we support legislative efforts to ban lead, above minute amounts, in any product intended for use by children. We urge all members of Congress to move promptly to clarify that the CPSC has the authority to ban lead from all children's products.

Consumers Union's safety blog includes, "Five Things Parents Can Do to Avoid Lead Poisoning."<sup>6</sup> We include within that description tips for parents to prevent not only lead exposure from toys but also from lunchboxes, bibs, metal jewelry, and other kids' products.

We support extending CPSC's regulations for lead in toys to cover lead in other children's products, including in jewelry and in vinyl products. We note that CPSC Commissioner Thomas Moore has also called for giving the CPSC the authority to enforce the total elimination of lead or other toxic substances from children's products.

Currently, CPSC's has regulations restricting the use of "lead-containing" paint and other similar surface coatings on toys and on other children's products. "Lead-containing paint" is defined as a "paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight . . ." 16 C.F.R. 1303.2(b)(2). CPSC regulations also ban similar amounts of lead in household paint. Today, any toy that has a surface coating that exceeds these limits is considered a hazardous product and is subject to recall.

While CU urged CPSC to set strict standards back in the 1970s, these limits—mandated by Congress in 1974—were based on the scientific understanding at the time of the hazards of lead paint, as well as what was achievable for paint products over 30 years ago. We think that 33 years later, it is time for the CPSC to conduct a scientific review and revise downward the current 0.06 percent limit for lead. Since the ingestion of lead at any level is hazardous, we urge Congress to direct the CPSC to review current lead limits based on today's scientific knowledge and reduce the allowable limit to the lowest possible threshold.

In addition, CU believes the presence of lead in imported toys raises once again the urgency of screening children at highest risk for lead exposure. In 1999, the U.S. Government Accounting Office (now called the Government Accountability Office) issued a report entitled "Lead Poisoning, Federal Health Care Programs are Not Effectively Reaching At-Risk Children [GAO/HEHS-99-18]. That report found that only about 20 percent of the children at greatest risk are ever screened or treated for excessive lead levels, despite the fact that this is a covered benefit under Med-

<sup>6</sup>The five steps include (1) Take Inventory, (2) Clean Up, (3) Buy Smart, (4) Find Substitutes, (5) Get Tested The full story can be found at: <http://blogs.consumerreports.org/safety/2007/08/five-things-par.html>.

icaid. We urge Congress to dedicate hearings to the problem of ensuring lead screening and treatment for uninsured and Medicaid/SCHIP children.

Finally, we commend the CPSC for issuing an advance Notice of Proposed Rule-making on January 9, 2007, in response to a petition filed by the Sierra Club, to ban the sale of metal jewelry intended for children with lead content above 600 ppm. Consumers Union is on record supporting this proposed ban, although we urged that it be expanded and include other products. We also opposed regulatory action to preempt stronger state regulations. Indeed, California will set a standard for 200 ppm for lead in jewelry in August, 2009. We urge prompt action by the CPSC in response to comments the agency has received.

#### *Hazards From Magnets*

While much of the concern over toy recalls in the past few months has focused on lead paint, recalls of toys with magnets have also raised serious concerns. A 20-month old boy died and at least 12 children have been seriously injured after ingesting magnets in toys.

Millions of toys made by Mattel containing powerful small magnets were recalled in August 2007. In April of this year, a recall of Magnetix toys was expanded to cover nearly 8 million products. Last year, 2.4 million toys with dangerous magnets were recalled.

We commend you, Senator Durbin, for holding a joint hearing with House members on this issue on June 18, 2007 in Illinois and for bringing needed attention to the dangers from magnets in toys. You and Senator Amy Klobuchar of Minnesota have together highlighted the CPSC's slow response to the hazards magnets could pose to children if swallowed.

CU shares your dismay at the CPSC's foot-dragging in 2005, after it first received a report about a serious injury to a child from ingesting a magnet. The agency took no immediate steps to warn the public and recall the product. Indeed, it took two years for the CPSC to launch a full blown joint voluntary recall with Rose Art/Mega Brands of these toys with magnets.

CPSC finally is now appropriately warning parents that:

"Small magnets can kill children if two or more are swallowed. If two or more magnets or magnetic components or a magnet and another metal object (such as a small metal ball) are swallowed separately, they can attract one another through intestinal walls. This traps the magnets in place and can cause holes (perforations), twisting and/or blockage of the intestines, infection, blood poisoning (sepsis), and death. When multiple magnets are ingested surgery is required to remove the magnets and sometimes sections of the intestines need to be removed."

In addition, we have posted on CU's safety blog recommendations to parents about what to do if they suspect their child has swallowed a magnet or magnets.<sup>7</sup>

#### *CPSC's Ability to Deter Company's Violating the Law is Hindered by Cap on Fines*

Mr. Chairman, last week, the Wall Street Journal (WSJ)<sup>8</sup> reported that the Chairman of Mattel stated that the company discloses problems on its own timetable because it believes both the law and the commission's enforcement practices are unreasonable. We, like many others, found this disturbing.

CPSC's statute requires companies to report if they believe their product creates a "substantial product hazard." Failure to report can lead to a fine of up to \$1.83 million.

Yet according to the article, Mattel said it should be able to evaluate hazards internally before alerting any outsiders, regardless of what the law says.

The same article also reported that Mattel, "in at least three major cases since the late 1990s—including last month's recall of nearly 18 million (sic) playsets studied with potentially dangerous magnets—took months to gather information. In two of the cases, it collected scores of complaints for months before disclosing them to the agency."

CU believes that this statement by the head of the leading toy company is telling. Moreover, Mattel conflicts with the CPSC go back nearly a decade. Mattel was previously fined \$1.1 million for failing to promptly report a fire hazard involving its Power Wheels line of motorized minicars, designed to be ridden by children as young as 2 years old. Ten million of the cars were recalled in 1998.

Ann Brown, the CPSC Chairman at the time, said after announcing the penalty in 2001 that Mattel knew about hundreds of problems with the toy's electrical sys-

<sup>7</sup> <http://blogs.consumerreports.org/safety/2007/08/latest-toy-reca.html>.

<sup>8</sup> Wall Street Journal, September 4, 2007, p. A1. [http://online.wsj.com/article/SB118886996338816516.html?mod=hpp\\_us\\_whats\\_news](http://online.wsj.com/article/SB118886996338816516.html?mod=hpp_us_whats_news).

tems, “yet did nothing for years.” There were reports of 150 fires involving the minicars and more than 10 times as many reports of electrical components overheating, melting, short-circuiting or failing.

A year later, Mattel again failed to file required reports under the Commission’s rules. In the fall of 2002, Mattel began receiving reports involving the safety of screws in its Little People Animal Sounds Farm, which presented a choking hazard to children if swallowed. In one report, a screw punctured the lung of a 14-month-old baby who had inhaled it, sending the child into emergency surgery.

“It was not until March 2003 that the company reported the safety hazard” to the commission, according to an agency investigation. According to the WSJ<sup>9</sup>, CPSC learned that Mattel had collected 32 earlier reports of loose screws before approaching regulators. While denying any wrongdoing, the company signed a settlement in March, agreeing to pay \$975,000.

Pamela Gilbert, former Executive Director of the CPSC, told the WSJ, “The agency has a real problem in finding out about dangerous products. They know after [company] lawyers might know—that’s after a death or injury.”

This unfortunate history of just one company’s interactions with the CPSC suggests to us that companies simply do not regard the CPSC’s regulatory powers as a deterrent to flouting the law. Consumers Union and other consumer groups have consistently pressed for lifting the cap on the fines CPSC can impose for violations of the agency’s reporting rules—most notably Section 15(b) of the Consumer Product Safety Act (CPSA)<sup>10</sup>—which requires that companies “immediately inform the Commission” if a product fails to comply with a safety standard, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. Senator Durbin, the bill you and Senator Bill Nelson of Florida introduced this summer, S. 1848, The Consumer Product Safety Modernization Act, calls for lifting the cap to \$20 million. While we think such an increase would be a great improvement over today’s cap, we also agree with CPSC Commissioner Thomas Moore, who argued for lifting the cap entirely, when he told attendees at a conference in Florida in 2002 that “[p]erhaps some companies would be less likely to try to stall our agency by putting off reporting hazardous products if we had penalties that were more commensurate with the harm they can cause.”

The evidence indicates that Mattel is not alone in failing to report to the CPSC upon learning that its products violate the CPSA.<sup>11</sup> Year in and year out, the CPSC imposes fines on companies for failing to report, but the practice of failing to report continues. The cap on fines CPSC is authorized to impose—and the fines that CPSC does in fact impose—are low enough that they have become a cost of doing business for a company. Several years ago CPSC assessed a \$750,000 fine on Wal-Mart for failure to report a safety problem with fitness machines selling in its stores. For Wal-Mart, the fine was equivalent to sales rung up in only 1 minute and 33 seconds.

CU believes the cap on fines is just one way in which the CPSC’s power to keep the marketplace safe is undercut and one that Congress should work to change.

#### *Public Disclosure About Products Reported to the Agency*

Another way in which the CPSC’s power to keep the marketplace safe is undermined is Section 6(b) of the Consumer Product Safety Act.

We believe a federal agency has an obligation to disclose to the public when it opens an investigation on potentially hazardous products. Currently, NHTSA makes much of this information public; the CPSC, however, cannot disclose this information due to limits imposed on the agency by Section 6(b). Public disclosure can help warn consumers of potential hazards while an investigation is on-going.

We appreciate your addressing the problem of 6(b) in S. 1848. While you are not calling for the repeal of 6(b), as we have urged, your bill would allow the CPSC to make public information if it determines that a manufacturer is not cooperating and that disclosure is necessary to prevent an “unreasonable risk to health and safety.” That provision would be a vast improvement over the CPSC’s inability today to provide critical safety information to the public under 6(b).

<sup>9</sup>Id.

<sup>10</sup><http://www.cpsc.gov/businfo/cpsatext.html#sec15>.

<sup>11</sup>In 2001, the U.S. Consumer Product Safety Commission fined Cosco Inc. and Safety 1st Inc., of Canton, Massachusetts a total of \$1.75 million in civil penalties to settle CPSC charges that they failed to report product defects that caused serious injuries and deaths to children. In 2002, the Consumer Product Safety Commission (CPSC) fined General Electric Co. (GE) \$1 million to settle allegations that GE knowingly failed to report to CPSC in a timely manner a defect with certain models of dishwashers. Under the Consumer Product Safety Act (CPSA), manufacturers, importers, distributors, and retailers must immediately report information about potentially hazardous products to the Commission. <http://www.cpsc.gov/CPSC/PUB/PREREL/prhtml01/01119.html>.

*The Problem With Recalls*

CU is concerned about the recall of so many millions of toys over the past year alone. While the term “recalled product” suggests that a product has been or will be successfully returned, repaired or replaced, that is rarely the case. Author Marla Felcher, in her book “It’s No Accident—How Corporations Sell Dangerous Baby Products,”<sup>12</sup> quotes a CPSC study estimating that manufacturers cannot account for 70–90 percent of sold infant products after they have been recalled.

Recall notices rarely reach the very people who most need it—parents and caregivers. 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 same way they advertised the product in the first place—toys with lead paint and magnets, high chairs, cribs, strollers, infant swings and carriers often continue to be used for months or years after they have been recalled.

In an effort to improve recall effectiveness, consumer groups petitioned the CPSC,<sup>13</sup> asking that the Commission require simple registration cards on products intended for use by children. While not a panacea, registration cards are one way to facilitate recalls. The Commission denied the petition on April 28, 2003, citing concerns about the effectiveness of registration cards, despite evidence that such cards—required by federal regulations to accompany the sale of a car seat—have improved registration of those car seats substantially. In a 2003 National Highway Traffic Safety Administration survey, the federal highway safety agency found that almost three-quarters (73 percent) of parents/caregivers who said they obtained the car seat new also said that a registration card came with the seat. Of these, 53 percent mailed back the card.<sup>14</sup>

In addition to the problems with getting the notice out to consumers about recalled products, once a product is recalled by CPSC, the Commission, for reasons that escape us, will not release information on the number of units that have been successfully recalled so that the public can accurately estimate how many remain at large, the extent of the remaining risk, and whether the recall outreach used for a particular product was successful. We recommend that you add a provision to S. 1847 requiring CPSC to publish quarterly reports on the success of a recall and post these reports on the Internet.

*Conclusion*

Consumers Union appreciates this Subcommittee’s attention to toy safety and extends our thanks to its determination to press the toy industry and the CPSC toward a far better system of ensuring the safety of toys.

Senator DURBIN. Carter Keithley is President of the Toy Industry Association.

**STATEMENT OF CARTER KEITHLEY, PRESIDENT, TOY INDUSTRY ASSOCIATION, NEW YORK CITY, NEW YORK**

Mr. KEITHLEY. I’ve got a green light. All right.

Good morning, Mr. Chairman, Senator Brownback, Senator Klobuchar.

I’m really pleased to come before the subcommittee this morning on behalf of the Toy Industry Association (TIA) to talk about toy safety. The TIA is the leading industry association, toy industry association, in the world. Our 500 member companies provide more than 85 percent of all toys sold in the United States each year, and TIA has been a leader in developing and implementing toy safety measures for more than seven decades.

We’re very proud of our accomplishments in assuring that toys sold in America are the safest of any in the world. Our toy safety standards have been the model for other nations, and records show that toy-related injuries in the United States are extremely rare, despite the sale of nearly 3 billion new toys every year.

<sup>12</sup> Common Courage Press, 2001.

<sup>13</sup> Federal Register, Vol. 66, No. 148, Wednesday, August 1, 2001.

<sup>14</sup> Motor Vehicle Occupant Safety Survey, <http://www.nhtsa.dot.gov/people/injury/research/2003MVOSSVol5/pages/ExecSumm.htm>.

The recent recalls of a few models of toy products in the United States, however, have given our industry an opportunity to make further progress in the continuous process of safety improvement. These recalls demonstrated to us that we needed to apply some new safety assurance measures in the toy production process.

It is important to point out that the recalls account for a tiny portion of the total of nearly 3 billion toys sold in the United States each year. So far this year, there have been lead paint related recalls of 14 models of toy products imported into the United States by 11 companies. Two of those companies are among our 500 manufacturing members. And it should also be remembered that—to their credit—these recalls were initiated by the manufacturers themselves, when they identified the problem.

But, because the recalls this year related to lead paint on toys—something which has been prohibited by our safety standards for decades—we believe it is important for us to develop new measures, to prevent such occurrences in the future. Here are the fundamentals of the new initiatives that we are undertaking.

First, we are developing standardized procedures that will be used industry-wide to verify that products comply with U.S. safety standards.

Second, we are establishing criteria to certify that testing laboratories are qualified to perform testing to U.S. standards, using the industry-wide protocols.

And third, we are encouraging the Federal Government to adopt a requirement that all toys sold in the United States undergo inspection to ensure that they conform to our standards.

We have modeled our initiatives in this area after measures utilized in many American industries. We're working with the American National Standards Institute (ANSI) to develop these procedures who are communicating closely with the Consumer Product Safety Commission.

The safety system in the United States is a characteristically American approach to solving the problems and meeting needs. It is a robust, pluralistic system that employs the talents and expertise and speed of the private sector to address safety issues in its own self interest.

We're very proud to be working with ANSI in developing these new measures. ANSI is the premier, nonprofit organization whose mission is to enhance the American quality of life by promoting, facilitating and safeguarding the integrity of consensus-driven safety standards, and conformity assessment systems in the United States.

In contrast to a top-down, Government-driven approach to safety, our system involves all stakeholders in a consensus process that allows tens of thousands of new products and new technology to come to market for the enjoyment of our consumers.

Clearly, there is an important role for Government to play—as a watchdog and an enforcer of conformance with private sector standards. But history has proven the success of our reliance upon private sector safety initiatives.

Finally, I'd like to point out that our proposals are not specific to toys made in any particular area of the world. The new requirements will apply to toys made in any nation. For more than 30

years, working with our trusted suppliers in China, our industry has produced billions of high-quality toys that fully conform to our toy safety standards, and we are confident that our suppliers in China will embrace these new safety requirements.

We enthusiastically applaud the new safety agreements signed yesterday between the United States CPSC and the General Administration of Quality Supervision, Inspection and Quarantine in China, and we welcome the agreement by the Chinese authorities to take immediate action to eliminate the use of lead paint on Chinese-manufactured toys exported to the United States.

We recognize, and accept, however, that the ultimate responsibility resides with our industry, to assure that toys imported into the United States conform to our safety standard. We do not shirk from this responsibility, and we pledge to you, and to the American public that we will do everything in our power to ensure that toys sold in America are safe for our children to play with.

I'm honored to be here representing the toy industry among my distinguished colleagues, and I look forward to responding to your questions.

Senator DURBIN. Thank you, Mr. Keithley.  
[The statement follows:]

PREPARED STATEMENT OF CARTER KEITHLEY

Good morning Mr. Chairman.

Thank you for the opportunity to come before the subcommittee this morning to discuss the safety of toys sold in the United States. As you all know, my name is Carter Keithley and I am the President of the Toy Industry Association (TIA). We represent the toy companies who provide 85 percent of all toys sold in the United States. As the voice of the industry, I would like to assure you we are, as we always have been, committed to the safety of our products and the children who use them.

The fact that we are here before you today is in our view a positive step in gathering those who are interested in working together to connect the recent lapses in our safety net that have been exposed over the past several weeks. I would like to make the point however; that our actions to bridge these lapses is not an indication of a failed system, but rather a demonstration of the integrity of our industry, the Congress and the Consumer Product Safety Commission to fulfill our shared commitment to ensure the safety of children.

At the outset, I would like to note the United States has among the strictest, most comprehensive toy safety systems in the world. U.S. toys have, for years, been ranked among the safest of all consumer products in the home. In fact, many nations around the world emulate the U.S. system and understand our toy safety standards to be the premier standards.

This is not to say there is no room for improvement. It is our mission to continuously search for new ways to further strengthen our safety systems and standards. The unfortunate events of the last several weeks have presented us with such an opportunity.

With input from Members of Congress, the U.S. Consumer Product Safety Commission (CPSC), American National Standards Institute (ANSI), industry leaders and the retailing community, TIA has led the development and introduction of the framework for a new testing requirement for toy manufacturers.

Before addressing the specifics of this new program, however, I would like to take the opportunity to share with the subcommittee how we arrived where we are today and the current situation of the toy industry. As we entered the summer months and up until as late as last week, toy recalls were in the headlines daily. These recent recalls clearly demonstrated our safety system needed to be strengthened. Although, as I stated, we have some of the best standards in the world we were left wanting in assuring the application of the standards. This lack of assuring application of standards left our companies, the industry and most importantly our children exposed. I am proud to say that our companies acted quickly and professionally in responding to this issue and embracing the need to take significant action to close the "assurance gap," if you will.

The immediate response prompted by the recalls has been a redoubling of efforts to ensure U.S. standards are applied to toys regardless of where they are made. Many if not all toy manufacturers have conducted tests and in many cases retested products bound for the U.S. market. This effort has produced some of the recalls already announced and it may yet produce further recalls.

If I can take a step back, typically, recalls are not always a cause for alarm. At their best, consumer product recalls serve a proactive role in the product safety system to avoid risk and injury versus a reactive role after injury or damage has occurred. As you may know, many products pass federal safety standards, but because of unintended use or an unexpected potential hazard a product can end up being recalled. Recalls will always be with us; and therefore we shouldn't strive to eliminate them, but work to make sure this valuable safety tool is used in an appropriate, proactive manner.

As companies continue to test current product to clear violative product from their supply chains, TIA has, with the approval of our member companies, set out to provide a long term program to address the "assurance gap." To that end, I would like to share the framework for our new mandatory testing program for toys sold in the United States.

The new mandatory program will:

- Require all toys manufactured for the U.S. market to be tested to U.S. standards;
- Standardize procedures that will be used industry-wide to verify that products comply with U.S. safety standards;
- Establish criteria to certify that testing laboratories are qualified to perform testing to U.S. standards using industry-wide protocols;
- Require the development of testing protocols and certification criteria through the cooperation of all stakeholders and apply them consistently;
- Necessitate that TIA work with Congress, CPSC and ANSI to implement the legislation, rules and protocols to ensure industry-wide adherence.

It is the toy industry's strong belief that with this new mandatory testing program our industry will be even better equipped to protect the integrity of our products and the safety of American children. We held our initial meeting with ANSI, toy manufacturers and the retailing community August 31st. Working groups have been formed and we hope to announce an initial proposal with testing and certification protocols within the next few months.

As mentioned in my description of the program we will need the help of the Consumer Product Safety Commission and Congress, specifically with you, Mr. Chairman and members of the Commerce Committee. In principle, your legislation, S. 1833 is the needed Congressional action to mandate this action across our industry. We, as with any legislation, look forward to further examining the details and working with you to enact the appropriate measures to implement this program.

In closing, Mr. Chairman, again I would like to thank you for this opportunity and I am happy to answer any questions from the Members of the committee. I look forward to a positive exchange of ideas.

Senator DURBIN. Joe Bhatia is President and CEO of the American National Standards Institute (ANSI).

Mr. Bhatia.

**STATEMENT OF S. JOE BHATIA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN NATIONAL STANDARDS INSTITUTE, WASHINGTON, DC**

Ms. BHATIA. Thank you, Chairman Durbin. And I appreciate you pronouncing my tough name properly.

Senator DURBIN. It's just good luck.

Ms. BHATIA. ANSI is the coordinator of this Nation's private sector-led, but public sector-supported, voluntary standard and compliance solutions system.

We usually speak as the U.S. voice in the standardization forums around the globe. Importantly to our discussion here today, we accredit standards developers and certification organizations that we've been talking about. Our membership is broad, it includes industry, industry associations, Government agencies, consumers and other groups. Collectively, we represent a network of members



which amount to 125,000 organizations or industries, and over 3.5 million professionals.

Preventing safety of consumers is of paramount importance to the institute—it's actually a part of our mission. This hearing, in my view, is necessary because it's not an issue of standards, but because some suppliers—particularly those who are exporting products into the United States are not complying with rigorous standards and regulations that have already been established to keep our citizens safe.

As you've already noted, has asked ANSI to work with the toy industry to build upon its current safety standards and compliance systems, and make them better—there's room for improvement. We will engage and work with CPSC—they are a member, they sit on our board—and other regulatory agencies to ensure that their concerns, and their needs are adequately addressed in formulating our solutions.

But we need a system that is consistent across all manufacturers, across all geographies, and one that is sustainable over a long time. We'll focus our attention on the entire supply chain, not one part of it, improving how products are evaluated, and addressing who is conducting the evaluations.

Our first step is to develop and standardize procedures that can be used across the toy industry to verify that products indeed comply with agreed-upon safety requirements, regardless of whether these are voluntary standards, or Federal regulations.

Our second step will be to help the toy industry and CPSC to develop the tools they need to evaluate the competence of the organizations they are relying upon to control safety assessments. Our solutions will draw from a toolbox—big toolbox—of conformity assessment or compliance resources, not just testing and inspections, but also systems auditing, accreditation of certification bodies, accreditation of test labs, assessment of subcontractors and sub-subcontractors—that's where a lot of the problems occur—and, of course, education and training.

ANSI is committed into building into the global supply chain a sustainable approach to compliance verification, that's what's needed here. We will work, not only with the domestic entities, but also with our international partner—we work with them on many fronts, including the Chinese. We need to engage them.

ANSI knows how to leverage standards and conform to assessment systems to form solutions which engage all stakeholders—public and private sector. During our 90-year history, the institute has demonstrated a unique ability to bring together—in the spirit of cooperation—diverse representation, Government agencies, Federal agencies, State agencies, industry, trade associations, institutions, consumers, labor and other groups.

For example, we have teamed with the Council of Better Business Bureaus to tackle the big issue of the identity theft and identity protection. We partnered with the 9/11 Commission and continued to work with the Department of Homeland Security (DHS) to address homeland security. We were asked by the Office of Science and Technology Policy in the Executive Office of the President to take lead in nanotechnology initiatives. And we're currently helping the Department of Health and Human Services (HHS) to de-

velop a secure an electronic health record for every American, a goal of our President.

Mr. Chairman, members of the subcommittee, ANSI wants to help reassure our consumers that the products that are imported, that are on our shelves are safe. We want to support the activities of other groups, we want to coordinate this effort—not just from lead paint, but from also other potential hazards, that are yet to be identified—we need to have a flexible and workable solution.

I invite everybody that is in this room to come and join us for our September 26 ANSI-sponsored conference that is focused specifically on building consumer confidence in the products that enter the U.S. marketplace, Nancy Nord is one of our speakers.

But, to create safer consumer environment, we need to make more efficient use of the standards and compliance solutions that exist today, we need to identify every gap that exists—we know of some, but we need to find every one of them.

We need to build on what works in the current system, and make it better. We also need to bring new human and financial resources that can strengthen the existing systems and satisfy the needs. I applaud your efforts today that you have talked about.

In some cases it may be necessary—and we talked about that today—to elevate certain requirements from voluntary to mandatory status, or CPSC and other regulatory bodies that oversee consumer health and safety will not—will not be able to handle the workload alone, even with additional funding.

Government, industry, and ANSI, and other groups need to work together to restore consumer confidence in the imported goods. ANSI stands ready to help. We have been able to coordinate private sector and public sector partnerships to create solutions over the 90-year history of our company. We have done it often, and we're good at it.

I'd be glad to answer your questions. Thank you.

Senator DURBIN. Thank you, Mr. Bhatia.

[The statement follows:]

PREPARED STATEMENT OF S. JOE BHATIA

*Introduction*

The American National Standards Institute (ANSI) is a private non-profit organization whose mission is to enhance U.S. global competitiveness and the American quality of life by promoting, facilitating, and safeguarding the integrity of the voluntary standardization and conformity assessment system. ANSI's membership is comprised of businesses, professional societies and trade associations, standards developers, government agencies, and consumer and labor organizations. Through this network of members, the Institute represents the diverse interests of more than 125,000 companies and organizations and 3.5 million professionals worldwide.

ANSI is the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC), and is a U.S. representative to the International Accreditation Forum (IAF). A memorandum of agreement between ANSI and the Commerce Department's National Institute of Standards and Technology outlines a mutual understanding of the roles of each organization. This includes ANSI's recognition as the official U.S. member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

Since its formation, ANSI has been coordinating the development of standards-based solutions to support accident prevention and improve worker and consumer safety. Today, 10 percent of the approximately 10,000 approved American National Standards (ANS) currently available address issues that help to protect the workforce, consumers and the general public.

Protecting the safety of consumers is of paramount importance to ANSI. It is a key element of the Institute's mission. ANSI works hard to ensure that there is consumer participation at all levels of the total federation—from the Board of Directors all the way through the policy and technical activities. Sometimes the participation is by consumers themselves, at other times representation is through a consumer organization. But there is always a need for more consumer involvement in standards and conformity assessment activities.

ANSI's processes give any interested stakeholder the opportunity to engage in the development of a standard or the approval of a compliance program. The Institute's procedures are written to assure that everyone, regardless of ANSI membership status, is able to participate in ANSI activities. If someone is interested in the subject covered by a standard, for example, that individual may participate by applying to become a member of the consensus body or submitting a contribution during public review and comment.

American National Standards (ANS) run the entire spectrum, from the very first ANS on pipe threads to work that is underway today to meet emerging needs in areas ranging from the service sectors to the aging populations and those with disabilities.

Standards are important for everyone because they influence the design, safety, manufacturing and marketing of many products worldwide. Standards are not only developed in response to injuries, hazards or other identified safety risks, but more often in a proactive manner to prevent injuries from known hazards. Some areas that come to mind where voluntary standards have especially made a difference in enhancing consumer safety include:

- the National Electric Code (ANSI/NFPA 70);
- Safety for Ground-Fault Circuit Interrupters (ANSI/UL 943);
- Safety for Gas Water Heaters (ANSI Z21.10.1);
- Safety of Corded Window Covering Products (ANSI/WMCA A100.1);
- Accessible and Usable Buildings and Facilities (ANSI/ICC A117.1); and
- Standard Specification for Protective Headgear Used in Bicycling or Roller Skating (ASTM F1447-98—Approved as an American National Standard).

Voluntary consensus standards and conformity assessment programs are driven by requirements for continuous quality improvement—especially as technology changes and evolves. ANSI and its hundreds of accredited standards developers and conformity assessment bodies are constantly reviewing and updating their systems to stay abreast of current and anticipated needs.

*ANSI: Responding to national priorities*

ANSI's actions are aligned with the United States Standards Strategy (USSS), an overarching framework document that calls for close cooperation between those who develop the nation's standards and conformity assessment programs and those who use them. The USSS (excerpted in Annex B of this testimony) calls for the consistent use by government of voluntary consensus standards. It also calls for the standardization community to show leadership in developing responses to emerging national priorities.

ANSI's standards panels are excellent examples of how the Institute is addressing the critical needs of the nation. Last fall, ANSI partnered with the Council of Better Business Bureaus to tackle identity theft prevention and ID management—an issue that has victimized more than 18 million Americans over the past two years.

The Institute has partnered with the 9/11 Commission and the DHS to address homeland security; and with the President's Office of Science and Technology Policy to help lead global nanotechnology initiatives. ANSI is working with HHS to implement the President's vision for every American to have a secure electronic health record within the next ten years. And the Institute's newest panel is working with a broad spectrum of agencies to support the commoditization of viable alternatives to fossil fuels and the diversification of the global energy infrastructure.

ANSI has a unique ability to bring together in a neutral forum representatives of industry, standards developing organizations, trade associations, professional and technical societies, government, labor and consumer groups.

ANSI believes that a strong public-private partnership is essential to renew consumer confidence in the safety of imported products.

*ANSI: Acting to improve toy safety*

The current American National Standard for toy safety is ASTM F963-07e1. The Toy Industry Association and members of the toy industry worked in cooperation with ASTM International—another ANSI-accredited standards developer—and its committee on consumer products to develop the standard and submit the F963 standard through the ANS approval process.

This hearing is necessary not because there is an issue with standards. It is necessary because some suppliers—particularly those who are exporting products to U.S. soil—are not complying with the rigorous standards and regulations that have been established to keep our citizens safe.

Products manufactured in accordance with U.S. toy safety standards provide greater protection to our children. Testing and inspection systems must be strengthened so that compliance with these standards can be verified before unsafe products get into this country.

In this testimony, ANSI will identify actions that are already being taken to ensure that product standards are indeed being met and honored in the real world. The Institute will also identify steps that can be taken, working in conjunction with this Committee and with other policymakers, to stem the tide of unsafe products imported into our country.

Carter Keithley, president of the Toy Industry Association (TIA), has asked ANSI to work with the toy industry to build upon its current toy safety standards and conformity assessment systems and make them better. The Institute has accepted this invitation.

ANSI will also engage the Consumer Product Safety Commission (CPSC) to ensure that their concerns are adequately addressed in formulating a solution.

The system must be efficient, consistent and sustainable. It must focus on improving how products are evaluated and assessing who is conducting the evaluations.

ANSI will focus its facilitation efforts on the development and standardization of compliance procedures that can be used industry-wide—today these activities are defined by individual manufacturers and retailers.

The Institute will also turn its attention to harmonization of the current practices used to evaluate the competence of the conformity assessment bodies that are evaluating compliance to requirements—these harmonized practices are also intended for use industry-wide.

ANSI's solutions will draw from a toolbox of conformity assessment resources that includes sampling, testing and inspection; certification, registration, and auditing; accreditation and recognition, and—of course—education and training. These tools are defined in the National Conformity Assessment Principles of the United States, excerpted in Annex C of this testimony.

The development of a system that can be implemented industry-wide may carry over into 2008. In the meantime, a broad spectrum of stakeholders is already taking decisive action to remove unsafe products from distribution. In particular, brands and retailers have shared with ANSI that they have intensified their conformity assessment efforts to ensure the integrity of the import safety net.

There can be no guarantee unless all the stakeholders are working together. From producer to government regulator to retailer to parent—everyone has a role to play.

#### *Building Consumer Confidence*

Just as consumers have the right to expect that the toys they buy for their children will be safe, the same expectation should hold true for the toothpaste they use, the tires they travel on, and the food they eat.

The emergence of the global marketplace has created both consumer benefits and problems. If the public and private sectors work together, practicable solutions can be found to address the emerging issues of consumer health and safety in a global world.

Steps are already being taken. On September 26, ANSI will host a conference focused on building consumer confidence in the products that enter into our marketplace. The Institute intends to identify necessary, practicable and immediate actions that can be taken to ensure that only safe products enter into the U.S. marketplace.

Nancy Nord, acting chairman of the U.S. Consumer Product Safety Commission (CPSC), will deliver the keynote address. Among other topics, she will share a summary report of the Second Biennial U.S.-Sino Consumer Product Safety Summit held on September 11 in Washington, DC.

Presentations and discussion sessions will engage participants in identifying resources, initiatives, and applicable standards and compliance programs that will create a safer consumer environment.

In the first of three panels, industry representatives will offer case studies of recent import safety issues, and examine opportunities for future improvement in their respective sectors. The second panel will highlight government-specific issues, focusing on federal agencies that rely upon private-sector standards and related compliance programs to ensure consumer product safety. The third panel will bring together representatives of consumer organizations, standards developing bodies, and safety certification organizations to offer their perspectives on what actions are and can be taken to build consumer confidence.

ANSI invites the members of this committee to attend the conference on September 26 and help to identify areas where problems exist that might be mitigated or resolved with existing or new standards and compliance programs.

#### *Conclusion*

ANSI wants to help reassure consumers that the products they find on the shelves of their local retailer have been tested and found to be safe—regardless of country of origin. In order for the Institute to accomplish this objective:

- Standards and conformity assessment resources that are already in place must be used more efficiently.
- Government and industry need to work at a single purpose to identify gaps in the current systems of testing and inspection of products imported to the United States.
- New human and financial resources must be brought to bear to strengthen existing systems and fill any identified gaps.

In some cases, it may be necessary to elevate certain requirements from voluntary to mandatory status. If this happens, the United States must also be careful to remain compliant with our obligations in the WTO and existing bi-lateral trade agreements. Any efforts made to improve the safety of imported products should not cause other governments to reciprocate with trade barriers on American exports.

CPSC and the other regulatory bodies that lead oversight and regulation for consumer health and safety issues will not be able to handle the workload alone—even with additional financial resources. Private and public sector resources must be utilized in harmony if consumer confidence in imported goods is to be restored.

ANSI stands ready to coordinate that public/private partnership. The Institute knows how to leverage voluntary consensus standards and the related compliance systems to create solutions that engage and support all stakeholders.

ANSI looks forward to working in partnership with this committee, Congress, and other U.S. public sector representatives to stem the tide of unsafe products imported into our country.

#### ANNEX A.—BACKGROUND ON THE U.S. STANDARDIZATION AND CONFORMITY ASSESSMENT SYSTEM AND THE ROLE OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

The U.S. private sector-led, voluntary standardization and conformity assessment system has been in existence for more than 100 years. Highly decentralized, the system is naturally partitioned into industrial sectors that are supported by numerous independent, private sector standards developing organizations (SDOs). Marketplace demand drives the system's activities, with standards and conformity assessment programs typically developed in response to specific concerns and needs expressed by industry, government, and consumers.

Since 1918, this system has been administered and coordinated by the American National Standards Institute (ANSI) with the cooperation of the private sector and the federal, state and local governments. ANSI does not develop standards or conformity assessment programs. Rather, it functions as a central clearinghouse and coordinating body for its member organizations. The Institute is a unique partnership of industry, professional, technical, trade, labor, academic and consumer organizations, as well as government agencies. These members of the ANSI federation actually develop standards and conformity assessment programs, contributing their time and expertise in order to make the system work.

ANSI ensures the integrity of the U.S. standards and conformity assessment system by: establishing a set of due process-based “essential requirements” that SDOs may follow in order to manage the development of consensus standards and conformity assessment programs in a fair and open manner; accrediting SDOs who adhere to these requirements; approving candidate standards from ANSI-accredited SDOs as American National Standards (ANS); and conducting regular audits of the ANS activities of ANSI-accredited SDOs to ensure ongoing compliance with ANSI's essential requirements.

ANSI has accredited hundreds of SDOs across a range of industry sectors. These industries include (but certainly are not limited to) telecommunications, medical devices, heavy equipment, fire protection, information technology, petroleum, banking, and household appliances. There are now approximately 10,000 ANSI-approved ANS that address topics as diverse as dimensions, ratings, terminology and symbols, test methods, interoperability criteria, product specifications, and performance and safety requirements. These standards development efforts serve the public interest and are being applied to new critical areas such as the environment, healthcare, homeland security, and nanotechnology.

The Institute's approval of a candidate standard or conformity assessment program as an ANS verifies that the principles of openness and due process have been followed and that a consensus of all interested parties has been reached. Due process requires that all proposed ANS be circulated to the public at large for comment, that an attempt be made to resolve all comments, and that there is a right of appeal. In addition, ANSI considers any evidence that a proposed ANS is contrary to the public interest, contains unfair provisions or is unsuitable for national use. This basic formula has been the hallmark of the ANS process for decades, and it has garnered worldwide respect and acceptance.

One of the best indicators of confidence in the U.S. voluntary consensus standardization and conformity assessment system (as exemplified by the ANS process) is Congress's 1996 passage of the National Technology Transfer and Advancement Act (NTTAA). This law (Public Law 104-113) requires federal agencies to use voluntary consensus standards and conformity assessment programs for regulatory purposes wherever feasible and to procure equipment and services in accordance with such standards. It also requires agencies to increase their participation in the development process and directs the Commerce Department's National Institute of Standards and Technology (NIST) to coordinate federal, state and local voluntary standards and related conformity assessment activities.

ANSI's success is measured by usage and acceptance. From the government's perspective, there are two examples of confidence in the ANSI process that are worth citing here:

The first is the Consumer Product Safety Act. This 1972 legislation mandates that if a voluntary standard exists, CPSC may issue a mandatory standard only when the voluntary standards will not eliminate or adequately reduce the risk of injury or death, or it is unlikely that there will be substantial compliance with the voluntary standard.

The second is Congress' 1996 approval of Public Law 104-113, also known as the National Technology Transfer and Advancement Act (NTTAA). This law requires federal agencies to increase their reliance upon and participation in the voluntary consensus standards and conformity assessment systems.

ANSI also promotes the international use of U.S. standards and conformity assessment programs. The Institute serves as the U.S. national body representative in two major, non-treaty international standards organizations: the International Organization for Standardization (ISO) and, through the United States National Committee (USNC), the International Electrotechnical Commission (IEC). ANSI and the USNC play a leadership role in ISO and IEC, respectively, on both policy and technical matters.

Part of ANSI's role as the U.S. member of ISO includes accrediting U.S. Technical Advisory Groups (U.S. TAGs) which develop and transmit, via ANSI, U.S. consensus positions on the activities and ballots of technical committees and subcommittees. Similarly, the USNC approves TAGs for IEC activities. In many instances, voluntary standards and conformity assessment programs developed by U.S. SDOs are taken forward, through ANSI or the USNC, where they are approved in whole or in part by the ISO and/or IEC as International Standards. ANSI also encourages the adoption of international standards as national standards where they meet the needs of the user community.

In addition, ANSI advocates U.S. positions in various regional standards organizations and regularly meets with representatives from standards bodies in other nations. Thus, ANSI plays an important role in facilitating the development of global standards and related conformity assessment programs that support global commerce and which prevent regions from using local standards that favor local industries as trade barriers.

Conformity assessment is the term used to describe steps taken by both manufacturers and independent third-parties to determine fulfillment of standards requirements. ANSI's role in the conformity assessment arena includes accreditation of organizations that certify that products and personnel meet recognized standards. The ANSI-American Society for Quality National Accreditation Board (ANAB) serves as the U.S. accreditation body for management systems certification, primarily in areas such as quality (ISO 9000 family of standards) and/or the environment (ISO 14000 family of standards). ANSI also is involved in several international and regional organizations to promote multilateral recognition of conformity assessments across borders to preclude redundant and costly barriers to trade.

In summary, through its various roles and responsibilities, ANSI advances its mission to "enhance both the global competitiveness of U.S. business and the U.S. quality of life by promoting and facilitating voluntary consensus standards and conformity assessment systems and safeguarding their integrity."

## ANNEX B.—EXCERPT FROM THE UNITED STATES STANDARDS STRATEGY

*Principles*

It is well established in the community of nations that standards should meet societal and market needs and should not be developed to act as barriers to trade. In approving the World Trade Organization Technical Barriers to Trade Agreement, WTO members recognized that goal and established globally accepted principles as a framework to promote cooperation and discourage the use of standards as trade barriers. The U.S. standards and conformity assessment system is based on the following set of globally accepted principles for standards development.

- Transparency*.—Essential information regarding standardization and conformity assessment activities is accessible to all interested parties.
- Openness*.—Participation is open to all affected interests.
- Impartiality*.—No one interest dominates the process or is favored over another.
- Effectiveness and relevance*.—Standards and related conformity assessment programs are relevant and effectively respond to regulatory and market needs, as well as scientific and technological developments.
- Consensus*.—Decisions are reached through consensus among those affected.
- Performance-based*.—Standards are performance-based, specifying essential characteristics rather than detailed designs where possible.
- Coherence*.—The process encourages coherence to avoid overlapping and conflicting standards and conformity assessment programs.
- Due Process*.—Standards development accords with due process so that all views are considered and appeals are possible.
- Technical Assistance*.—Assistance is offered to developing countries in the formulation and application of standards and related conformity assessment programs.

In addition, U.S. interests strongly agree that the process should be:

- Flexible, allowing the use of different methodologies to meet the needs of different technology and product sectors;
- Timely, so that purely administrative matters do not slow down the work, but meet market expectations; and
- Balanced among competing interests.

## ANNEX C.—EXCERPT FROM THE NATIONAL CONFORMITY ASSESSMENT PRINCIPLES OF THE UNITED STATES

The National Conformity Assessment Principles for the United States document articulates the principles for U.S. conformity assessment activities that will allow consumers, buyers, sellers, regulators and other interested parties to have confidence in the processes of providing conformity assessment, while avoiding the creation of unnecessary barriers to trade.

Conformity assessment includes sampling and testing, inspection, supplier's declaration of conformity, certification, and management system assessment and registration. It also includes accreditation of the competence of those activities by a third party and recognition (usually by a government agency) of an accreditation program's capability.

While each of these activities is a distinct operation, they are closely interrelated. The choice of the most appropriate assessment processes, as well as the quality with which any one of them is performed, can have a significant effect on the confidence in and reliance that can be placed on the results of the entire conformity assessment.

The definitions included in the National Conformity Assessment Principles document are based on ISO/IEC 17000:2004, *Conformity assessment—Vocabulary and general principles*. Some variances, noted in italics, occur where the term is not in ISO/IEC 17000 or has another specific meaning in the United States. Definitions are included in this document to preclude confusion and to make it more understandable. In different contexts, the same term can signify different types of activities.

*Accreditation*

Third party attestation related to a conformity assessment body conveying a formal demonstration of its competence to carry out specific conformity assessment tasks. (*These tasks include sampling and testing, inspection, certification and registration.*)

*Certification*

Third party attestation related to products, processes, or persons *that conveys assurance that specified requirements have been demonstrated.*

*Conformity Assessment*

Demonstration that specified requirements relating to a product, process, system, person or body are fulfilled. *(This may include any activity concerned with determining directly or indirectly that relevant requirements are fulfilled.)*

*First, Second and Third Party*

*The first party is generally the person or organization that provides the object, such as the supplier. The second party is usually a person or organization that has a user interest in the product, such as the customer. The third party is a person or body that is recognized as being independent of the person or organization that provides the object, as well as the user or customer of the object.*

*Inspection*

Examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements.

*Recognition*

*Procedure used to provide formal notice that an accreditation body is competent to carry out specific tasks. These tasks include accreditation of testing laboratories and inspection, certification and registration bodies. A governmental recognition system is a set of one or more procedures used by a Federal agency to provide recognition.*

*Registration*

*Third party attestation related to systems that convey assurance that specified requirements have been demonstrated. Such systems include those established for the management of product, process or service quality and environmental performance.*

*Sampling*

Provision of a sample of the object of conformity assessment according to a procedure.

*Supplier's Declaration*

*Procedure by which a first party or supplier conveys assurance that the object of conformity fulfills specified requirements.*

*Test*

*Technical operation that consists of the determination of one or more characteristics of a given product, material, equipment, organism, person's qualification, physical phenomenon, process or service according to a specified technical procedure (test method).*

*Testing*

Determination of one or more characteristics of an object of conformity according to a specified technical procedure (test method). Action of carrying out one or more tests.

*Test Method*

*Specified technical procedure for performing a test.*

Senator DURBIN. And thanks to the entire panel. I was just noting as Mr. Storch and Mr. Eckert noted that they had five and four children, respectively. I wondered when your kids realized that they could say to the kids in school, "My dad owns a toy store." Or a toy company. They must have been the most popular kids in school.

Let me thank Mr. Keithley, Mr. Storch and Mr. Eckert, in particular, and say that over the course of my congressional career, there have been times when I have been tough on businesses, and I really have been heartened, and refreshed by, the response of your industry to this crisis. I think there is a level of openness and honesty that is essential for restoring the confidence in your products, and to bring your consumers back to your stores and back to your company. There's no corporate denial going on here, there's no



defensive crouch, there's no throwing around of the terms "junk science."

I mean, you're facing this honestly, and I think that's the only way to deal with it, and I'm glad that you are, I commend you for doing that, of course, you have to follow through. And we'll watch you as this process unfolds.

So, Mr. Eckert would say, "That's kind of you, Senator Durbin, but Mattel knew what they were doing. They were looking for the cheapest places in the world to make their toys. So, they found a country with the lowest wage scale, with virtually no environmental standards, and basically no safety inspection, so why should we be surprised at the outcome? Lead paint goes on products, maybe not because it's cheap, but because the folks who are applying it have no notion that it's dangerous or what the toy ultimately is going to be used for." So, is this a situation where your industry is facing the reality of deciding to ship your production overseas?

Mr. ECKERT. Mr. Chairman—what's important to me—the regulations are important, the laws are important, but as I tried to communicate in my statement, we're a company built on brands and trust. And if consumers can't trust our brands, regardless of where our products are made—and we make product in our own plants, and in vendor plants, in China, and in other countries. To me, the issue here hasn't been where these products are made, or what the rules are—have we done everything we can to ensure their safety? And I believe everything we're doing today—and the new program I talked about in my testimony—of certified paint, re-testing the paint, making sure we test samples of finished products before, in every production run before they reach store shelves, and increasing the monitoring worldwide, not just in vendor plants in China, will make a big difference.

Senator DURBIN. Well, having taken a look at our laboratory facilities here at the Consumer Products Safety Commission, it's pretty clear we're not going to test your toys. And I want to get down to this third-party certification or testing. Is it your plan—you and I've discussed this, but I want to put it on the record—is it your plan to have testing in the countries of origin of these products before they're exported to the United States, by reputable firms, which can be trusted to do the job well?

Mr. ECKERT. Yes. In fact, that's what we're doing today. Now, we have—we have testing facilities in Mattel and I know our labs, and our labs are a little bit more sophisticated and have more opportunities than some of the things I've seen here today. I know what our labs do.

Senator DURBIN. I hope so.

Mr. ECKERT. This hasn't been an issue of the labs haven't done their jobs, the labs have worked. I think it is important to level the playing field, make sure everybody's protocols are right, have labs certified or accredited by an independent organization to make sure the labs have the right equipment, are doing the right tests, and are doing it with the right frequency.

But I can commit to you today, and I use the cookie analogy. If we—if we test the ingredients going into the cookie and we know they're safe, and we watch the baking of the cookie, when the cookies come out, we do need to sample some of the cookies. Of course

remember, you know, every time we sample a cookie, we destroy it. And every time we do one of these lead paint samples on a toy, we destroy it. But if we get the ingredients right, if we're doing the tests up front, by certified facilities or accredited facilities, I can not imagine we're going to have this problem again.

Senator DURBIN. Now, for the record, most of the toys for sale this holiday season, have been manufactured long before. They are in the pipeline already, in warehouses, and on ships. Is that true?

Mr. ECKERT. It's probably in the ballpark.

Senator DURBIN. And so, the testing that would bring consumer confidence, involves products that have already been shipped, in many instances, from the country where they were manufactured.

Mr. ECKERT. And we're testing those as well. So the first thing we did, was we've got to stop this at the source. The source is in these overseas plants. Let's make sure we've got our arms around that inventory and what is there. We know that we have now tested every batch of finished product before it leaves Asia or any other facility. That was the important thing.

Now we've shifted our attention, with the help of retailers, into what products are already here and are there—are any problems here. But from a long-term perspective, to me, the real issue is at the source.

Senator DURBIN. Ms. Greenberg, you—I hope you were here and listened to the testimony of Chairman Nord on children's jewelry. I'm at a loss to figure out what the Consumer Products Safety Commission is doing. What I heard her say, is in 2004 there were massive recalls. They're concerned that one out of five pieces of jewelry, children's jewelry coming into America now are dangerous because of lead content. And the best I could get from her testimony, is that they're in the process of rulemaking, whatever that might be, that may have started in July of last year or January of this year. And I'm not certain, I don't want to misstate her testimony, that she answered directly my question, as to whether or not they are stopping and examining shipments of children's jewelry.

As someone who has analyzed this agency, what was your impression of that testimony?

Ms. GREENBERG. Well, it didn't sound from her testimony like they had taken the kind of aggressive action I would have liked to have seen from this agency. And what's she saying is that because there's no standard in place, she felt she didn't have the power to go in and take these samples out of the ships that were coming in or—but what that generated in my mind is, "Okay, what would I do in that situation?" And if I were a member of her staff or if I ran that agency, what I would have—what I would have done is say, "You know, listen, maybe I don't have the standard in place, but my hands certainly aren't tied." Because the statute, under which the CPSC operates, provides a lot of leeway for whoever's in charge there, to do—to take a number of steps.

One of the first things I probably would do, is I—particularly Senator Klobuchar, since you had a young constituent who died from a piece of a lead toy that ended up in his stomach. We've got a serious problem here. So you're going to pull the manufacturers in, anybody who's making these toys, pull them into a room and say, "We've got kids who are getting seriously injured by this.

What can you—what can you promise me you intend to do to, are you doing the testing that needs to be done. What is the level of lead in these toys that come over? Obviously, it's way too high. Are you willing to sit down with us and pound out a voluntary agreement to do the testing and keep these lead toys out of the country?" So that's one idea.

The second idea is, under section 19, which covers imports from CPSC. There is an opportunity to take—if there's—if a product evidences a substantial—is a substantial product hazard, that can be the subject of reports to the CPSC about any—any company that is selling that product. I would have taken those reports, I would have looked at those, and I would have gone, maybe gone to a Member of Congress and said, "We've got a lot of these products out there. I need your help because the rulemaking process is a very lengthy one. So let's take this product and let's try to get some legislation passed quickly that would put a ban in place. Because this is a substantial product hazard and it's killed a kid and it's hurt many others."

So, in other words, her hands are not tied. She may not have a standard in place, but there are a myriad options that I think the Chairman of the CPSC ought to—ought to have considered.

Senator DURBIN. Well, I'm just going to close by—this round of questions—by saying, it's not just a matter of providing more money to the agency, more staff at the agency, more and better laboratories and buildings. There has to be an aggressive attitude at the agency about protecting families and consumers. And when they don't have the tools to protect them, to reach out to Congress and other places, the President, and say, "We need more authority here because there's a danger at stake here." And I think that's—

Ms. GREENBERG. Exactly.

Senator DURBIN [continuing]. I was looking for that in her testimony and I'm sorry that I didn't find it in many of her responses.

Senator BROWNBACK.

Senator BROWNBACK. Thank you, Mr. Chairman.

Ms. Greenberg, I hope you'll work with us on statutory authority, that I hope we can put in the appropriations bill and that the authorizing committee will agree with, so we can move that through rapidly, so that you'll advise us on what else needs to be put in.

Ms. GREENBERG. Glad to do that.

Senator BROWNBACK. Mr. Storch, I've been in many of your stores, often. With two 9 year olds, I'm familiar with Toys "R" Us. The information that I've looked at says that 80 percent of your products come from China. Is that correct?

Mr. STORCH. Let me give you some, Mary and I, your staff, were discussing that yesterday. So let me give you some background on that because I went back and did some investigation after—after our discussion. And as in many consumer products categories, a majority of the products do come from China in toys, like they do in category after category now, as you pointed out in your earlier remarks.

Senator BROWNBACK. What is it in your store? What percent of your products come from China?

Mr. STORCH. Let me give you some—let me give you some break-out or some conception of that by category, because it varies, based on the category. We sell multiple categories or products in our stores for kids. Products like, juvenile products for example, diapers or baby care products, these typically are made by U.S. manufacturers like Proctor & Gamble, et cetera.

Senator BROWNBACk. All right.

Mr. STORCH. Outdoor and indoor—indoor—outdoor products and the indoor playhouses, you know, the blow-molded—

Senator BROWNBACk. Right. Right.

Mr. STORCH [continuing]. And injection-molded large houses. These also are typically domestic-manufactured because of the transportation costs are so high, they tend to be made in the United States. Video games is another big area, and those, the hardware is made in Asia in various places and the software is typically, the disks are actually stamped out in the United States or Japan. Construction toys, things like Legos, for example, or Connects, some of those are made in the United States, some of those are made in Mexico, they're made in various locations, some are in Canada. Now, the category that most people are focused on here, would be things like dolls and action figures and the trains that we've seen the recalls on. And for those, somewhere between three-quarters to 80 percent of the products are made in China.

I would point out that we operate in 35 countries and if someone believes that there are, sort of, secret factories out there, in these countries and France or England, wherever the leader in toys, or in Spain. It's the same thing in those countries, where almost—almost all of these categories of toys are manufactured in China, around the world today. So our focus is on making the toys safe wherever they're manufactured.

Senator BROWNBACk. And I appreciate that.

Mr. Eckert, now, what about in your products? How much, what percent of those come from China?

Mr. ECKERT. We manufacture one-half of our own toys and vendor source about one-half of our toys. Looking across both of those systems, roughly 65 percent of our toys are made in China and 35 percent are made in other countries.

Senator BROWNBACk. Ms. Greenberg pointed to a systemic problem. My guess is you gentleman have been going back and forth to China for many years. Mr. Eckert, in the last 5 years, how often a year have you gone to China?

Mr. ECKERT. I probably, a couple of times a year.

Senator BROWNBACk. Mr. Storch?

Mr. STORCH. China hasn't been a place that I've tended to visit.

Senator BROWNBACk. It is not or it has been?

Mr. STORCH. No, as a retailer again, the manufacturers have their facilities over there and they're making products over there. And as a retailer, we don't have operations in China.

Senator BROWNBACk. So you don't go and visit these factories where a big percentage of your products come from?

Mr. STORCH. Yeah. We have a very large staff, we have an office in Hong Kong and we have, for example, a gentleman here, Rick Rupert, who's our Executive Vice President, who is over there almost all the time, looking at the factories.

Senator BROWNBACk. You yourself are not, you're not going?

Mr. STORCH. No. I am not, sir.

Senator BROWNBACk. I would think it would be wise to visit the one particular area where you're getting so much of your product.

Mr. Eckert, one of my growing concerns has been this concentration of our manufacturing and of our economic activity associated with China, which is a closed system and is battling corruption. And even the Communist Party is talking about corruption within China.

So then, when you get into a manufactured set of products, it seems to me, you almost are set up to see these sort of things taking place. And then when we get this level of concentration in an economy, you do get people manipulating the marketplace.

So you've got a closed system, having corruption, battling corruption, and a market concentration in the 60 to 80 percent ratio. You're set up, almost, to see the occurrence of problems. I'm sure this is something that you've thought about. Have you tried to break out of the sourcing in this one place? Or do you not see that there are endemic problems and a likelihood that things like this might take place?

Mr. ECKERT. First, we do manufacture in markets other than China. Second, I've personally seen a lot of success in the growth of capitalism, if you will, in China, as jobs are created and they start going through the industrial revolution there. Many of the people who work in our facilities in China, are people who have come from the agrarian society and, literally, this is their first job.

But we make sure we enforce our own standards. That, to me, is what's important here. As an example, since 1990—

Senator BROWNBACk. Well, that didn't work, did it?

Mr. ECKERT. Well, since 1997, we have had outside, independent auditors go into our facilities and check who'd be working on our products and what conditions they have. And we publish those on [mattel.com](http://mattel.com), so anybody can go look at independent auditor reports and what we've done to correct things, to make sure we impose our standards, regardless of what someone else does.

Senator BROWNBACk. But it didn't work.

Mr. ECKERT. Well, in the case of—if you're speaking specifically to lead paint testing—

Senator BROWNBACk. Yes.

Mr. ECKERT [continuing]. We didn't test sufficiently to catch that product. I don't know if that's a question of where the product was made.

Senator BROWNBACk. You don't see the setup of the macro situation as being a good possibility of producing a problem like this?

Mr. ECKERT. I see it from my perspective, just as a manufacturer, what systems do I have in place, regardless of who owns the plant or in which country it is? That's my viewpoint of this.

Senator BROWNBACk. Well, I would ask you to think about the macro situation in the way Ms. Greenberg identifies it, I think this is a situation that would evolve into the type of setup that we are experiencing. And my hope is, that we can give the Consumer Product Safety Commission more authority to deal with it. But also that you as manufacturers would look at the type of settings that you're in, and if there is a likelihood that situations like this would

emerge you can do spot testing and random testing as a method of prevention. That's good, I'm glad that we do, because if the system is flawed we're asking for problems. And we have got them.

So I would hope you could work with us and look at other places even other countries with more open systems, as a possible place to go.

There's been this huge flush of capital going into China, you've had manufacturing growth taking place that I don't think has necessarily served the rest of the world nor served the United States well. You have your free choice. You're a free company, to do with as you see fit, and you will, and you should. But I think we're asking for problems in this.

Mr. Chairman, thank you for letting me go over.

Senator DURBIN. Senator Klobuchar.

Senator KLOBUCHAR. Thank you, Mr. Chairman. Thank you to all of our witnesses. It's been very helpful, particularly I welcome Mr. Storch, who's a resident of Minnesota.

And I wanted to echo what Senator Durbin had said, as I appreciate the people who are here today, who work in the industry, for being honest, for working with us, and coming forward. I think you've admitted that there were some major problems that need to be fixed.

And I guess my first question would be of you, Mr. Eckert. If this can happen to a reputable company like Mattel, it can happen to any toy manufacturer. And how can you make sure that the new systems that you have put in place are going to work and are going to serve us adequately when the past systems failed?

Mr. ECKERT. I support mandatory testing by certified labs, the same kind of program we're doing today, with mandatory testing of finished goods before they reach store shelves, for the rest of the industry. And I think, as Carter Keithley has announced the TIA, the industry association of 500 members, both large to very small, support this proposal. We would like to have a level playing field and we would work with them and with the agency to develop those standards.

Senator KLOBUCHAR. So, what you're doing now, are you testing batch by batch? Is that what's happening?

Mr. ECKERT. Yes.

Senator KLOBUCHAR. Okay.

Mr. ECKERT. So here's what we're doing. And it's very important to me that I have an opportunity to explain this.

First, it's the paint. Again, if you get the ingredients right, we don't have to worry about the end so much. Let's make sure the paint is right. The paint has to come from one of our eight certified paint vendors. You have—that's all you can do, you have to buy their paint and we test the paint in those paint factories.

Two, when a plant takes that paint, a manufacturing plant, whether we own the plant or whether a vendor, an outsider owns the plant, that paint has to be tested again—every batch of paint—has to be tested before it's used.

Three, as the toys are being made, we have more auditors on the ground today, going around to these various vendors and subcontractors to watch over their shoulder about how they're using the paint.

And four—to me the ultimate test—before that product gets to retailer shelves, we take a sampling from every production run, of finished toys, and test the paint one more time. I think that kind of system will be effective and I think that sort of system would benefit manufacturers large and small.

Senator KLOBUCHAR. Now, do you produce kids jewelry?

Mr. ECKERT. We don't. We have had some jewelry, licensed product jewelry for example. I recall a situation with American Girl, which is one of our brands.

Senator KLOBUCHAR. I've seen that jewelry.

Mr. ECKERT. Okay.

Senator KLOBUCHAR. In my house.

Mr. ECKERT. Well, we've had some licensed jewelry out of American Girl that—my recollection is this goes back to last spring, maybe it was the end of March of last spring—where routine testing, even though we don't manufacture that product, we just distribute it in our stores, in our few American Girl stores, one of which is in Chicago—we found lead in that product, and recalled that product, discontinued the product. We're not going to be in that business.

Senator KLOBUCHAR. Mr. Storch, you were talking about the recall process, and how we can make it better. I appreciated your support for my legislation to put some kind of demarcation on the products and the packaging. Could you talk about what you do when you get a recalled product and how that differs from what, maybe a smaller retailer, would do—what they may have the capacity to do and what you think would be best to guarantee that these products can be recalled immediately?

Mr. STORCH. Yes. I—we have communicated in no uncertain terms to our people, that executing recalls is the most important part of their job. And everyday, store managers check the recall board and audit that the recall's been carried out.

But more importantly and more specific to your question, our systems allow us to lock out sales of any recalled product. And I mentioned that a little bit in my prepared remarks, that both in the distribution centers and in the stores, the system has basically blocked further movement of those products. So they can't move from the distribution centers to the stores, and they can't move from a store shelf, if one were on the store shelf, they can't be—can't be bought. And so, there is—should be no way, from a systems-enforced perspective, for anyone to buy the product. And again, all the audits we've seen, all the testing, and believe me, everyone from journalists to public agencies around the country to anyone with a thought about this has gone in and tried to check, is that we have near perfection on execution of these—of these recalls.

I think for a smaller retailer, that's going to be a much more difficult challenge. And, because they may not have the systems, they're not able to proceed in that—in that sort of guaranteed 100 percent—100 percent fashion.

The other thing we do, is that if there's any source of confusion or concern, we just remove the whole line. And so that happened, for example, earlier this year with the Magnetix recall. We felt it was confusing to our customers to try to tell which product was re-

called and which one wasn't, because there were so many different types of Magnetix. So we took the whole line off the shelf until that was sorted through. We have the financial ability to accomplish that. And I could see, perhaps, some smaller retailers not being able to do that.

Senator KLOBUCHAR. So do you understand the need, and I appreciate you talking about the voluntary work you're doing to revamp some of these regulations for the CPSC and also give them some more resources to do their work. Some of the issues that Ms. Greenberg was talking about, is the CPSC and is it a shadow of its former self? As a member of the industry, do you support more resources for this agency?

Mr. STORCH. Absolutely. And, it was interesting, we met with— with Ms. Greenberg yesterday and I was fascinated. I'm a little bit of a Consumer Report junkie, as I told her, from childhood. And we found ourselves in agreement on almost every issue that we discussed. So, we are absolutely in that—in that place. It is clear that CPSC needs more money and you've all spoken of that and demonstrated that. And if we expect them to do more things, they're going to need more money.

It's also very important to us that some of these timeframes be shortened, between the time when a product is first discovered as having a problem and a time when the consumer finds out about it. And for us, often, we get a 1-day notice, something like that, whenever, as soon as, you know, the manufacturer feels like the recall is going forward, we'll get a phone call, "We're going to recall this tomorrow." And so, we immediately take it off the shelf. But sometimes, particularly earlier this year, we felt like months may have gone by while these situations were being investigated and those products were still being sold and we didn't like that. Now, with more resources, we feel the CPSC can move faster on that.

Senator KLOBUCHAR. Thank you very much.

Senator DURBIN. Following up on that, Mr. Eckert. One of the questions that was raised is, your requirement as a toy manufacturer to report defective products or dangerous products. And, so what do you understand your corporate obligation to be, under the law or otherwise, to notify either the Consumer Product Safety Commission about the dangers that you found of a product that you're selling, or to take other action?

Mr. ECKERT. First, let me say we would also support more resources for the CPSC. I think they do important work. We do support them. Some of the things I've said in the last couple of weeks, I believe have been misattributed about my support of the CPSC, and I want—appreciate the opportunity, Senator, to be on the record here, saying we do support this agency.

And I'll tell you, the work they've done with us this past summer on the lead paint recalls has been exemplary. We're working with short periods of time, we're calling them at night, we're calling them on weekends, we're making things happen, we are calling retailers the night before a recall is going to be announced. Everybody is working as fast as they possibly can.

My understanding of the requirements, sir, are these. The requirement of 24-hour notice to the agency of a product that could present a hazard, has been well covered. And, one of my concerns



always, is the “could” standard. Because with the benefit of hindsight, going out 3 or 4 years, well now we know it could have been a problem because it was a problem 3 or 4 years down the road.

What hasn’t been reported or what hasn’t received as much attention, is the provision of the CPSC regulations that gives companies 10 business days or more to determine that they have a reportable incident. So for example, in our very first situation, first lead paint recall this year, we found this paint, we found this issue in a shipment of product destined for a retailer in France. Our people on the ground thought they had the—their arms around the situation, that they controlled the product. It wasn’t in commerce and it wasn’t heading to the United States. I wish it would have dialed up sooner to the corporate situation, because it wasn’t until we did subsequent tests.

And let me give you an example. We tested—a retailer tested this little green fox in a Dora product, and it failed a lead paint test. We do thousands of lead paint tests every year and don’t have failures. So our people, well-intended people on the ground in China, called the vendor and said, “You’ve got a problem, get us some new green foxes.” The retailer tested green foxes again. They pass. Our people on the ground think the problem’s behind them.

We, in the meantime, have also drawn our own samples from that vendor facility and saw products that failed. And once we did that, we quarantined all products and very quickly this situation moved into the United States, where we can take action, which we did in a matter of days.

Senator DURBIN. You told me in a meeting, I believe it was our conversation, that when it comes to vinyl, for example, there is some presence of lead in most or all vinyl. And so, we talked for a few moments about what the lead safety standard is.

Ms. Greenberg, in her testimony, said that the CPSC has not really established an acceptable standard when it comes to lead. So what have you found as you’re testing, what do you use as the standard for your products, as acceptable amounts of lead? Is it zero?

Mr. ECKERT. We use six parts per million. There is lead in the environment. Unfortunately, lead is pretty ubiquitous in our lives. That’s the way it is. I don’t know that one can find zero lead, but we use a very small portion of lead, which even though it may—as I understand now—it’s not mandated. That’s one that everyone in the industry uses.

Senator DURBIN. You mentioned to me, I think, that California had a State standard that was more—one of, either you or Mr. Storch—mentioned that California had a State standard that was even stricter. Is that correct?

Mr. STORCH. I believe that’s not the case, in regard to toys where—and I’ll check on this—where the toy standard is the same. But I believe that’s in regard to vinyl, in vinyl products. And in that—I’ll check my aperture in a second—but and I believe that’s a standard in there law, where it’s a standard of, where it has to be stated on the package, that it could be potentially harmful, as opposed to an absolute—absolute standard. They have a lot of things like that in California, where you’ll see on the back of the package, you know, this has been determined by the State to be po-

tentially hazardous. I believe it's like that. Let me just, if I may just check for a second, I'll get you a definitive answer on that. Prop 65, and they say, 30 parts per million.

Senator DURBIN. My last question relates to design. When I met with Minister Wei this morning, from China, he said, part of the problem we have with toys is that our people are manufacturing to the design standards of the United States. And so, if the Magnetix toy has a magnet that pops out, it's because we were told to make it that way. We didn't design them, so don't blame us.

How much of this, beyond lead paint, which obviously you've indicated not to include on any products, but how much of this does go to design and how much could be laid at the doorstep of toy manufacturers, for having designs that create loose parts or magnets that pop out?

Mr. ECKERT. I think that is well-stated, because a lot of these problems, not the lead paint problem, but a lot of toy recalls are related to design. We ourselves, are producing thousands and thousands of new products every year. And we're very careful when we design those products, to make sure they meet standards, not just regulatory standards around the world, but our own internal standards.

That said, we occasionally make a mistake. Everybody does. And when we do, we need to fix it. And that's not a manufacturing issue. Everything I've seen in the magnet situation, has nothing to do with manufacturing. And what has happened in magnets, is these small, high-powered magnets, Senator as you know, have become almost ubiquitous. We have them on our cell phones, our blackberries and we've been using them in toys for the past few years. And when a magnet came loose, I think the industry, certainly Mattel and I believe the regulators, saw it as a quality issue, not a safety issue. A small part came unglued. That occasionally happens, and what do you do about it?

And in our situation, we twice changed our requirements for how to affix those magnets as small parts so they don't come off. It really wasn't until November 2005, when unfortunately a child died as a result of ingesting multiple magnets, that I think we all got the wakeup call. This is a safety problem. This isn't about a quality and it has to do with design. How do we design a system to keep these magnets in place? In January of this year, we created a locking system to embed these small, high-powered magnets in the plastic itself, so they won't come out. And we had had a recall before then, related to loose magnets, but we—we found the solution.

And what we've done this year, and I think is an example of how Mattel tries to lead the industry, is we retroactively applied that new system for locking the magnet in place to toys that we sold years ago, before that was even discovered. Because again, I think it's most important to get the consumers, even if they bought one of these products 2 or 3 years ago, if we know that magnet isn't a small part issue, it could be a real safety hazard, it's our job to get that product back.

Senator DURBIN. Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman.

Mr. Eckert, I want to talk with you about some of your meetings in China, if I could, and officials. You meet with Chinese officials,

I would guess, regularly on production and manufacturing standards?

Mr. ECKERT. I wouldn't say regularly, and it's certainly not on standards. I meet with local officials around our facilities or the facilities I visit and I, on occasion, am in Beijing. But most of our facilities are in the southern part of China and that's where I spend most of my time, by far.

Senator BROWNBACk. And meeting with local officials there?

Mr. ECKERT. Yes.

Senator BROWNBACk. Meeting with local officials? Do you ever meet with people from the PLA, People's Liberation Army? Have you ever met with officials from the PLA?

Mr. ECKERT. Not that I'm aware of.

Senator BROWNBACk. Do any of the plants that you have associate with the PLA?

Mr. ECKERT. I don't know that to be the case.

Senator BROWNBACk. Do you know who runs or who owns the plants, 100 percent, in the cases of what you're dealing with in China?

Mr. ECKERT. As it relates to our plants, yes. As it relates to these large vendor plants, yes. Some of the issues though, that we found this year, is vendors and—and we wouldn't be here if a handful of vendors didn't violate our rules—some of these vendors have subcontracted and further subcontracted some of these components. And I don't know—and that's one of our issues we're tracking down—who are those people and why are they here?

Senator BROWNBACk. I'm not putting the beat on you. You're here, and I'm asking you these questions. But what I'm looking at are the systems where a problem arose. It seems that, not just producing problems in toys, but producing problems in other product areas is what I'm trying to get at there.

I was just looking at—and this is an old article, it's 1998 International Herald Tribune article, but they were estimating that the armed forces ran some 20,000 industrial production and service companies in China. And that's why I ask if you had met with, or if they continued to run, any of the facilities that you're a part of or that your vendors have any association with.

Mr. ECKERT. Not that I'm aware of. It may—there may be. I'm just not aware of it and I've certainly never met with anybody that has identified himself being that type of person.

Senator BROWNBACk. I hope we can—in looking forward—pass legislation to try to correct this situation, put standards in place so that people can be assured of the products they buy. And also push the Chinese Government, whether through communications through you and certainly through communications from our Government that we will not tolerate these problems in our products. And we're going to do everything we can to stop these problems, period. And that the products aren't coming in if they're not good.

And I hope we treat them the way we get treated in other countries around the world. If our product is seen as having any quality problem, we get shut out of the marketplace, shut out. I think that we ought to do here. Until we are sure that the system has changed and won't produce the same sort of products that we've seen.

Senator DURBIN. Mr. Bhatia.

Mr. BHATIA. Senator, if I may. I would like to seize this example that you just raised to make a point. I think we need a systemic fix, which goes beyond just lead or small parts. If we have evaluation and accreditation process, if we have a system that looks at not only the manufacturer, but the supplier and the sub-assembler and the sub-supplier. We have techniques available which register and record the manufacturing location, that record the sub and subcontractors as part of the certification of accreditation process. And these problems can be handled, they have been successfully handled in other sectors. We're just in need for look—for looking to these types of options, integrate them with what we have that works in other areas, and work with our industry, work with our regulatory framework. You need to strengthen that for sure.

But we have mechanisms that are available, designing the proper system and then making sure that we inspect often, we audit often, we validate often, we accredit often. I think that's what's going to be needed to get this done. And the small parts are one component that has been regulated for many years. The regulations are meaningless unless somebody actually checks compliance to them. And that's what we need to focus on.

Senator BROWNBACK. Thank you.

Senator KLOBUCHAR. Thank you.

Mr. Keithley, I thought I'd ask you a few questions. You've been over there on your own. We were talking briefly here about the lead standards. I think people are pretty surprised that there's no set Federal lead ban or lead standard for children's products. I think it was Mr. Eckert and Mr. Storch who were correct to explain this .06 percent is the standard that's used by the States. The Feds and the CPSC use a, what I understand, a voluntary guideline standard of .06 percent, and then if it meets that standard they may do some additional testing, which seems to add time to this whole process, which people have said is something they care about. And then with jewelry, from what I understand, the California standard is to go to .02 by 2009. And that's why when we have talked to people, consumer advocates, people at the CPSC, people in industry, we came up with the ban standard of .04 percent because that's the standard that's used for lead in dirt. I won't ask you the details of that. And then the jewelry of .02 percent, which is the one that California's looking at to go to by 2009.

And then allowing, because of this understanding, the vinyl and some of these other products, that we may want to go under that standard to allow the CPSC or to require them to do a rulemaking to look at these individual products. We are certainly saying that this is a ceiling and that we could go lower as the science develops, because we wanted to try to have a standard that was based on science. So, could you talk a little bit about that idea and where you think that this should go? And if you think that a Federal standard would be helpful?

Mr. KEITHLEY. Well, in fact Senator, the jewelry people per se, are not strictly speaking, part of our industry. Nevertheless, they're closely enough related to our industry that it is a matter of concern to us. And in fact, in the spring 2006, we wrote a letter to the Commission encouraging the Commission to move forward, adopting a

set of standards and rules eliminating lead from jewelry. We fully support that.

Senator KLOBUCHAR. Okay. And are you open to looking at this, the Federal standards then? To put a standard in place?

Mr. KEITHLEY. Absolutely.

Senator KLOBUCHAR. Okay.

Mr. KEITHLEY. Absolutely.

Senator KLOBUCHAR. Okay, thank you.

Ms. Greenberg, could you comment a little bit about this? And then, before time expires here, I had asked Chairman Nord before about the agency budgets and their requests. Could you go on a little bit about your perspective on that as well?

Ms. GREENBERG. Sure. The agency is, as I said in my oral statement, is at 401 employees, as of the 2008 year. It has had as many as 960-some employees in the 1970s. It's clear, if you read their budget proposal for 2008, it is a very sad document because there are so many things that they say they can't do, they're stretched to the limit. And as the New York Times showed so well in the article about 1 week ago, they've got one person testing toys. Their lab is, looks like an old college friend's dorm room. They—they are suffering and they've lost lots of, I mean, there's been a serious brain drain there as a result of the very low level of funding.

One of our frustrations is, over the past several years, the Chairs of the CPSC have not asked Congress for more money because apparently they were told that they shouldn't. But it's so obvious when you read their internal documents or their documents that they supply, that they can't carry out their basic functions. They actually said they weren't going to work on drowning incidents, which is a core issue and kills a lot of kids every year, because they simply don't have the resources to devote to it.

So, we need to put this agency on a course, and you've done that in your legislation, of increasing—steady increases, so it can absorb additional employees and additional resources. This business with the lab is really sad. I mean, they've been dancing around this, it was cut out of the budget this year. Chairman—Commissioner Moore talks about that in his testimony. The lab was, you know, they've been trying to redesign the lab. It's been going on for 6 years and they just cut the money for it.

So, this is an unfortunate way to draw attention to a Federal agency, but I think this is going to be a shot, a real shot in the arm. When I have a moment, I know your time is limited, but I want to talk about the broader issue of children's products. Because toys is one thing, but we have, as safety agencies, and certainly with the Consumer Federation of America, and other groups have talked about a lot of problems with design of children's cribs, baby walkers, strollers, car seats, porta-cribs. Those are issues that also need to be addressed. We'd like to see some independent testing of those items, because kids have been killed or badly injured over the years and the CPSC really hasn't been equipped or stepped up to the plate to deal with those issues.

Senator KLOBUCHAR. Thank you.

Senator DURBIN. Thank you very much. I want to thank this entire panel, my colleagues, Senator Brownback, Senator Klobuchar. I think the three obvious conclusions from this hearing: China has

failed in sending us products that are dangerous, that have harmed children and many others and certainly we have to hold them to higher standards if they want to do business with the United States; the Consumer Products Safety Commission has failed in not providing adequate resources, staffing, or perhaps the will to deal with the important issues that they face; and Congress has failed. Those who have argued for so many years that we have to get Government out of our lives, understand that there are moments when we need Government, when we need someone to make certain that the products on the shelves are always going to be safe for our families and our kids. We need to step up to that responsibility.

#### ADDITIONAL COMMITTEE QUESTIONS

If there are any questions from members they will be submitted for your response in the record.

[The following questions were not asked at the hearing, but were submitted to the agency for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED TO HON. NANCY A. NORD

#### QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

##### RISK ANALYSIS

*Question.* One point of contention that we've had is with a request that I originally made in early August asking the CPSC to conduct a risk analysis on the presence of lead in children's products. This request was made in response to a news article that reported that one in five pieces of children's jewelry sampled by CPSC contained excessive quantities of lead. This analysis, which was conducted several years ago, revealed the risk and resulted in CPSC recalling more than 150 million pieces of children's jewelry in 2004.

How much did the children's jewelry analysis cost and how long did it take the Commission to accomplish? What was the study's methodology?

*Answer.* The report that one in five pieces of children's jewelry contains excessive lead was based on a market surveillance program conducted in fiscal year 2007 by CPSC's Office of Compliance and Field Operations, with the assistance of CPSC's Chemistry Lab. (The children's metal jewelry recalls in 2004 did not result from a formal surveillance program.)

The surveillance program was conducted over the last year to get a sense of conditions in the children's jewelry marketplace following issuance of an enforcement policy by the Office of Compliance. The scope of this effort was not intended to be statistically representative of the current market but rather to provide the agency with a general overview by collecting jewelry items from a variety of different sources across the nation. Nonetheless, the program led to more than a dozen recalls this year and has provided useful information to CPSC staff who are currently developing a draft proposed rule regarding lead in children's jewelry for consideration by the Commission.

Recalls of one product typically beget more recalls of the same type of product as media reports raise consciousness, and firms examine their activities more critically. That pattern is evident in this case as retailers have conducted a number of Fast Track recalls this year after testing their own products and reporting problems to the CPSC. New York State has also conducted a similar retail surveillance program this year, in close cooperation with CPSC staff, which we anticipate will result in additional recalls.

*Question.* In your response to my most recent letter, you suggested that it would take years of work and millions of dollars to conduct a risk analysis. Is there any way to structure a less comprehensive survey that would be less expensive and time consuming? Do you think that the findings of such a study would be helpful to policymakers and consumers?

*Answer.* In your letter of August 2, 2007, you proposed a risk analysis of children's products manufactured in China to determine whether there is sufficient risk of lead contamination to pursue a "detain and test" program on these products. A valid risk analysis on which to base a "detain and test" program of that magnitude would require a major expenditure of CPSC's resources.

CPSC staff is currently working to identify issues (see below) associated with the development of a sampling plan to define a baseline compliance assessment which is a necessary requisite for a valid risk analysis. This baseline compliance assessment would focus on determining the proportion of products that comply with regulations (such as the ban on toys that bear lead-containing paint). These issues must be identified, researched and resolved during the initial phase of developing a sampling plan so that staff can subsequently determine the number and sources of samples to be collected, the types of testing to be required, and resource requirements to assure that the precision, usefulness and applicability of the survey's results are sufficient to support Commission decision-making.

A national compliance rate estimate at a very minimum requires a multi-staged probability sample. Issues as to whether to limit the compliance rate determination to a specific set of toys or across children's products for all importers are critical for defining the target population to be sampled and the utility of the results. From there, issues as to where samples should be obtained—at the retail level to emulate consumer behavior or at distribution points prior to consumer access—must be resolved. Once the target population is selected, information identifying members of the population and their sales or production numbers must be gathered to support the structuring of the sampling plan. The sampling plan, even if limited to a specific market segment such as imported toys, will require a large number of samples to be tested to reliably estimate non-compliance from a very large population.

The results of this effort will allow the Commission to make a responsible and informed decision. Given the tens of millions of children's products imported from China annually, this would in any case be a major project which would, under CPSC's regulations, need to be incorporated into the agency's annual Operating Plans by a vote of the Commission, and it would also be expected to be brought to the attention of the appropriate Committees of Congress. It is an expenditure of agency resources that cannot be ordered solely at the direction of the Acting Chairman.

#### U.S.-CHINA AGREEMENT

*Question.* Last week, the CPSC and its counterpart, China's AQSIQ, announced an agreement was reached on lead paint and consumer product safety. Because so many of our imports are made in China and because they account for such a high tally of recalled products, I think this is an important area to continue to explore. When I looked at the actual agreement, it didn't look like much more than a framework for future progress. However, you made statements to the press that suggested that concrete steps had been agreed to.

What specifically did AQSIQ agree to do in this framework agreement? What specifically did CPSC agree to do in this agreement?

*Answer.* Attachments 1 through 4 are the agreements that were signed by each of the Working Groups. They detail the specific steps to which AQSIQ and CPSC have agreed with regard to the different products addressed.

*Question.* I understand that China has a lower threshold for lead paint than the United States. Why was yesterday's lead announcement such significant news? Hasn't the substance been banned in the United States since 1978?

*Answer.* The Chinese standard for lead paint is not directly comparable to the U.S. standard because the two standards involve different test methodologies and measurement techniques. (Chinese government officials have stressed that the Mattel recalls included toys that fully complied with the Chinese lead paint standard, so at least in these cases, the U.S. standards were stricter than the Chinese.)

AQSIQ has agreed to immediately create and implement a plan to ensure that Chinese toys exported to the United States do not contain lead paint. It has also agreed to increase inspection of toys bound for the United States for lead paint violations. (The government of Canada, whose standards for lead paint are similar to U.S. standards, is working to reach the same agreement with China.) The announcement is significant because the Chinese government has not previously had such a safety plan for exports to the United States. The CPSC will be monitoring their activities closely to verify compliance with the agreement.

*Question.* How would you characterize China's cooperation on the issue of product safety?

*Answer.* Commercial incentives exist that encourage Chinese cooperation and compliance on the issue of product safety. As you know, the CPSC has been actively engaged with the Chinese government, and we have reached important agreements with AQSIQ on product safety. In addition to that mentioned above regarding lead paint, AQSIQ has agreed to broad cooperation with the CPSC in four major product areas including fireworks, electrical products, and lighters, as well as toys. The Chi-

nese government has also instituted programs aimed at ensuring that its producers meet product safety standards required by China's export markets (for example, pre-shipment inspections at its ports) and increased its regulation of manufacturers with the goal of improving quality and safety. The CPSC will closely monitor Chinese compliance with all of our agreements, as well as their other actions to improve product safety. We will work to expand on these programs and take appropriate action if they falter; however, it is responsible and important that we have engaged them on these issues in the first place and upgraded our earlier dialogue by reaching these significant bilateral agreements.

*Question.* Beyond signing agreements, what are the key structural obstacles to implementing new standards in China?

*Answer.* I assume that this question relates to implementing U.S. standards in China for products that are made for export to the United States. We have observed the following systemic issues with those products that have been problematic:

- U.S. importers sometimes fail to communicate product specifications that would ensure compliance with CPSC rules, when placing orders with their Chinese suppliers.
- U.S. importers sometimes supply faulty and unsafe designs to their Chinese suppliers.
- Chinese (and U.S.-Chinese jointly owned) factories filling orders for U.S. importers may sometimes lack adequate controls and accountability in their manufacturing procedures.
- Chinese manufacturers making consumer products destined for export for the United States may sometimes ignore or be unaware of U.S. safety standards, or may be unaware of the destination of a product to be exported, particularly if the products are to be sold to a small or medium-sized Chinese trading company, rather than being made-to-order for a major U.S. importer.

*Question.* Are there currently personnel exchanged between AQSIIQ and CPSC?

*Answer.* The CPSC and AQSIIQ have conducted technical exchanges for several years. AQSIIQ technical personnel have visited the CPSC laboratory to learn about testing procedures. Chinese compliance officials have also visited the CPSC to learn how the U.S. system operates. Further exchanges of technical and managerial staff comprise a major component of the four Working Group Work Plans (toys, lighters, fireworks, electrical products) which AQSIIQ and CPSC completed on September 10, 2007. Laboratory personnel, technical staff, and compliance and enforcement staff will be providing training on the most critical elements of consumer product safety enforcement, from risk assessment procedures to market surveillance and enforcement policies.

*Question.* Are safety standards documents translated into Mandarin? If not, will there be?

*Answer.* Beginning in 2005, in cooperation with the American National Standards Institute (ANSI), the CPSC began making titles and scope statements for relevant standards available in Chinese. Approximately 390 documents have been translated, including but not limited to those related to children's toys, electrical products, gas appliances and furniture. All of these translations are available at [www.standardsportal.org](http://www.standardsportal.org) and further translations of CPSC regulations and standards will be completed under the four work plans recently concluded with AQSIIQ. The CPSC believes that making U.S. requirements available in Chinese is an important step in ensuring that consumer products manufactured in China and exported to the United States comply with our rules. We will continue our efforts to make more translations available.

*Question.* The ingestion of lead at any level is hazardous. Current standards were set in the 1970s. Does the CPSC have any plans to conduct a scientific review of the current 0.06 level of lead to revise it downward?

*Answer.* The CPSC does not have plans to conduct a scientific review of the 0.06 percent level of lead (i.e., the 1978 lead in paint standard, 16 CFR Part 1303) to revise it downward. The reason for this decision is best explained by discussing what we currently know about the health effects related to lead exposures, the technology that is available to rapidly and accurately detect lead in these children's products, and the results of a study staff conducted in 1992 on domestic house paints and levels of lead in the paint on the toys that have recently been the subject of recalls.

CPSC staff agrees that the ingestion of lead at any level is of concern. In addition to our own agency actions to reduce lead exposures, the staff participates in several federal interagency committees addressing the issues of lead exposure, adverse health effects, public health screening, and intervention.

The federal community currently recognizes a blood lead level above 10 ug/dL as a level of concern—a level intended to trigger prevention activities. This level was



established in 1991 (down from 60 ug/dL in 1960) and reaffirmed by CDC's Advisory Committee on Childhood Lead Poisoning Prevention in 2005.

CPSC staff agrees that this does not mean that this level is a threshold for health effects, as no "safe" threshold has been identified, and there is some evidence that adverse effects can occur at levels below 10 ug/dL. However, because it is critical to focus resources where potential adverse health effects are the greatest, the CDC did not lower the blood lead level of concern. CDC felt that doing so would be arbitrary and divert resources away from primary prevention activities and individual interventions.

It is evident that the decline in blood lead levels in the United States has largely been the result of government regulations banning the use of lead in paint, gasoline, drinking water conduits, and food and beverage containers and increased lead screening and identification of children with elevated blood lead levels.

Despite these actions, deteriorating pre-1978 residential lead paint remains by far the primary source of lead exposure for U.S. children. A 2002 HUD report indicates that 24 million housing units had significant lead-based paint hazards of which 1.2 million units were occupied by low-income families with children under 6 years of age.

The toxicological difference between paints containing 0.06 percent and less than that level is hard to determine because other factors, such as area of painted surface, weight of paint, and any potential ingestion rate for paint based on location are difficult to estimate. Achieving zero lead content is a formidable goal that may not be achievable, either technologically or because of contamination.

From the public health perspective, the least amount of lead is best. However, any set limit must be weighed against the ability to rapidly and reliably screen and/or test products. Our laboratory uses a desktop XRF to screen some products. Products testing negative do not undergo further testing; all products with positive results are tested with standard chemistry techniques.

The laboratory staff indicates that it is questionable that XRF could detect lead in painted surfaces containing lead levels below 0.02 percent (as is proposed in legislation pending in Congress that would lower the level to 0.009 percent). The lab can detect levels below this amount with standard chemical testing, so setting a standard below 0.02 percent will make it slower and more cumbersome to screen and test products without meaningful health impact.

Because the actual health implications of 0.009 percent vs 0.06 percent are hard to quantify, it is reasonable to have a lead paint limit that allows for the use of the most effective methodology for rapid screening and identification. If the technology for detection improves, or as science progresses, the lead paint limit could be adjusted by the Commission through regulation.

#### PUBLICATION OF RECALL RATES

*Question.* Some regulatory agencies publish statistics on recall rates. However, CPSC does not publish these numbers for products it regulates. I believe it would be helpful for policymakers and the American public to know these numbers.

Why doesn't CPSC release information on the number of units that have been successfully recalled? Will CPSC consider publishing these numbers in annual or quarterly reports?

*Answer.* In the staff's view, such recall rates generally do not provide a useful indicator of recall effectiveness. One reason for this view is that the CPSC regulates such a wide variety of different products, and many of these are inexpensive products that consumers may choose to throw away rather than make even a modest effort to obtain a repair, replacement or refund. In addition, recall rates generally change over time because firms are encouraged to continue their corrective action plans indefinitely. For this reason, it can also be misleading to compare rates for one year to another.

#### PENALTIES

*Question.* Can you please provide an itemized list of all of the penalties CPSC has collected over the past ten years?

*Answer.* Attachment 5 contains the requested information.

#### SECTION 6(B)

*Question.* Do you know of any instances in which an uncooperative firm has used Section 6(b) confidentiality protection to delay information sharing or a recall? Can you specify what regulatory tools you are able to use during these instances?

*Answer.* Section 6(b)(1) requires that the staff take reasonable steps to assure the fairness and accuracy of public disclosures, giving companies a 30 day review period,

unless the Commission finds (and publishes) that a lesser period is necessary to protect public health and safety. Section 6(b)(5) prohibits disclosure of information submitted under Section 15(b) until after a recall has been announced. There are occasionally situations in which CPSC staff would like to disclose information that is protected by section 6(b)(1) or 6(b)(5). In such situations, there are three regulatory options available to the staff. First, there is an exception to both 6(b)(1) and 6(b)(5) if the Commission has reasonable cause to believe that the product in question is in violation of section 19. This exception is potentially useful when a product violates a standard issued under the Consumer Product Safety Act, but it does not apply when a product fails to comply with standards adopted under the other statutes administered by the Commission. Earlier this year, I recommended a change to the statute on this point. The issuance of a complaint under section 15(c) or 15(d) would also allow disclosure. A final option would be to bring suit under section 12 (relating to imminently hazardous products).

#### ACCOUNTABILITY

*Question.* In 2004, a malfunctioning floor jack collapsed on James Jennings, killing him. Despite defects in the product, the 7th Circuit Court of Appeals threw out his widow's suit against the floor jack's Danish manufacturer because the manufacturer imported this product into the United States through unrelated American distributors.

How are foreign manufacturers held legally accountable for not complying with American laws and standards when selling foreign goods in our country?

*Answer.* Because the CPSC does not have the authority to enforce American laws in foreign countries, under our governing statutes the agency is empowered to hold U.S. entities (importers, distributors or retailers of the foreign made product) accountable for safety violations.

#### LENGTHY RECALL PROCESS

*Question.* I understand that several companies have contacted CPSC upon determining that their products contain high amounts of lead yet these companies have reported a delay of about two to five months before a recall is announced, leaving consumers dangerously unaware. In some cases, companies have reportedly contacted CPSC yet there has been no recall at all. While I understand that certain procedures may need to be in place to handle consumer contacts, the lengthy delay endangers the public.

Why can't CPSC announce the danger in order to stop consumers from buying these products and follow-up more quickly with the actual recall announcement?

*Answer.* Under most health and safety statutes, firms do not need to report to the government unless they have determined that they have a safety problem warranting a recall. The Consumer Product Safety Act is unusual in that it requires a firm to report as soon as it has information that a product "contains a defect which *could* create a substantial product hazard . . ." 15 U.S.C. § 2064(b)(2) (emphasis added).

The CPSC can order a corrective action (in common parlance, a recall) only when it determines after an adjudicatory hearing that a product actually "presents a substantial product hazard." *Id.* § 2064(d). After a firm reports a possible hazard, therefore, CPSC staff must analyze the case and determine whether a recall is necessary. This is a staff-intensive process, which generally involves obtaining more information from the firm and a thorough review of the case by CPSC technical staffs.

The process culminates in a "preliminary determination" by the staff. The staff may decide no corrective action is necessary (or none beyond what the firm has already done). If the staff concludes that a substantial product hazard exists, it will immediately ask the firm to stop sale (if the product is still being sold) and conduct a recall of any units in the field. The firm may of course contest the staff's conclusions or it may acquiesce. Even when the firm is prepared to move ahead, additional time may be required to work out the details of the recall. In particular, the firm may need time to develop an appropriate repair or obtain a suitable replacement product.

In roughly half of our cases, a firm is already committed to a recall when it reports the problem to the CPSC. In such cases, it can seek "Fast Track" treatment. Under this approach, there is no need for a preliminary determination by the staff. This saves a great deal of time and staff resources. It is still necessary to work out the corrective action and public notice, but these can usually be accomplished relatively quickly.

The Compliance staff has a goal to initiate corrective action in Fast Track cases within twenty working days. In recent years, we have sought to meet this schedule in 90 percent or more of Fast Track cases.

*Question.* Please provide an itemized list of recalls during the past three years including the amount of time that passed between notification to CPSC and recall announcement. Please provide an itemized list of contacts from companies during the past three years for which no recall has occurred and explain why.

*Answer.* CPSC staff is continuing to compile this information, and it will be provided to the Committee upon completion.

#### ATTACHMENT 1.—WORK PLAN FOR THE U.S.-SINO TOY WORKING GROUP

Consistent with the Memorandum of Understanding between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission and the Action Plan on Consumer Product Safety between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) and the U.S. Consumer Product Safety Commission (CPSC), and in order to promote toy safety and to protect the safety and health of consumers, the U.S.-Sino Toy Working Group agrees to develop cooperation in the following fields:

##### *Increase Information Exchange*

CPSC and AQSIQ will explore ways to strengthen and improve information exchange relating to toys.

CPSC will provide relevant U.S. laws and regulations to AQSIQ in English and Chinese. AQSIQ will publicize and distribute laws and/or regulations to toy manufacturers and provide feedback to CPSC on this activity. The exchange of information will focus initially on lead paint on toys, toy labeling, and age determination guidelines.

##### *Provide Notification to AQSIQ of CPSC Recalls*

CPSC will notify AQSIQ of recalls involving toys, providing the names and addresses of manufacturers and/or exporters and relevant injury and test reports, when appropriate and available. Based on the information provided by CPSC, AQSIQ will follow up with the manufacturer in China, ensuring that the manufacturer takes corrective action to prevent similar problems from recurring. AQSIQ will provide CPSC with other useful information as available and appropriate, such as the existence of similar products manufactured by the same manufacturer for other U.S. importers where the similar products might present the same problems as the products recalled. CPSC will follow up with U.S. importers to ensure they take corrective action, as appropriate, to prevent similar problems.

##### *Facilitate Technical Exchange and Cooperation*

In order to improve the technical level of toy safety testing, AQSIQ will send representatives to the United States for technical training during 2007/2008. CPSC will provide staff support and materials for the training.

##### *Enhance Inspections of Violative Toys and Proper Labeling*

CPSC will notify AQSIQ of toy categories or issues of special concern. AQSIQ will increase inspection based on that information. In particular, AQSIQ will increase inspection of toys for lead paint violations and proper labeling in accordance with CPSC regulations.

The cooperative activities proposed in this document will be undertaken on a best efforts basis and are not binding.

This Work Plan was signed on September 10, 2007 in Bethesda, Maryland. The Chinese version and English version have the same validity.

JOHN GIBSON MULLAN,  
*Assistant Executive Director, Office of Compliance and Field Operations, Consumer  
Product Safety Commission of the United States of America.*

WANG XIN,  
*Director General, Department of Supervision on Inspection, General  
Administration of Quality Supervision, Inspection and Quarantine of the People's  
Republic of China.*

#### ATTACHMENT 2.—WORK PLAN FOR THE U.S.-SINO LIGHTER WORKING GROUP

Consistent with the Memorandum of Understanding between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission signed by the General

Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission (hereinafter referred to as "the Participants") on April 21, 2004, in Washington, D.C. and the Action Plan on Consumer Product Safety between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission signed on August 30, 2005, in Beijing, China the Participants set up the Working Group on Lighters, which is expected to study, discuss, and act on issues of mutual concern in the field of lighters, fulfill the tasks and objectives set at the U.S.-Sino. Consumer Product Safety Summit, resolve differences and problems arising in the field of lighters and support, develop, and continuously strengthen technical cooperation and communication in the field of lighters. The Participants agree to the following joint activities:

*Exchange Laws and Technical Regulations*

AQSIQ and CPSC will exchange relevant laws and technical regulations, including the ASTM F-400 "Standard Consumer Safety Specification for Lighters" (consensus safety standard), which is currently under consideration for adoption as a mandatory standard. CPSC will provide the latest U.S. laws and regulations on lighters to AQSIQ.

*Exchange Technical Information*

In order to strengthen information exchange on lighter safety, AQSIQ and CPSC will provide each other with: Information on non-compliant lighters, including the identity of the non-compliant importer and manufacturer, as well as relevant technical data, where available and appropriate; and information to improve inspection methods and efficiency, with a view toward improved analysis and solutions for lighters that don't comply with regulations.

*Facilitate Technical Exchanges*

AQSIQ and CPSC will exchange technical personnel and provide training for managers and inspection personnel at least annually.

*Exchange of Inspection and Certification Information*

AQSIQ will provide CPSC with inspection and certification information, including CIQ testing reports, sample certificates, information on coding rules of lighter manufacturers in China, Enterprise Self-Assessment Reports and related test reports.

AQSIQ will assist the CPSC in identifying U.S. importers in order to verify whether importers are on the CPSC submissions list. The CPSC submissions list indicates that the CPSC has received a required report that must be submitted to the CPSC 30 days before importation.

The cooperative activities proposed in this document will be undertaken on a best efforts basis and are not binding.

This Work Plan was signed on September 10, 2007 in Bethesda, Maryland. The Chinese version and English version have the same validity.

WANG XIN,

*General Director, Department for Supervision on Inspection, the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China.*

MARC SCHOEM,

*Deputy Director, Office of Compliance and Field Operations, Consumer Product Safety Commission of the United States of America.*

ATTACHMENT 3.—WORK PLAN OF FIREWORKS WORKING GROUP

Consistent with the Memorandum of Understanding between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission signed in Washington D.C. on April 21, 2004 and the Action Plan on Consumer Product Safety between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission signed in Beijing on August 30, 2005 by the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission (hereinafter referred to as "the Participants"), the Participants established a Fireworks Working Group, which is expected to study, discuss, and act on issues of mutual concern in the field of fireworks; fulfill the tasks and objectives set at the U.S.-Sino. Consumer Product Safety Summit; resolve any differences and problems arising in the field of fireworks; and to support, develop, and continuously strengthen technical cooperation and communication in the field of fireworks. The Participants agree to the following joint activities:

*Exchange Laws and Technical Regulations*

AQSIQ and CPSC will exchange relevant laws and technical regulations. CPSC will provide AQSIQ with the latest laws, regulations, and testing manual of the United States on fireworks, in English. CPSC and AQSIQ will organize the experts from both sides to conduct a comprehensive analytical comparison and discussion on compulsory technical requirements between the Chinese and U.S. standards. CPSC and AQSIQ will work together to increase awareness of the CPSC fireworks regulations and Chinese mandatory standards for fireworks.

*Exchange Technical Information*

In order to strengthen information exchange on fireworks safety, AQSIQ and CPSC will provide each other with information on accidents, incidents, and non-compliant products, as well as analysis, where available and appropriate. This would include the identity of the non-compliant importer and manufacturer where available and appropriate. It is suggested that the exchange will be at least on a monthly basis; however, more frequent exchanges are encouraged where appropriate.

*Facilitate Technical Exchanges*

AQSIQ and CPSC will exchange technical personnel and provide training for laboratory technicians and inspection personnel at least annually.

The focus of these technical exchanges will be to: improve the efficiency and accuracy of inspections; and strengthen the inspection of non-compliant manufacturers.

*Exchange of Inspection and Certification Information*

AQSIQ will provide China Inspection and Quarantine Bureau testing reports and sample certificates and fireworks manufacturer coding rules of fireworks manufacturers in China to CPSC.

Activities proposed in this Work Plan are undertaken on a best efforts basis and are not binding.

This Work Plan was agreed on September 10, 2007 in Bethesda, Maryland. The Chinese version and English version have the same validity.

WANG XIN,

*General Director, Department for Supervision on Inspection, the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China.*

MARC SCHOEM,

*Deputy Director, Office of Compliance and Field Operations, Consumer Product Safety Commission of the United States of America.*

## ATTACHMENT 4.—WORK PLAN FOR THE U.S.-SINO. ELECTRICAL WORKING GROUP

Consistent with the Memorandum of Understanding between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the U.S. Consumer Product Safety Commission and the Action Plan on Consumer Product Safety between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) and the U.S. Consumer Product Safety Commission (CPSC), and in order to promote electrical product safety and to protect the safety of consumers, the U.S.-Sino. Electrical Working Group agrees to develop cooperation in the following fields:

*Enhance Information Exchange on Regulations*

CPSC and AQSIQ will explore ways to strengthen and improve information exchange mechanisms.

CPSC will provide U.S. laws and regulations related to electrical products to AQSIQ both in English and Chinese. AQSIQ will publicize and distribute those laws and/or regulations to manufacturers and will provide feedback to CPSC on this activity. The exchange of information will focus initially on the following categories: extension cords, power strips, and decorative lighting strings. The range of categories would be discussed at each group meeting and adjusted when it is deemed appropriate.

AQSIQ will encourage manufacturers to apply UL standards and/or other appropriate standards for electrical products that are destined for the United States, and to have their products certified by accredited certification bodies.

*Strengthen Recall Notification and Follow Up*

CPSC will notify AQSIQ of recalls involving electrical products, providing names and addresses of manufacturers and/or exporters in China and relevant injury or test reports when appropriate and available. Based on the above information,

AQSIQ will take effective measures to urge the manufacturers to take corrective actions in order to prevent similar problems. AQSIQ will provide CPSC with other useful information as available and appropriate, such as the existence of similar products manufactured by the same manufacturer and imported by any other U.S. importer where the similar products might present the same problems as the products recalled.

*Facilitate Technical Exchange and Cooperation*

In order to improve the efficiency and accuracy of electrical products safety testing, CPSC and AQSIQ agree to promote technical exchanges between testing labs, as well as certification bodies of the two countries.

*Enhance Inspections of electrical products*

CPSC will share its screening criteria for electrical products with AQSIQ. AQSIQ will use the screening criteria to inspect electrical products designated for export to the United States. This effort will focus initially on extension cords, power strips and decorative lighting strings. The range of categories would be discussed and adjusted when deemed appropriate at the annual group meeting. AQSIQ will provide CPSC with names of the U.S. importers who designed and ordered defective electrical products from China, when available.

The cooperative activities proposed in this document will be undertaken on a best efforts basis and are not binding.

This Work Plan was signed on September 10, 2007 in Bethesda, Maryland. The Chinese version and English version have the same validity.

JOHN GIBSON MULLAN,  
Assistant Executive Director, Office of Compliance and Field Operations, Consumer  
Product Safety Commission of the United States of America.

WANG XIN,  
Director General, Department of Supervision on Inspection, General  
Administration of Quality Supervision, Inspection and Quarantine of the People's  
Republic of China.

ATTACHMENT 5

	Amount
Fiscal Year 1997 Penalties	
Atlas Importers Inc .....	\$54,000
Brinkmann .....	\$175,000
CSA, Inc .....	\$100,000
Dots, Inc .....	\$50,000
Four Seasons General Merchandise .....	\$110,000
Hartman .....	\$60,000
Nutone .....	\$110,000
One Price Clothing Stores .....	\$50,000
STK .....	\$80,000
The Toro Co .....	\$250,000
<b>Total .....</b>	<b>\$1,039,000</b>
Fiscal Year 1998 Penalties	
Binky Griptight .....	\$150,000
Century Products Co .....	\$225,000
COA .....	\$300,000
The Limited .....	\$200,000
Monarch Towel Co., Inc .....	\$10,000
Ross .....	\$200,000
Safety 1st .....	\$175,000
TJX .....	\$150,000
Yongxin International, Inc .....	\$50,000
<b>Total .....</b>	<b>\$1,460,000</b>

	Amount
Referred to DOJ:	
Ariens—Stump grinders	
Cigarette lighter cases	
Fiscal Year 1999 Penalties	
Shimano American Corp .....	\$150,000
Nordstrom, Inc .....	\$150,000
Carter Brothers Mfg. Co .....	\$125,000
Shelton Wholesale, Inc .....	\$100,000
Neiman Marcus .....	\$112,500
Schneitter Fireworks .....	\$60,000
Small World .....	\$225,000
Total .....	\$922,500
Central Sprinkler (trust) .....	\$1,300,000
Fiscal Year 2000 Penalties	
Red Rock Trading Co. & Blackjack Fireworks, Inc .....	\$90,000
Black & Decker (USA), Inc .....	\$575,000
Baby's Dream Furniture .....	\$200,000
Lancaster Colony Corp .....	\$150,000
Hasbro, Inc .....	\$400,000
Standard Mattress Co .....	\$60,000
Royal Sovereign .....	\$20,000
LL Bean Inc .....	\$750,000
Galob Toys .....	\$400,000
AZ3, Inc .....	\$75,000
Riello Corp of America .....	\$125,000
Total .....	\$2,845,000
Referred to DOJ: High Star Toys, Inc .....	\$100,000
Fiscal Year 2001 Penalties	
Cosco, Inc .....	\$1,300,000
Crawford Textile Corp .....	\$150,000
Federated Department Stores, Inc .....	\$850,000
Fisher-Price, Inc .....	\$1,100,000
Hanro USA .....	\$150,000
Lane .....	\$900,000
Mast Industries, Inc .....	\$500,000
Safety 1st, Inc .....	\$450,000
Tensor Corp .....	\$125,000
Tropitone Furniture Co .....	\$750,000
West Bend Co .....	\$225,000
HMB .....	\$87,500
Total .....	\$6,587,500
Fiscal Year 2002 Penalties	
Aerus LLC .....	\$250,000
Briggs & Stratton .....	\$400,000
Cigarettes Cheaper .....	\$220,000
General Electric .....	\$1,000,000
Golden Gift, L.L.C .....	\$125,000
Honeywell Consumer Products .....	\$800,000
Icon Health & Fitness, Inc .....	\$500,000
MTS Products, Inc .....	\$75,000
Peg Perego U.S.A. Inc .....	\$150,000
Popular Products .....	\$180,000
Regent International Corporation, Inc .....	\$75,000
STK .....	\$150,000
Court Ordered Penalties:	
Ameri China .....	\$140,000

	Amount
Aroma .....	\$300,000
Golden Gate Fireworks, Inc .....	\$10,000
<b>Total</b> .....	<b>\$4,375,000</b>
Criminal Fines: Steve Thai (three years probation) .....	\$20,000
Fiscal Year 2003 Penalties	
Blue Coral Slick-50, Inc .....	\$150,000
Weed Wizard .....	\$885,000
Lucky Toys, Inc .....	\$100,000
Wal-Mart .....	\$750,000
<b>Total</b> .....	<b>\$1,885,000</b>
Criminal Cases: STK and Kole .....	\$120,000
Fiscal Year 2004 Penalties	
Brunswick .....	\$1,000,000
Murray, Inc .....	\$375,000
Imperial .....	\$200,000
E&B Giftware .....	\$100,000
Lifetime Products, Inc .....	\$800,000
Groupe SEB USA f/k/a/Krups North America, Inc .....	\$500,000
RRK Holdings Inc .....	\$100,000
Battat Incorporated .....	\$125,000
Johnson Health Tech Co, Ltd and Horizon Fitness, Inc .....	\$500,000
Sears, Roebuck and Company .....	\$500,000
<b>Total</b> .....	<b>\$4,200,000</b>
Fiscal Year 2005 Penalties	
Dynacraft BSC, Inc .....	\$1,400,000
Polaris Industries Inc .....	\$ 950,000
Graco Children's Products, Inc., a Corporation and Century Products, f/k/a Century Products Company .....	\$4,000,000
Hamilton Beach/Proctor-Silex, Inc .....	\$1,200,000
Nautilus, Inc .....	\$950,000
Rose Art Industries, Inc .....	\$300,000
<b>Total</b> .....	<b>\$8,800,000</b>
Fiscal Year 2006 Penalties	
SMC Marketing Corp .....	\$500,000
Winco Fireworks .....	\$600,000
Acuity Brands, Inc .....	\$700,000
West Bend Housewares, LLC .....	\$100,000
Tiffany and Company .....	\$262,500
Family Dollar, Inc .....	\$100,000
<b>Total</b> .....	<b>\$2,262,500</b>
Fiscal Year 2007 Penalties	
Fisher Price .....	\$975,000
Nexgrill .....	\$300,000
Black Dog Tavern Company, Inc .....	\$50,000
Hoover/Maytag .....	\$750,000
<b>Total</b> .....	<b>\$2,075,000</b>



## QUESTIONS SUBMITTED TO THOMAS H. MOORE

## QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

*Question.* In your legislative proposals, you have called for annual increases of about 10 percent for the CPSC. Which divisions in particular would you like to see augmented? Are there functions that you believe are significantly under-funded?

*Answer.* I will say that our Field Division, which was combined with the Office of Compliance in 2005, has probably been one of the most affected and under-funded areas. I think that we certainly need to look into strengthening our ability to police our ports for violative imports. That is an area of weakness that has been getting a tremendous amount of attention lately. We also have to be able to have sufficient Field personnel to support other areas in the Commission, besides Compliance, such as hazard identification and analysis and consumer outreach. In addition, since we have also had a lot of attention rightfully placed on our testing and laboratory facilities, our ability to enhance our testing and research of consumer products has to be addressed. However, I think that with the possible increase in funding and the modernization of our statutes to give us better enforcement tools across the board, we will have to look at every area of the agency to see how it can be improved. I think that it is not an exaggeration to say that all functions of the agency have been under-funded in recent years.

CPSC is a staff intensive organization. Over the last few years, because we have achieved our budget-required staff reductions through non-targeted means such as attrition, early-outs and buy-outs, we have lost some very key staffers in some very key areas. For example, just to name a few, we have lost key experts in these areas: Poison prevention, chemical hazards as they relate to the Federal Hazardous Substances Act, compliance of toys, drowning prevention, data collection and analysis, emerging hazards, fire-related hazards, and legal knowledge of CPSC's regulatory process.

Therefore, we have lost ability in compliance-related activities, regulatory activities, information and education activities, data collection activities and in our legal analysis activities.

We must seriously look at strengthening all of these areas if we are going to be an enforcement force in today's consumer product marketplace. It would be my goal that we would begin a process of identifying critical areas of need and increasing our staff accordingly each year (assuming CPSC obtains the increases that you are supporting for the agency) with an early emphasis on the Field, since they have lost so many people, but not focusing exclusively on the import situation. It will take time to recruit and train new employees in every discipline in which we need to rebuild. Spreading out the hiring throughout the agency will reduce the recruiting and training strains on any one supervisor or supervisory team. It will also help us to make progress each year in rebuilding non-Compliance areas, such as those identified above.

*Question.* You have indicated that you support some of Chairman Nord's recommendations but not others. Which recommendations do you support and which don't you support and why?

*Answer.* I have attached my complete analysis of Chairman Nord's entire list of legislative recommendations.

## COMMENTS OF COMMISSIONER THOMAS H. MOORE TO THE PRISM PROPOSAL

(Moore comments in bold)

## WORKING PAPER . . . WORKING PAPER

## PRODUCT RECALL, INFORMATION AND SAFETY MODERNIZATION ("PRISM") ACT

Note: CPSC = Consumer Product Safety Commission; CPSA = Consumer Product Safety Act; FHSA = Federal Hazardous Substances Act; FFA = Flammable Fabrics Act.

## TITLE I. IMPROVED ENFORCEMENT TOOLS

*Section 1. Additional Prohibited Acts*

(a) Make it unlawful (under Section 19 of CPSA) to knowingly sell to a consumer a recalled product after the date of public announcement of the recall;

Rationale: Creates incentive to halt sales of recalled products quickly.

**I agree with the basic premise, but I have two questions. First, there appears to be a "knowing" requirement to make selling a recalled product a prohibited act, in addition to the "knowing" requirement before a civil or**

criminal penalty can be assessed. No other provisions in section 19 require knowledge. I am not sure if this is intentional or merely a recognition of the “knowing” requirement in the penalty provisions.

Second, sections 19, 20 and 21 make “any person” liable for civil and criminal penalties for committing a prohibited act. I can certainly understand wanting to make sure retailers and importers who continue to sell recalled products are covered, but how far down the chain would this provision apply: thrift stores; flea markets; yard sales? When our staff has visited thrift stores in the past, for recall round-up activities, they nearly always find a recalled product or two. Our enforcement capabilities are already limited, so if this provision does contemplate reaching beyond retailers and importers to the domestic resale market, there could be major resource implications for our Compliance staff.

See my additional comments on this issue with regard to retailers in the next section.

(b) Make it unlawful for a recalling firm to fail to provide notice to any retailer or distributor to whom it has previously distributed the recalled product at least 24 hours before notification to the general public or purchasers of the product (Section 19 of CPSA and relevant sections of other statutes);

Rationale: Assures recalling firm’s distributors/retailers have advance notice so that they can comply with “stop sale” requirement.

I agree with this provision. Retailers have been complaining for years about the short notice given to them prior to a recall. However, I wonder if 24 hours is enough time. For a huge chain of stores, being able to react in that short timeframe may be difficult. Congress might want to consider making it at least a 48-hour advance notice. Recent well-publicized recalls have shone the spotlight on the difficulty of reaching the many retailers (from the mom-and-pop stores to the larger ones) that may carry a product. We are nearly always negotiating a recall with a manufacturer or an importer, not the retailer. Manufacturers usually object to our letting their retailers know about a pending recall until it is finalized, so the retailers have little or no advance notice that they need to sweep their shelves of a recalled product. Some of the retailers will only hear about it from the news reports as it is not always the case that a manufacturer will know where all of his products end up. Requiring a manufacturer or an importer to provide advance notice will go a long way to solving the problem, although ensuring that all retailers, of whatever size and however they may have ultimately received the product, know of a recall may not be possible. The proposal to make selling a recalled product after the date of the public announcement of the recall a prohibited act should also spur retailers to pay attention to our recall notices. Most of them should be able to access the Internet and could sign up to receive recall notices through the CPSC web site for the types of products they carry. Policing such a requirement at the retail level would still be haphazard, as the agency does not have the investigative force to do more than spot checks. But perhaps a few fines would bring most retailers into line. The larger stores could certainly be held accountable under such a system, but it is unclear how the mom and pop stores or stores that sell overstock and discontinued products would fare. I will be interested to hear the retailers’ perspective on both of these issues.

Identifying the exact product to be recalled can also be a problem. Manufacturers are not required, in most cases, to put date codes or other distinguishing marks on their products every time they change them. Thus they often cannot tell the Commission at what point in a product’s production it presented a risk, and at what point the problem was fixed (particularly if they fixed the problem before the Commission became aware of it). Because old product can stay on store shelves for quite a while and be intermingled with newer versions of the same product, this presents problems for retailers and the Commission staff in identifying which products in stores are subject to the recall. I believe the law should put the burden squarely on the manufacturer/importer/distributor to make sure the products are marked (production date codes, for example) so that problem products can be readily distinguished by everyone (including the consumer who has the product in his home). If Commission staff is unable to clearly distinguish between products that should be covered by a recall and those that should not, then that should result in the recall of all similar products made by that manufacturer. The Commission should not have to guess (or test) every possible permutation of a particular product to determine if it

has been remedied (although we certainly should test the alleged “fix” to make sure that the hazard has indeed been eliminated). A company that misrepresents the scope of the products affected by a recall should be subject to a penalty. In fact, a company that knowingly misrepresents any material fact in a recall investigation that delays, or otherwise hinders the agency’s ability to promptly initiate an effective recall, should be subject to penalties by the Commission.

(c) Clarify that it is a prohibited act to manufacture etc. a product which violates a voluntary standard upon which the CPSC has relied under Section 9(b) of the CPSA or other statute administered by the Commission;

Rationale: Makes clear that once the Commission has formally relied upon a voluntary standard, its stature is equal to a mandatory standard for enforcement purposes. Makes requirement uniform across all CPSC statutes.

**This is a policy change that Congress will need to decide because it significantly alters the interplay between voluntary and mandatory standards and would require a change to the premise that underlies the statutory reliance provisions. Our statutes provide that the Commission is required to terminate rulemaking on a mandatory standard if a voluntary standard exists that eliminates or satisfactorily reduces the unreasonable risk of injury presented by the product and there is likely to be substantial compliance with the voluntary standard. Under current law, the only consequence of the Commission formally relying upon a voluntary standard under the CPSA (as opposed to simply terminating the rulemaking) is that a reporting requirement is triggered under section 15(b)(1). Presently, if a product fails to meet a voluntary standard (whether that standard has been formally relied upon or not), it does not necessarily mean the product presents an unreasonable risk of injury or is a substantial product hazard under section 15. Many products that fail to meet some provision of a relevant voluntary standard are never recalled because no hazard is presented that warrants one. Conversely a product that meets a voluntary standard is not deemed, for that reason alone, to be free of safety concerns, although there are those in industry that want a presumption that products meeting voluntary standards are deemed to be safe. The PRISM proposal would make the failure to comply with a formally relied upon voluntary standard a prohibited act making it “equal to a mandatory standard for enforcement purposes.” Thus, if a product fails to comply with a relied upon voluntary standard, no section 15 analysis would be required to determine if it presented a substantial product hazard, the product would automatically be deemed to constitute an unreasonable risk of injury and be violative.**

In its history, the Commission has only formally relied upon two voluntary standards and, to my knowledge, there is no problem with those products (unvented gas-fired space heaters and gasoline-powered chain saws) being introduced into commerce in contravention of the standards. The proposal that violations of relied upon voluntary standards be made a prohibited act appears to be a solution to a nonexistent problem. It, in fact, seeks to lay the groundwork for a policy change that could have far-reaching consequences in the interplay between voluntary and mandatory standards. The changes would give credibility to attempts to reinterpret the reliance provisions of the CPSA (and by extension to our other statutes as well) to allow the Commission to adopt voluntary standards as mandatory standards, with full enforcement powers, and possibly preemption protection, without having to make the usual findings required for rulemaking and to use “reliance” to mean something quite different than what it was originally intended to mean. I object to these changes, and their larger agenda that anticipates a policy change by the Commission, because they are contrary to congressional intent, past agency interpretation and the clear language of the statute. Congress may very well want to make such a policy change, which would also require additional wording changes in the statute, but it should do it with a clear understanding of what is involved.<sup>1</sup>

<sup>1</sup> Some domestic manufacturers in industries facing increasing competition from abroad have begun to advocate a reinterpretation of the reliance language to persuade the Commission to elevate their industry’s voluntary standard to a mandatory one, as a way to create enforcement roadblocks for foreign competitors who are gaining market share and in an attempt to obtain immunity from state court civil actions through the preemption provisions of our statutes. Ab-

The reasons given for seeking to rely on a voluntary standard and enforce it as if it were a mandatory one are to reduce the time it takes to promulgate a mandatory standard and to have the full range of enforcement powers available for failure to comply with relied upon voluntary standards, especially the ability to stop violative imports at their port of entry. If the Commission could simply rely on a voluntary standard, without having to make the cost/benefit and other findings required by our statutes, it could be a much shorter process, or so the argument goes. It is true, it could be shorter, but unless the CPSC staff has been closely involved in the development of the voluntary standard, is completely satisfied with its provisions, and has been monitoring industry's conformance with it over a period of time, much of the underlying work that is required in promulgating a mandatory standard should still be done in order for the Commission to feel confident in relying upon the voluntary standard (the only set of circumstances under which the agency should consider relying upon it). And, of course, the premise underlying the current reliance language would have to be changed from one of keeping the federal government out of the way of effective voluntary standards to one of the federal government co-opting them and turning them, without the normal regulatory process, into mandatory standards (a significant change to the present reliance language).

Over the years, Congress has viewed the relationship between voluntary standards and federal mandatory standards in the consumer product area in varying lights. The Commission was founded on the belief that industry-formulated voluntary standards were consensus-driven minimum standards that sometimes did more to protect industry than consumers.<sup>2</sup> Over time, after some changes were made to the voluntary standards-setting procedures and CPSC staff began to have active participation in those organizations, Congress became concerned that the Commission was stifling or supplanting acceptable voluntary standards with mandatory ones, and the emphasis shifted from favoring mandatory regulation to requiring the agency to defer to voluntary standards when those standards adequately addressed the risk of injury and the standards were substantially complied with by industry.

It was in the context of Congress wanting CPSC to get out of industry's way when it was doing a good job through the voluntary standards process that the reliance language was added to the Consumer Product Safety Act. The whole thrust of the statute is to allow voluntary regulation (without any rulemaking or mandatory enforcement resources being expended) to fill as much of the regulatory landscape as possible. When we terminate a rulemaking in reliance (formally or otherwise) on a voluntary standard, the mandatory rulemaking ends as do any agency enforcement powers (other than the ability to make a substantial product hazard determination under section 15). The Commission understood this context at the time and has interpreted the provisions accordingly ever since. The Commission has only used the formal reliance mechanism twice—both times looking back at past Commission actions and determining that they met the requirements for reliance—one involved the revocation of a mandatory regulation for which the industry had adopted a more stringent voluntary standard

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sent clear safety issues, foreign competition is not a concern of CPSC, but is in the purview of other government entities.

<sup>2</sup>“Safety itself has been a secondary consideration in the usual process of developing voluntary standards. The need for a consensus commonly waters down a proposed standard until it is little more than an affirmative of the status quo.” *Final Report of The National Commission on Product Safety*, Presented to the President and Congress, June 1970, page 62.

and one was the termination of a rulemaking in which industry had adopted a solution developed in cooperation with Commission staff.<sup>3 4</sup>

There are two reasons why the Commission has so rarely formally terminated a rulemaking in reliance on a voluntary standard to obtain the increased reporting authority under section 15(b)(1). First, that reporting requirement only applies to voluntary standards relied upon under the CPSA. Since the CPSA also requires the agency to promulgate regulations under the more targeted provisions of the FHSA, FFA or PPPA whenever appropriate, the result is that most of our regulations are issued under one of these three statutes where there is no advantage to the Commission (in the form of a reporting requirement) to choose formal reliance over merely terminating the rulemaking proceeding and allowing the voluntary standard to fill the void. The second reason is that the premise set up by the statutory language rarely occurs. If a voluntary standard exists that both adequately addresses an identified risk and it is being substantially complied with by manufacturers and importers, the agency would be unlikely to even start a rulemaking process. There is no need for agency intervention in the face of an effective voluntary standard. Only if the standard does not meet one of the two prongs of the test (adequately addressing the risk or likely to be substantially complied with) could the Commission step in, and then it would be to turn the voluntary standard into a mandatory standard through its normal regulatory process.

It might be useful to extend the reporting provision for relied upon voluntary standards to the other Acts we administer. For example, until the Commission began a rulemaking proceeding to address the more than 25,000 annual injuries to infants falling down stairs in baby walkers, no solutions were proffered by industry to this serious problem. Industry maintained the only solution was better parental supervision. But once the agency began rulemaking in this area, industry, working closely with Commission staff, began to work on a solution. CPSC held the rulemaking in abeyance until a satisfactory voluntary standard was issued and until staff was satisfied that there was substantial conformance with the standard. Had the baby walker rulemaking been initiated under the CPSA rather than the FHSA, the Commission might have considered formally relying upon the voluntary standard. This would have triggered the reporting requirement under section 15 of the CPSA and would have resulted in that voluntary standard being referenced in the Code of Federal Regulations as one upon which CPSC has relied. While it is unknown whether the reporting provision and the CFR reference would have prevented any of the recalls of noncomplying baby walkers that occurred after the acceptance of the voluntary standard by the Commission, it is possible that they could have made a difference.<sup>5 6</sup>

<sup>3</sup>In voting to revoke the Mandatory Standard for Unvented Gas-Fired Space Heaters, Commissioner Stuart M. Statler listed among his reasons for supporting the revocation of the mandatory standard in favor of the *voluntary* standard the following: "The Commission retains powers under Section 15 of the CPSA to *remove from the market* any unvented LP or natural gas-fired heaters not equipped with an ODS device or equivalent means to curtail the asphyxiation risk." He stated further "If [States and localities] believe the voluntary standard is not a sufficient safeguard, States and cities may now regulate the use of unvented gas space heaters *as they best see fit* without having their hands tied by the existence of a Federal rule." [Emphases in the original.] Statement of Stuart M. Statler dated August 16, 1984. Clearly Commissioner Statler viewed the revocation of a mandatory standard in reliance on a voluntary standard as terminating federal enforcement powers (except to the extent section 15 might apply, as it would to any unregulated product) and ending any federal preemption that had attached to the mandatory standard.

<sup>4</sup>It is also worth noting that until the adoption of the 1991 amendments, which added the reporting requirement with respect to relied upon voluntary standards to section 15 of the CPSA, the Commission felt no obligation to make any particular distinction when it was terminating a rulemaking as to whether it was "relying" on a voluntary standard because, until those amendments, no statutory consequences were attached to reliance beyond the termination of the rulemaking. Not until 1992 did the Commission go back and review past actions and identify the two Commission actions in which it was determined that their revocation and termination had been done in reliance on a voluntary standard. The Commission did this in order to give notice to the affected industries that the new reporting requirement would apply to them.

<sup>5</sup>The baby walker voluntary standard has been instrumental in the dramatic decrease in injuries to children of almost 90 percent from 1992 to 2005.

<sup>6</sup>Even if no other changes are made to the reliance provisions by Congress, I think the Commission should consider elevating the prominence of the relied upon standards in the text of

Continued

Ultimately it is for Congress to decide whether it wants to again change the interplay between voluntary and mandatory standards. Since Congress last addressed this issue, many industries have often fought long and hard to devise a voluntary standard in order to avoid a mandatory one. It would be instructive to know their reasons for not wanting a mandatory regulation. Is it simply the desire to keep the illusion of control over their product? I say “illusion” because the Commission should not accept a voluntary standard solution that provides less safety for the consumer than it could achieve through rulemaking, whether it formally relies upon the voluntary standard or not. Or is industry reluctant to give CPSC greater enforcement powers over their products? Whatever the reasons, we should move carefully in this area. The ability to too easily transform voluntary standards into mandatory ones could remove any incentive manufacturers have to develop voluntary standards to avoid federal regulation (there would likely be no effective voluntary baby walker standard today had there not been the real threat of mandatory regulation). Given the success the Commission has had over the years in getting various industries to adopt effective voluntary standards in order to avoid federal regulation, we would not want to lose the leverage we currently have in that regard. And given the shrinking resources of the Commission, we often need the resources of industry to develop a workable standard—resources they have been much more willing to commit when working on a voluntary standard than when they are facing the promulgation of a mandatory rule. Resources would also be an issue if any significant number of voluntary standards suddenly had to be enforced as mandatory standards. Every new mandatory regulation creates expectations in consumers and industry alike that the Commission is going to be able to keep noncomplying products out of the marketplace. As our budgetary resources and our personnel decline, and the number of imported products grows, this is less and less of a realistic expectation.

While I do not believe the current statutory language can be used to give formal reliance on a voluntary standard any consequence beyond the imposition of the reporting obligations in section 15, I think Congress should address whether other consequences should flow from formal Commission reliance on a voluntary standard in lieu of a mandatory one and clearly state its views on the matter. Congress should also consider giving the Commission the ability to do two-step rulemaking (instead of three-step) when the Commission, in its discretion, feels a shorter process may be appropriate. One case might be where the Commission believes an adequate voluntary standard exists (based on active staff participation in the development of the standard) that addresses a real risk of injury but which, for some reason, is not being adequately complied with and where the Commission’s enforcement powers could make a significant difference in that compliance. I say “significant” because one could always make the argument that we have more enforcement tools in the mandatory setting than in the voluntary one.

Congress also needs to consider the effect the preemption of state regulations, standards, and state civil court actions (in light of the new interpretation by the current Commission in that area) could have if reliance on consensus-developed voluntary standards were extended beyond the CPSA and too casually used in lieu of full-blown federal rulemaking proceedings. I do not believe we want consensus-driven voluntary standards routinely becoming the ceiling instead of the floor in protecting consumers from product hazards that may present an unreasonable risk of injury or death. That would run contrary to the purpose for which the Commission was established (see footnote 2, above).

(d) Make it unlawful to fail to furnish a certificate of compliance with a mandatory standard under any statute administered by CPSC or any voluntary standard relied upon by the Commission or to issue a false certificate of compliance (CPSA Section 19 and relevant sections of other statutes);

Rationale: Applies CPSA certificate requirement uniformly across all CPSC statutes, and treats voluntary standards formally relied upon by the Commission as equivalent to mandatory product safety standards for certification purposes.

**I agree to the extent it extends the certification provision to mandatory standards under our other statutes. As to extending it to relied upon vol-**

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the CFR, particularly if more voluntary standards are added to the current list of two. As it stands now, those standards are effectively buried in the CFR.

**untary standards, that would depend upon what decision Congress makes with regard to expanding the reach and the meaning of such standards. See my answer to the previous proposal.**

(e) Make it unlawful to fail to provide information in timely response to a subpoena from the Commission (CPSA Section 19 and relevant sections of other statutes);

**I agree, although I would like to see the language when it is drafted with regard to what constitutes a “timely” response.**

Rationale: Provides explicit enforcement mechanism for failure to respond to a Commission subpoena in timely fashion.

**I agree.**

(f) Prohibit stockpiling under all statutes administered by the Commission to the same extent as under the CPSA (Section 9(g)).

Rationale: Conforms other CPSC statutes to anti-stockpiling provisions of CPSA.

**I agree.**

#### *Section 2. Civil and Criminal Penalties and Other Remedies*

(a) Add asset forfeiture as a potential additional criminal remedy under any statute administered by the Commission (Section 21 of CPSA and relevant sections of other statutes);

Rationale: Allows CPSC to act to assure that any gain from criminally violative activity is not retained by perpetrator.

**I agree.**

(b) Give the CPSC the authority to impose penalties of up to \$2 million administratively (without need for Department of Justice referral and initiation of federal court action) under CPSA, FHSA and FFA (penalty would still be subject to judicial review);

Rationale: Streamlines civil penalty process by allowing CPSC to proceed administratively rather than via judicial action in many cases.

**I am undecided on this proposal. Given that this requires an administrative proceeding that could take quite a bit of time and agency resources (one of the reasons we so rarely have administrative proceedings in the recall area) and then would be subject to judicial review, I’m not sure this would streamline the process. I also worry about the \$2 million cap becoming a barrier to Justice Department referrals, further limiting the use of any increased penalty authority.**

(c) Increase the cap on civil penalties under the CPSA, FHSA, and FFA to \$10 million, to be phased in over 4 years. (Section 20 of CPSA; Section 5 of FHSA; Section 5 of FFA);

Rationale: Gradual phase-in reduces likelihood of unmanageable surge in unnecessary reports from firms or that some firms may stop submitting necessary reports. Uniformity across all statutes makes enforcement tools consistent for all products under Commission jurisdiction.

**I have gone on record several times as supporting the complete elimination of any civil penalty cap. The civil penalty provision already lays out factors to be considered in determining the amount of any penalty: “the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed and the appropriateness of such penalty in relation to the size of the business of the person charged.” Having a monetary cap on top of those factors (particularly such a small cap) serves no useful purpose other than to make it easier for companies to include the risk of potential consumer harm in their cost of doing business.**

Because the Commission strives for negotiated civil penalty settlements whenever possible, the existence of a cap means that, even in the most egregious cases, the cap amount is where the agency has to start its negotiations. Unless we are willing to take the case to court, we are always going to be settling the case for less than the civil penalty cap and since the cap itself is so low, going to court will usually be the difference of only a few hundred thousand dollars. We often find ourselves accepting penalties below what we think is appropriate because the cost of getting the relatively small incremental amount through a lengthy court proceeding is not worth the time and resources. Our negotiating room is thus extremely limited and obvious to every company we deal with. We also have little room to make meaningful distinctions in assessing civil penalty amounts among the types of violations and the sizes of the companies involved. Industry complains that they cannot discern a rationale for our civil penalty decisions. If the cap was not putting unnatural constraints on the way the

statutory factors should work to determine penalties, the basis for our decisions would be more cogent and thus more obvious. Removal of the cap, or raising it significantly, would put the agency in a stronger negotiating position, allow us to make more reasoned distinctions among violators and the penalties assessed against them and would make business more hesitant to ignore their safety responsibilities to consumers.

If we are going to still have a cap, I see no particular reason to phase it in. We have complained for years that we really do not get the reports that we should be getting under section 15. If we suddenly got a surge of reports, I would say “bravo.” The whole point of the staff’s retailer reporting model is to try to get the number of reports up because we know we are not seeing all the incident reports we should be seeing.

On the whole, this proposal is better than no change, but, given how long we have labored under this low cap, and since we finally have the opportunity and the interest in Congress to do something about it, I would hope we would make the strongest change possible.

(d) Clarify that the list of 5 statutory factors to be considered by the CPSC in determining a civil penalty amount under the CPSA, FHSA or FFA is not exclusive [Section 20(b),(c) of CPSA; Section 5(c)(3),(4) of FHSA; Section 5(e)(2),(3) of FFA].

Rationale: Makes clear that while Commission must consider factors enumerated in the statute, it may in its discretion address other factors as appropriate to the particular matter under consideration.

I agree that this provision needs to be clarified, but I take no position as to what the original intent of Congress was with regard to the exclusivity of those provisions. Last year, the Commission considered whether certain other factors that are not listed in the statute should be considered in assessing civil penalties. The Commission has gone out for public comment on these additional factors. A copy of my statement discussing the proposed factors can be found at <http://www.cpsc.gov/pr/statements.html>. Congress may want to review the factors currently in the statute to see if additional factors are warranted (such as the number of violations by the same company) and to clarify whether the Commission has the discretion to supplement the statutory list.

In addition to this proposal I would like to see the Congress clarify the reference in the second sentence of section 20(a)(1) of the CPSA with regard to the clause “any related series of violations.” It would seem to me that if a company violates multiple provisions of section 19, for example, sells a product that violates a mandatory standard, has falsely filed a certificate with the Commission stating that the product meets the standard, and fails to file a section 15 report about the failure to comply with the standard, that the Commission should be able to seek a separate penalty amount for each such offense and that they not all be swept up under one civil penalty cap amount. There are differing opinions as to what that second sentence means—some will argue that the maximum penalty will be the same no matter how many violations occur with regard to the same product—and I believe this may be why we so rarely go after any other penalty than one for failure to file a section 15 report. If there were no civil penalty cap, this would not be an issue.

I also do not know why, if a person “knowingly and willfully” violates section 19, they also have to receive notice of noncompliance from the Commission before they are subject to a potential criminal penalty. Congress may want to reexamine the need for this requirement.

### *Section 3. Recalls*

(a) Clarify that the CPSC must approve the consumer remedy (refund, repair or replacement) proposed by a firm in a mandatory recall under Section 15 of the CPSA or section 15 of the FHSA;

Rationale: Makes clear that Commission is the final arbiter of the remedy in rare instances of mandatory recalls (recalls that are mandated after failed negotiation, an administrative law hearing, Commission review and subject to judicial review).

I agree. In May of 2000, I voted to endorse draft legislation that would have given the Commission the ability to order manufacturers, distributors or retailers to take whatever other action the Commission determines is in the public interest, if the Commission determines that the remedy chosen by the company in a mandatory recall is not in the public interest. A copy of the draft legislation and the press release that accompanied the vote on the legislation (as well as the statement in opposition by Commissioner Mary Sheila Gall) can be found at the following link <http://www.cpsc.gov/>



library/foia/ballot/ballot00/ballot00.html. This legislation also eliminated the civil penalty cap and the requirement of notice of noncompliance in the criminal penalty provisions.

Companies have used the fact that they can elect the remedy if the agency pursued administrative action, as a basis for arguing with Commission staff that their proffered voluntary recall action plan is as much as they will do. Staff is thus constrained by the statutory consequences of failing to negotiate a voluntary recall even when staff believes that the remedy is inadequate. Because time is of the essence in removing a hazardous product from the marketplace, having to go through an administrative process (in addition to the cost such a process entails), has led to less than robust recalls on occasion. It is true that the agency can get an injunction to stop future distribution of the product during the pendency of the administrative proceeding, but that does not get the product out of the hands of consumers who already own it.

Under the Consumer Product Safety Act, if we fail to negotiate a cooperative recall with a company, we can take the matter to an administrative proceeding before an administrative law judge. If at the end of that proceeding, the Commission determines that a recall of a product is required in the public interest, the Commission may “order the manufacturer or any distributor or retailer of such product *to take whichever of the following actions the person to whom the order is directed elects . . .*” The election is among the options of repair, replacement or refund. The statute goes on to say, “An order under this subsection may also require the person to whom it applies to submit a plan, *satisfactory to the Commission*, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act.” [Emphasis added.] Thus, by statute, the Commission cannot require a certain remedy but I believe it can insist that whatever remedy is chosen be satisfactory to achieve an effective recall. Nevertheless, making it clear that the Commission is “the final arbiter” on the choice of a recall remedy would be helpful in the voluntary recall negotiation stage, even though the Commission has rarely taken the steps necessary to go to the mandatory recall stage.

(b) Authorize CPSC to order further notification of consumers and additional corrective action if consumers are not adequately protected by the original corrective action.

Rationale: Provides clear authority to the Commission to take additional action if remedy as initially implemented proves insufficient to adequately protect consumers.

**I believe we already have this authority and we have insisted in several cases in the past that companies take additional action if their original recall remedy is not effective. However, I support any change that would strengthen our ability to act in this area.**

#### *Section 4. Information and Reporting*

(a) Require reports under section 15 whenever a manufacturer, distributor or retailer obtains information which reasonably supports the conclusion that a product fails to comply with (i) a mandatory standard or ban adopted by the Commission under any statute it administers; or (ii) a voluntary standard relied upon by the Commission under any statute it administers;

Rationale: Adds reporting requirements for violations of mandatory standards under all statutes, as well as voluntary standards upon which the Commission may rely.

**I agree with extending the reporting requirements of section 15 to our other statutes.**

(b) Require any retailer or distributor of any consumer product to provide, to the extent practicable, the name and address of any company who supplied the product to such retailer or distributor (would amend Section 16 of CPSA);

Rationale: Such information should be in the hands of the retailer or distributor. Access to it would allow CPSC to reach other possible routes for product to get to consumers.

**I agree, although I would add “importer” to the list.**

(c) Require any manufacturer, importer or distributor of a consumer product to provide, to the extent practicable, the name and address of any entity to which it sold or otherwise made available such product for resale (CPSA Section 16).

Rationale: Such information should be in the hands of the manufacturer, importer or distributor. Access to it would allow CPSC to identify other possible routes for the product to get to consumers.

**I agree. While this, and the proposal just above it, appear to be covered in section 19(a)(3), the Congress might want to consider a separate reference to them in 19(a) to make it clear that failure to abide by these requirements are prohibited acts and to spur companies to obtain and retain such information.**

*Section 5. Bonding of Violative Imports*

(a) Permit the Commission or Customs to require the posting of a bond sufficient to pay for the destruction of a shipment of consumer products where the expense may be substantial or there are concerns that a firm may disappear or abandon the shipment.

Rationale: Assures that if CPSC must address disposal of violative products, funds to do so are available from the importer. As an example of the need, disposal of violative fireworks can involve significant costs.

**I agree.**

*Section 6. Foreign Internet Sales*

(a) If a consumer product is sold or offered for sale to consumers on the internet by an entity located outside the United States, that entity shall be deemed the manufacturer/importer and shall maintain the original or a copy of the records relating to such sales within the United States.

Rationale: Allows CPSC to reach extraterritorial internet sellers and assures that records necessary to track such sales are available in the United States.

**I do not know what enforcement tools we would have to reach foreign internet sellers, and given that, I am not sure what use we would make of the sales records, apart from taking it upon ourselves to notify purchasers if we discovered a problem with a product. I appreciate, as Acting Chairman Nord put it, that this is more of a place marker, than an actual solution. I think most foreign products still end up coming through a U.S. distributor as opposed to being sent directly to the consumer, due to the product having to clear Customs and tariffs having to be paid. This is an area that will bear continued watch and thought. How much of an actual problem it is at the moment I do not know.**

*Section 7. Information Disclosure Reform*

(a) Reduce the notice period of CPSA section 6(b) from 30 days to 15 days and allow for electronic notice to a firm by the CPSC;

Rationale: Reduced timeframe facilitates timely recalls and recognizes 21st Century modes of electronic communication.

**The entire rationale for section 6(b) of the CPSA needs to be revisited. Congress should decide what kind of information it wants consumers to have about potentially hazardous products and when that information should become available. The Committee may want to look at certain of the powers that have been granted to the National Highway Traffic Safety Administration (NHTSA) and consider how extending similar powers to the CPSC could enhance our consumer protection abilities. For example, anyone can go onto the NHTSA web site, type in the make, model and year of an automobile and read consumer complaints about the car. The complaints are not censored, nor are they verified, and they do not necessarily result in a recall. They are a compendium of comments by owners of cars who were concerned enough about some feature of their car to file a complaint. It is a car buyer's bonanza. Compare that to CPSC where complaints are kept secret (except from the manufacturer) and consumers only know about a problem with a product from CPSC when the agency has issued a recall, and then they only know what the agency and the company have agreed to make public. I cannot think of any good reason why there should be a difference with what a consumer could be aware of when he is thinking of buying a particular car (or who is having a problem with one he already owns) and, for example, what a prospective or current All-Terrain Vehicle (ATV) owner could know about ATVs?**

**NHTSA also has the ability to publish initial defect determinations about a vehicle in the Federal Register for everyone to see. I think a lot of the foot-dragging and reluctance to provide the agency with information would disappear if companies knew that their lack of cooperation in a recall could result in the public knowing that the agency staff has made a determination that their product presents a hazard.**

**The information from such an open process would not only benefit the consumer, it would benefit the Commission, for it could not help but generate input from other consumers who had had similar problems with a**

product, but who did not, for whatever reason, report it to the CPSC. We are always looking for ways to spot potential problems at the earliest possible moment. It is often not easy to recognize when a product incident goes from being what might simply be an aberration involving an unusual interaction between a consumer and one product, to its being a systemic problem with a product line that requires action by the Commission. The more that we learn from consumers about their product experiences, and are able to share with the public, the more likely we are to stop a problem before it causes serious harm. The Commission is forced to operate on a "need to know" basis and, oddly enough, the consumer is not on the "need to know" list until after a recall is finalized.

I know some argue that being able to provide information to CPSC and having it kept secret from the public somehow encourages fuller disclosure by companies than there would be otherwise. All I can say is that companies are required, by law, to report certain information to the Commission and to respond truthfully and completely to our information requests. Companies can keep certain information out of the public eye by appropriately identifying information such as trade secrets, which they want kept confidential and the Commission can use the law enforcement exception to the Freedom of Information Act, if it feels withholding certain information is necessary. What more assurance companies need for them to provide the information they are required to provide, I do not know, but given the often very difficult time we have obtaining information from some companies now, I doubt seriously that 6(b) plays much of a role in encouraging disclosure. The provision does come into play at a later stage in the process, after the company has agreed to a recall and when it is trying to paint the brightest picture of its product's failure. The elimination of 6(b) is not going to result in the agency disseminating false information about a product or a company. No purpose would be served by that and it would only further confuse consumers. Consumers want timely, accurate warnings about products that may cause harm to their families; information that is not filtered through some corporate public relations firm.

Speaking of public relations, I also think our recall notices may not be designed in a way that garners them the attention they deserve. They have been formalized and homogenized over the years to the point where they look like corporate press releases about quarterly profits, rather than serious safety warnings that people need to heed. I think we need to look at these releases in a different way. To the extent staff feels they are constrained in making the releases more attention-getting because of 6(b), then that is one more reason to change 6(b).

(b) Expand the exemptions from CPSA section 6(b) to include (i) violations of any CPSC mandatory standard, ban or relied-upon voluntary standard (not just CPSA-promulgated standards); and (ii) prohibited acts under any statute administered by the Commission;

Rationale: Extends application of section 6(b) exemption to relied-upon voluntary standards and clarifies that section 6(b) exemption runs to prohibited acts under any CPSC statute.

**If some version of 6(b) is retained (and subject to whatever decision the Congress makes as to relied upon voluntary standards), I agree that we should extend the exemptions to the other statutes.**

(c) Amend Section 29(e) of the CPSA to allow the CPSC to share information with any other federal agency for law enforcement purposes and to share any product safety-related information with any federal, state, local or foreign government who has established the ability to protect such information from premature public disclosure and who agrees to protect such information;

Rationale: Clarifies that CPSC can share any information with government enforcement partners, not just "reports." Adding foreign governments recognizes global marketplace.

**I agree in principal, but I would like to see the exact language of the proposed statutory change.**

(d) Clarify that section 6(b) does not prohibit the disclosure of information to foreign governments concerning products manufactured within their own national territory by companies not subject to U.S. jurisdiction;

Rationale: Recognizes global marketplace and addresses situations where direct U.S. jurisdiction over foreign manufacturer may not lie.

**I agree, assuming we still have a 6(b) provision and assuming that the preceding proposal does not already cover that issue. I would also want to make it clear that this pertains only to information that the agency elects**

**to disclose, so that we are not put in the position, for example, of having to disclose information to the government of a foreign manufacturer at a sensitive point in a recall negotiation with the importer of the product.**

(e) Provide that reports to the Commission under section 15 shall be given the same consideration as reports under section 37.

Rationale: Increases incentive to provide prompt and full information to CPSC. Makes section 15 provisions consistent with existing section 37 provisions.

**I do not know what this proposal attempts to do or what it amends.**

**I would like to see section 37 amended to enable the Commission to get more information from lawsuits filed against manufacturers. Congress should amend section 37 of the CPSA to require reporting when three or more individual lawsuits involving the same product are filed (or when one class action lawsuit is filed) instead of when they are settled. Given how long cases can be strung out, it is fairly easy for manufacturers to avoid the current reporting requirement and, indeed, we get few reports from it. The 24-month period should be expanded or eliminated as it serves no useful purpose, other than to cause companies to be creative about their delaying tactics.**

## TITLE II. REGULATORY REFORM

### *Section 1. Streamline Overall Regulatory Process*

Eliminate the requirement (but not the option) of issuing an advance notice of proposed rulemaking (ANPR) prior to the issuance of a notice of proposed rulemaking (NPR) relating to standards or bans under any statute administered by the Commission.

Rationale: Enables Commission to issue and update mandatory standards more efficiently where warranted. Commission could still, in its discretion, issue ANPR with regard to either potential mandatory or relied-upon voluntary standard.

**I agree. Congress should give the Commission the discretion to use two-step rulemaking in all of its statutes, instead of three-step rulemakings. Another example where the Commission might decide to streamline the process and use the two-step process (in addition to the example given earlier under the discussion of voluntary standards) is when the Commission is making amendments to current regulations that do not change the overall thrust of the regulation.**

### *Section 2. Efficient Enforcement Authority*

Grant CPSC authority to promulgate regulations for the efficient enforcement of any statute it administers (just as the CPSC now has under Section 10 of the FHSA).

Rationale: Clarifies that Commission can issue enforcement regulations in addition to consumer product safety standards under any of its statutes where warranted to carry out mission.

**I agree.**

### *Section 3. Eliminate Unnecessary Regulatory Requirement*

Correct disparity in rulemaking process between Sections 2 and 3 of FHSA by eliminating the requirement that the CPSC follow the procedures of the Federal Food, Drug and Cosmetic Act.

Rationale: Eliminates confusion between rulemaking under Food, Drug and Cosmetic Act and informal rulemaking procedures otherwise called for in these sections.

**I agree.**

### *Section 4. Strike Section 30(d) of CPSA*

Eliminate the requirement to make findings, with public notice, before regulating under the CPSA vs. other statutes.

Rationale: By eliminating two step proceeding, allows for more expedited issuance of CPSA rather than FHSA, FFA, or PPPA standard where warranted.

**I do not agree with this change. The rule that is required to be issued under section 30(d) issues at the same time as the proposed rule, so it is not a two-step proceeding in the sense that it causes cumulative delay. The comment period on the rule to explain why the Commission has chosen to regulate under the CPSA runs right along with the time for comments of the proposed rule itself. Until such time as all of our statutes are combined into one comprehensive safety statute and until such time as choosing one statute over another for procedural or other advantages disappears, I think it is important for the Commission to continue to explain why it has chosen to proceed under the CPSA as opposed to one of the other statutes. See, for**

**example, the Proposed Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Multi-Purpose Lighters That Can Be Operated by Children, September 30, 1998 issue of the Federal Register, Volume 63, Number 189, pages 52393–52397 <http://www.cpsc.gov/businfo/frnotices/fr98/riskmult.html>. This contains a thorough and informative explanation of why this hazard was regulated under the CPSA as opposed to the FHSA or the PPPA.**

*Section 5. Treaty Conformity*

Eliminate the 60 day deadline for publishing final rules. Executive Order 12889 requires minimum 75 day comment period. (Section 9(d) of CPSA).

Rationale: Conforms rulemaking process to notice requirements under North American Free Trade Agreement.

**I agree.**

*Section 6. Expand Certification Requirements*

Extend existing certification requirement under CPSA (Section 14) to all statutes administered by the Commission.

Rationale: Avoids confusion among disparate certification and labeling provisions of CPSA, FHSA, FFA, and PPPA.

**I agree.**

*Section 7. Relied-upon Voluntary Standards*

Clarify that informal APA rulemaking requirements are to be followed under the “notice and comment” provisions of Section 9(b) of the CPSA (after other, existing prerequisites to Section 9(b) are met, e.g., that there be an extant mandatory rulemaking underway, etc).

Rationale: Makes clear that full notice and comment rulemaking using Administrative Procedure Act process is the mechanism for the Commission to make “relied-upon” determinations.

**As I indicated above, Congress must decide whether it wants to change the current balance between voluntary and mandatory standards. If it does decide that it wants to adopt a system that makes it easier for the Commission to convert existing voluntary standards into mandatory ones, then the two-step rulemaking process would be appropriate.**

*Section 8. Rulemaking Authority*

Authorize the Commission to adopt rules implementing any of the provisions of this Act (“PRISM”).

Rationale: Explicitly enables the Commission to implement the other provisions of PRISM.

**The Commission should have the ability to adopt rules to implement whatever changes Congress makes to our statutes.**

TITLE III. TECHNICAL REVISIONS

*Section 1. CPSC Jurisdiction*

(a) Clarify the jurisdiction of the National Highway Traffic Safety Administration vs. the CPSC over “dual use” motor vehicle equipment (e.g., infant carriers and children’s car seats that can be removed and used away from the vehicle) (Section 3 of CPSA; Section 2 of FHSA);

Rationale: Eliminates confusion over which agency can take action depending on whether issue involves in-car or out-of-car problems.

**I agree.**

(b) Add “medical devices” to list of products not within CPSC jurisdiction under FHSA (Section 2(f)(2)).

Rationale: Eliminates inconsistency with CPSA and places “medical device” jurisdiction with the Food and Drug Administration.

**I do not see any reason for this change. The FDA does not regulate the same type of hazards that we regulate under the FHSA. I am reluctant to give up any jurisdiction without a good reason.**

*Section 2. Other Technical Revisions*

(a) Under FFA, delete reference to enforcement under the FTC Act and replace with CPSA enforcement mechanisms. (Section 5(b));

Rationale: Modernizes and simplifies FFA enforcement process to be consistent with other CPSC Acts.

**I agree.**

(b) Delete section CPSA section 36, FHSA section 21 and FFA section 17;

Rationale: These congressional veto provisions are superseded by the Congressional Review Act.

**I agree.**

(c) Add “records” to inspection authority under FHSA to make consistent with CPSA (FHSA Section 11(b));

Rationale: Clarifies that FHSA inspection authority is coincident with that under CPSA.

**I agree.**

(d) Strike “dealer” and replace with “retailer” under Section 15 of FHSA;

Rationale: Makes clear in the FHSA that Commission has authority over the last commercial entity before the ultimate consumer.

**I agree.**

#### TITLE IV. REAUTHORIZATION OF CPSC

##### *Section 1. Authorization of Appropriations*

CPSC to be authorized to be appropriated such sums as may be necessary to carry out its activities for fiscal year 2009 and thereafter. (Amends section 32 of CPSA).

Rationale: Multi-year authorization avoids decade and a half lapse like that which has occurred since 1990.

**I agree.**

*Question.* On the topic of submitting CPSC’s initial budget proposals to OMB, you have raised the issue of submitting those to Congress as well, which apparently used to occur, per section 27(k)(1) under the Consumer Product Safety Act. Can you provide more detailed background on this issue?

*Answer.* Congress used to get a copy of our annual budget submissions to the Office of Management and Budget. In 1999, in Public Law 104–66, section 3003, Congress eliminated the reporting requirement in the Consumer Product Safety Act (section 27(k)) that had required the Commission to submit its budget requests to the Congress concurrently with its submissions to OMB.

Subsequently, in 2001, in OMB Circular A–11; section 22, OMB made the budget submissions to it confidential, (deeming them “pre-decisional”) so they no longer could be made public by the agency. Prior to that time the agency had held public briefings on its budget proposals and the Commissioners discussed various funding possibilities in open meetings. Since Congress stopped receiving the budget request and OMB issued its directive, the agency’s budget submissions to OMB have not been disclosed and there are no longer public meetings to discuss our budget needs, which are a reflection of the agency’s priorities. Because of the shroud of secrecy imposed by OMB, many of the agency’s employees are kept in the dark about the budget request and only see the budget based on the President’s proposal when it is released to the public. I think Congress should rethink the issue of whether it (and the public) should be able to review the agency’s original budget request so it can be compared with the President’s proposal. In that way, before the Congress makes funding decisions about the agency, it will know what the agency’s priorities are, as opposed to the priorities imposed upon it by what are sometimes arbitrary funding levels established by OMB.

#### CONCLUSION OF HEARINGS

Senator DURBIN. I thank you all for attending this hearing. It stands recessed.

[Whereupon, at 1:40 p.m., Wednesday, September 12, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]