LEGISLATION TO IMPROVE CONSUMER PRODUCT SAFETY FOR CHILDREN

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

H.R. 2474, H.R. 1699, H.R. 814, H.R. 1721

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LEGISLATION TO IMPROVE CONSUMER PRODUCT SAFETY FOR CHILDREN, H.R. 2474, H.R. 1699, H.R. 814, AND H.R. 1721

WEDNESDAY, JUNE 6, 2007

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

The subcommittee met, pursuant to call, at 10:10 a.m., in room 2123, Rayburn House Office Building, Hon. Bobby L. Rush (chairman) presiding.

Present: Representatives Schakowsky, Hill, Stearns, Whitfield and Burgess.

Also present: Representatives Moore of Kansas, and Wasserman Schultz.

Staff present: Judith Bailey, Christian Tamotsu Fjeld, Angela E. Davis, Will Carty, Shannon Weinberg, and Matt Johnson.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The Subcommittee on Commerce, Trade and Consumer Protection will come to order.

The subject of our gathering today is to conduct a hearing on legislation to improve consumer product safety for children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721.

The Chair recognizes himself for 5 minutes for an opening statement.

One of the most critical subjects in this subcommittee's jurisdiction is consumer product safety, especially the safety of our children and the products that they use. As I noted at the oversight hearing this subcommittee held last month, I regard this aspect of our jurisdiction very seriously. I intend to initiate comprehensive reform of the Nation's children product safety system during this 110th Congress. We could do no less for our children. Today's hearing is a first step. We are considering four bills. Each has a limited and rather targeted goal. More importantly, all of the bills enjoy bipartisan support.

H.R. 2474 gives the Consumer Product Safety Commission an additional tool to enforce product safety by raising the overall cap on civil penalties that we can impose from the current $1.83 million to $20 million. This is the same increase that the Senate passed in 2003 as part of a CPSC reauthorization bill.

Second, we will consider H.R. 1699, introduced by Representatives Schakowsky and Upton, and it will require the CPSC to promulgate regulations to require manufacturers of defined nursery products—cribs, strollers and the like—to include postage-paid postcards for consumers to fill out so they can be notified directly in the event of a product recall. This bill adds one more tool to accomplish an effective recall of dangerous products. It is modeled after the car seat recall system used by the National Highway and Traffic Safety Administration. With privacy concerns in mind, this bill specifically prohibits information provided by consumers from being used for any other purpose.

Third, H.R. 814, introduced by Representatives Moore and Bachus, requires the CPSC to promulgate regulations to require child safety resistant caps on portable gasoline cans, cans sold empty. The current requirements inexplicably do not apply unless the cans already have the dangerous product inside.

Finally, H.R. 1721, introduced by Representatives Wasserman Schultz and Wolf, requires the CPSC to promulgate regulations to require antientrapment drain covers for swimming pools to prevent a particularly horrible form of drowning. It also requires the CPSC to establish a grant program for the States to encourage them to enact laws that mandate greater improved safety, including laws requiring adequate fencing and other barriers to entry.

At this time, it is my honor and privilege to acknowledge the presence in the hearing room of Ms. Nancy Baker. Both Ms. Baker and her father-in-law, Secretary James Baker, are strong supporters of the pool and spa bill. Please note that the terrible tragedy that took the life of their daughter and granddaughter has been a major inspiration for the reforms set forth in this bill.

Ms. Baker, please accept our condolences. We intend to make sure that your tragic loss was not in vain, and we will use that as a springboard to ensure that we prevent losses in the future of that kind. We thank you for your presence at this hearing.

I hope that we can have a full discussion on these bills in today's hearing. Let me emphasize that I want to work with the entire subcommittee on a bipartisan basis to make any technical or other changes and improvements to the bills and then move quickly to markup. As I said, these four bills are only a first step. In the months ahead, I hope to conduct a comprehensive review of the Agency's basic statutory authority and to craft the necessary reforms. Once again, I hope to do this on a bipartisan basis with the assistance of the CPSC, consumer advocates and industry groups. It is time now that we show the American people that we are serious about our children's product safety.

Before we begin, let me just take leave to share a word on our witnesses. We have two who are presenting oral testimony. We also have written testimony from Ms. Nancy Nord, the Acting Chairman of the Consumer Product Safety Commission. We invited the CPSC to send a representative to provide oral testimony at the hearing. Originally Ms. Nord elected to respond to that request and to testify in person. Yesterday we decided we needed to collapse the hearing into one panel because of the time restraints presented by today's floor consideration of H.R. 964, the spyware bill, for which I will serve as the manager. When Ms. Nord learned that we need-

ed her to testify on the same panel with the other two witnesses, she declined to appear in person or, alternatively, to send another CPSC representative.

We regret her decision not to have a CPSC witness at this hearing. Although, perhaps unusual, we have had to have one-panel hearings in the past and have mixed government witnesses with other witnesses such as the March 9 hearing on pretexting. In the future we will need the full participation of all of those at the CPSC and its leadership as we work to improve our Nation's consumer product safety system. I very much hope that the CPSC will be able to help us promote children's product safety and to look out for the needs of all of our consumers.

With that, I recognize the ranking member of the subcommittee, my friend from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman. Let me just thank you again for holding this hearing. I think I will move right to your last point.

As all of us know, CPSC Acting Chairwoman Nord was scheduled to appear today. She is not because the majority staff would not afford her the opportunity and courtesy of having the head of a Federal agency testify separately from nonadministration witnesses. This has been the precedent of this committee as long as I was chairman and going back with our staff for 15 to 20 years. So I understand there has been a misunderstanding of, perhaps, the committee staff of the majority in trying to increase witness participation because of time constraints, and I fully take the chairman at his word, but mixing a chairperson of a major Federal agency has never been done. It has always been on a separate hearing. We did that under the Clinton administration when I was in the majority.

So I think we had a little misunderstanding. I hope, in the future, that the acting chairwoman will be called back and will be given the opportunity and afforded the opportunity and courtesy of having her testify separately from nonadministration witnesses.

Having said that, it is important that, I think as you pointed out directly here, we examine these issues on these four bills. So I commend you for taking the time. We do not have a lot of time, but it is important that we have a hearing on this. We both know we have the spyware bill on the floor, and we are both eager to try and move that forward. That bill is on a Suspension Calendar today. The Social Security number protection bill, the pretexting bill and your commitment to move the data security bill by regular order is all in order, too. So I commend you for this full agenda.

One thing we also are a little concerned about is finding one witness that has an interest in all four bills from gasoline containers to increasing civil fines was extremely difficult, in addition to finding a witness given the short holiday workweek last week. For example, if we had 10 bills on the hearing, would we still only get one witness? What happens if we had 20 bills? So I think what would be helpful for our side is if we had an opportunity to have a different witness comment on each of these four bills instead of one witness to comment on the four bills.

So, normally, I would assume a legislative hearing would be held on each individual bill. Absent that, I would hope a hearing on multiple bills will be structured in a manner that permits the Republicans an opportunity to present a witness for each bill if the majority does not invite witnesses who represent those businesses who may have to operate under the proposed regulations.

This is an opportunity for freedom of thought, for freedom of opinion, and for letting the minority have an opportunity to have some authority on these bills. I hope we can have such an opportunity in the future so that we can continue as you and I work in a bipartisan way to develop legislation out of this committee.

That being said, Mr. Chairman, the legislation before us today is important, as you mentioned. All of the bills before us in some way involve the important work on the Consumer Product Safety Commission. It is no secret that anything involving children and consumer products tends to stir emotion in a manner that usually leads our protective nature to shield our children from harm. After all, that is part of the reason the CPSC was created in the first place, to provide a mechanism to ensure that consumer products in the marketplace are safe. Nobody wants to find that a product they can purchase at the local store is unsafe and creates a hazard for our young children, and nothing is more tragic than a life that ends prematurely, especially when it ends due to a foreseeable hazard. But our job is to evaluate the legislation on the merits, regardless of how we feel about the subject matter, and make any necessary recommendations or changes.

The legislation we examine today addresses four discrete issues: an increase in civil penalties the CPSC can levy, mandatory product registration for child nursery items, a uniform safety cap for gasoline containers, and pool and spa safety standards. Everyone wants to make sure that our children are safe, and that unscrupulous people who attempt to evade laws and standards are punished.

I wholeheartedly support improved safety standards and punishing wrongdoers, but I have some questions about aspects of the relative legislation that I hope will be explored during our question-and-answer period to our witnesses. I intend to submit written questions directed to the CPSC.

I ask, Mr. Chairman, unanimous consent that the Commission's responses be added as part of the record here today.

Mr. RUSH. So ordered.

Mr. STEARNS. The CPSC has performed an invaluable service to our country under a rare formula that has proven very successful. Voluntary standards promulgated and adhered to by industry can, and usually do serve as a de facto standard. With the aid of established industry standard-setting bodies, the workload of the CPSC is effectively delegated in many cases and obviates the need for formal CPSC rulemaking that would consume their valuable time and resources that could be spent more productively elsewhere.

So I look forward to the hearing today, Mr. Chairman, and I appreciate our being able to expedite this hearing so we can get our spyware on the floor. Thank you.

Mr. RUSH. The Chair now recognizes the gentle lady from Illinois Ms. Schakowsky for 5 minutes.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you so much, Chairman Rush, for holding today's hearing on four important bills that would protect children from needless harm and everyday dangers. I am especially grateful that you included my bill, H.R. 1699, the Danny Keysar Child Product Safety Notification Act, or Danny's Act.

As we heard at last month's hearing on children's products, because of lax laws and inadequate protections, dangerous and, in fact, deadly products are being made and sold for use by children. It is past due that we give parents the security they deserve and children the safety they need.

The importance of enacting stronger protections cannot be overstated. Unintentional injuries are the leading cause of death among children, and for every such injury that is fatal, approximately 18 children are hospitalized, and 1,250 are treated by emergency departments. According to the Consumer Product Safety Commission—I have in my testimony—who is not with us here today, an average of 61 children under the age of 5 die each year in incidents associated with nursery products. Of 318 consumer products recalled by the CPSC in 2006, 111, or 35 percent, were items intended for use by or in the care of children.

My bill, Danny's Act, would help prevent those needless and preventable injuries and deaths by making the recall of children's products more effective. H.R. 1699 would require that each durable infant and toddler product—and we name them—high chairs, cribs and strollers, et cetera—come with a postage-paid recall registration card. This will allow the manufacturers to directly contact each parent who bought their product should any problem arise that could put their children at risk.

Although there is a shocking number of recalled products, our current recall system is failing. Actual notice of a recall is dependent on news outlets' picking up the story and spreading the word. Notification targeted to owners of the product is rare, and many parents remain unaware of dangers even when products are recalled. In fact, many families still have the dangerous products listed in this report in their homes because they have not happened to turn on the television at the right time or to read the right newspaper.

My colleague, Representative Fred Upton, and I named our bill that would help solve this problem the Danny Keysar Child Product Safety Notification Act because his story is a tragic example of the inadequacy of our current recall practices. Danny Keysar, the precious 17-month-old son of Linda Ginzel and her husband Boaz Keysar, died when the Playskool Travel Lite portable crib he had been napping in at his babysitter's home collapsed. The rails of the crib folded into a V-shaped wedge when he stood up, trapping his neck, and he was strangled to death. It was May 12th, 1998, 5 years after the CPSC had ordered it off the shelves because it was so dangerous. Word of its hazard had not reached Danny's parents, the caregiver with whom he was staying or the State safety inspector who visited the home just 8 days before Danny's death. Had Danny's Act been in effect, there would have been a much greater

chance of saving Danny's life and the lives of six children who have since died from the Travel Lite.

We know that, while not the one and only answer, recall registration cards are an inexpensive and effective way of getting the word out. My bill is modeled after the National Highway and Transportation Safety Administration's recall system for car seats. Since NHTSA started requiring car seats to have registration cards in 1993, the number of families registering increased by at least tenfold. Recall repair rates have gone up 56 percent, all for a mere 43 cents per item. This bill will give families a much greater chance to repair, return or discard any dangerous products that have made it into the children's nurseries.

Finally, I would like to express my support for my colleagues' bills that are being considered. Mr. Rush's bill, H.R. 2474, would raise the cap on civil penalties for knowingly violating CPSC requirements so that getting caught violating safety requirements could not be written off as simply the cost of doing business. The Children's Gasoline Burn Prevention Act, which would extend the requirement of childproof caps to apply to gas cans, could save 1,200 families trips to the emergency room every year, and the Pool and Spa Safety Act would set a much-needed antientrapment standard for pool and spa drains sold in the United States.

I thank you, Mr. Chairman, for today's hearing, and I regret the lack of presence of the Acting Chair of the Consumer Product Safety Commission. I hope we can get past standing on ceremony and deal directly with saving children's lives. I welcome the witnesses who we have with us today.

Thank you.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. Thank you, Mr. Chairman.

As a parent, physician and Congressman, I firmly believe our children's safety and security should be our highest priority. Through over 25 years of practice delivering 3,000 babies in north Texas, I can tell you, before I placed a baby in the parents' arms, the first question invariably that was asked is, "Is the baby healthy? Is the baby safe?"

The safety and security of our children is the first thing on every parent's mind whether that child is a newborn or is a grown adult. The internal instinct is to protect all children. It transcends party lines. I think Republicans and Democrats alike can agree that our children are our most precious resource, and we must nurture and protect them. However, one thing that we do not agree on is how this hearing is being run today.

Disappointment. The word does not describe how I feel right now about Chairwoman Nord's absence at this committee. Her written testimony is very compelling and provides some excellent points and suggestions as the acting chairwoman of a Federal agency, and this committee should have given her the courtesy that she deserved. From my understanding, and I have not been here that long, there is absolutely no precedent to put agency chairmen and/

or commissioners on a panel with private-sector witnesses of any kind, and to ask Chairwoman Nord to do this is disrespectful to her and to the United States Consumer Public Safety Commission.

Due to the majority's action, this committee is robbed of a key insight that could have been provided to and that could have benefited our society. The chairwoman also recently traveled to China and met with officials about the disturbing trends of recalls of Chinese products. The American public deserves to hear her recount of the meetings, and by her not being here today to discuss this crucial matter in a public forum, the majority has inadvertently helped to silence the demand for the safety of consumer products imported from the People's Republic of China.

Additionally, we are talking about safety and antientrapment standards in swimming pools. That is a good thing to be talking about, but right next-door to my district in Fort Worth, Texas, we lost several young people and an adult in an ornamental pool in downtown Fort Worth, Texas. I would have welcomed the opportunity to ask Chairwoman Nord about the possibility of additional safety standards that would increase the amount of protection, the regulation and the protection for people who visit ornamental pools or landscaping pools.

Mr. Chairman, I was so concerned about this that I was considering offering a motion to have the committee rise. I was talked off that ledge by the ranking member, so I thank him for his input, but let us not forget that it is the U.S. Consumer Product Safety Commission that is tasked with the job of trying to safeguard our society and our children in particular from unreasonable risks of injury and death associated with consumer products.

I do not consider this to be a legitimate hearing to critically discuss legislation if the agency charged with enforcement is not present to testify. This committee is not doing our due diligence to the American public if the Consumer Product Safety Commission is not welcomed to the table to discuss the four pieces of legislation on the docket today, and I will continue to have grave concerns about the applicability of certain aspects of the legislation before us, and I am going to have continued concerns about the procedural irregularities of this hearing. I trust this will not happen again.

I yield back my time.

Mr. RUSH. The Chair now recognizes the gentleman from Indiana Mr. Hill for 5 minutes.

OPENING STATEMENT OF HON. BARON P. HILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HILL. I would like to thank Chairman Rush, Vice Chair Schakowsky and Ranking Member Stearns for holding this important hearing today.

Mr. Chairman, in addition to my own testimony, I request unanimous consent to insert the testimony of Mr. Alan Korn into the record. Mr. Korn is the director of public policy and general counsel to Safe Kids Worldwide. Safe Kids Worldwide is a global network of organizations whose mission is to prevent accidental injury, childhood injury, a leading killer of children 14 and under.

Mr. RUSH. So ordered.

Mr. HILL. They have played an important role in encouraging ways to improve the safety of America's children. As the summer months approach, there will be an unfortunate increase in incidences throughout the Nation. In recognition of that fact, June is Home Safety Awareness Month and an appropriate time to discuss relevant legislation pending before this committee. By encouraging the awareness of possible dangers within homes across America, we can attempt to reduce injuries and deaths to children across the country. The bills we are here to discuss today promote the ideas of home safety awareness by seeking to protect America's homes and families.

Mr. Chairman, at our last hearing, I spoke about one bill in particular that would go a long way towards reducing incidents of child injury and death, and that is House Resolution 1721, the Pool and Spa Safety Act. Today I would like to reiterate my support for this bill and encourage action.

After this committee's last hearing, I spoke with Nancy Baker, who lost one of her children because of the absence of the safe drain covers which this bill addresses. I know that Nancy is here today, and I want to commend her for her efforts to address this issue, and when I was on the phone with her, I talked to her a little bit about her courage. The best way to say this is not to retreat in sadness over the loss of her child. She wanted to make sure that other children did not have the same kind of things happen to them, and I applaud her here this morning for having the courage to step up and do this, and I am very impressed with her efforts.

It is clear that children can be spared from this terrifying situation, and parents can be spared from enduring that sort of pain. The steps we take here can help to move us towards that goal.

I am aware that there may be some minor technical concerns with the Pool and Spa Safety Act; however, I hope that we can all work together to ensure prompt action on this very important bill. By doing so, we will realize the goals of Home Safety Awareness Month and prevent families in the future from enduring the pain caused by avoidable drowning accidents.

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

Mr. RUSH. The Chair wants to thank the gentleman and now recognizes the gentleman from Kentucky Mr. Whitfield for 5 minutes of opening statement.

Mr. WHITFIELD. Mr. Chairman, I will waive my opening statement.

Mr. RUSH. The Chair thanks the gentleman.

Now we will recognize the gentleman from Kansas, Mr. Moore, who is not a member of the committee, but he is a sponsor of one of the bills that we are considering today.

Mr. Moore, you are recognized for 5 minutes. Welcome to the committee.

OPENING STATEMENT OF HON. DENNIS MOORE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. MOORE. Thank you very much, Mr. Chairman and members of the committee. I really appreciate the opportunity to come before your committee today to testify in support of H.R. 814, the Children's Gasoline Burn Prevention Act of 2007.

Mr. Chairman, they say that good things come to those who wait, but I think children who are the victims of burn injuries and death and their families would certainly disagree with that. I have introduced this measure with my friend and colleague Spencer Bachus of Alabama to allow the CPSC to require child-resistant gas caps for portable gas containers. I believe our children have waited too long for this commonsense consumer protection.

The 1973 Poison Packaging Prevention Act requires items containing dangerous or poisonous materials, such as pill bottles and drain openers, be sold with child-resistant caps, but gasoline cans are exempt from this requirement because they are sold empty even though they are designed solely to contain one hazardous, highly flammable liquid and probably the most dangerous substance in any of our homes, gasoline.

H.R. 814 would simply amend section 9 of the Consumer Product Safety Act to include child-resistant standards for closures in all portable gasoline containers. Allowing these cans to be sold with simple twist-off caps is dangerous and causes tragic accidents when children come into contact with them. Unfortunately, these accidents occur all too frequently. In 2003, the Consumer Product Safety Commission released a report estimating that, in a single year, about 1,270 children under the age of 5 were treated in emergency rooms for injuries resulting from unsecured gas cans either through fires or from the inhalation of fumes.

When I introduced this bill, I had a press conference at a fire station in my district, and the firemen were there with their fire trucks, and the TV cameras were there. And a mother brought her little 4-year-old boy over, and he was the cutest little thing, Mr. Chairman, running around in little shorts and had a short-sleeved shirt on and had a plastic fire hat on, and he had horrible burns all over his face and his arms and his legs. These burns could have been prevented.

H.R. 814 has been endorsed by the American Society for Testing and Materials Task Group of Standards for Flammable Liquid Containers, the World Burn Foundation, the National Safety Council, the American Academy of Pediatrics, the National Fire Protection Association, Public Citizen, and the Office of the Kansas State Fire Marshal. In addition, Mr. Chairman, H.R. 814 would not cost the taxpayers one single penny, and it is strongly bipartisan.

During the 109th Congress, the chairman's Gasoline Burn Prevention Act garnered 119 cosponsors, Republicans and Democrats. Mr. Chairman, this should not be about Republicans and Democrats. This is about our children.

Mr. Chairman, I have seven grandchildren right now, and I expect my eighth grandchild by noon today, and I am doing this for my grandchildren and for every child in this country to protect those children. I was district attorney in my home county for 12 years, and I worked a whole lot of child abuse cases to protect children, and I am doing the same thing here today to protect children from further danger, preventable danger and from preventable injuries and death.

I want to thank you again, Mr. Chairman, for the opportunity to appear today before your subcommittee. I hope that we can work together to enact this simple, commonsense measure that will pro-

tect young children and help put their parents' minds at ease with regard to gasoline cans stored in garages, basements and back porches. The Consumer Product Safety Commission should be and must be allowed to adequately protect our children.

Thank you, Mr. Chairman.

Mr. RUSH. I want to thank the gentleman.

I want to remind the members of the committee that this subcommittee and this chairman are concerned about doing the people's business. I have respect for pomp and circumstance, and I am not disrespectful to any individual, be they members of the administration, members of this committee or members of the public. I intend to be respectful.

However, if there is a time restriction, and there are time restraints, then the priority of this chairman is to make sure that the people's business gets conducted in a timely manner, and that was the motivation and is the motivation behind the actions of the Chair.

Mr. BURGESS. A parliamentary inquiry, Mr. Chairman.

The time constraint was the spyware bill; is that correct?

Mr. RUSH. The time restraint was the schedule for the House floor, which we had no control over and which we have no control over. The Chair does not have any control over the schedule on the House floor, and the spyware bill is to be up today, and the Chair is scheduled to manage the spyware bill, and because of those obligations and conflicts, the Chair decided to fold the panels into one panel and to move forward with this hearing.

The Chair did not consider canceling this hearing. The Chair did not consider moving this hearing to another date or to another time. The Chair was concerned about doing the people's business and making it the priority. Hopefully—I believe sincerely that anyone, whether or not they sat at a table with someone else or not, that that was not going to be that much of a big deal.

Mr. BURGESS. Mr. Chairman, there is respect for doing the people's business, and I respect you for doing that, but it also seems the people's business would be better accomplished if we heard from all witnesses involved.

Mr. RUSH. I really wanted to say that the Acting Chairman of the Consumer Product Safety Commission was told initially that she did not have to be here, that she did not have to appear. Just send a staff member. We wanted a staff member. She wanted to insert herself, and then she wanted to insert herself under certain circumstances and certain conditions that the Chair just could not respond to in an affirmative type of way. So we have decided to go ahead with the hearing. The Commissioner or the Acting Chairperson still has the opportunity to send someone over who is a staff member to answer the questions and to provide testimony to this subcommittee. The opportunity is still there for her, and I would certainly encourage her to come forward.

I believe that the quibbling over who sits where is not a proper point of inquiry when we are attempting to do important business that the people elected us to get done, and the Chair would——

Mr. BURGESS. I do not think so. When we have a protocol, we should follow it.

Mr. RUSH. Thank you. We will move to our hearing.

Mr. STEARNS. Mr. Chairman, I ask unanimous consent to put in as part of the record the CPSC coalition letter that both you and I received.

Mr. RUSH. So ordered. Any other statements for the record will be accepted at this time, as well as copies of the bills under consideration.

[The prepared statement of Mr. Butterfield and H.R. 814, 1699, 1721, and 2474 follows:]

PREPARED STATEMENT OF HON. G. K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

The oversight hearing the Subcommittee on Commerce, Trade, and Consumer Protection held nearly a month ago on the Consumer Product Safety Commission (CPSC) shed light on the understaffed and underfunded conditions at the Commission. It was an extremely productive hearing that was successful in laying out a framework for potential improvements. The CPSC is charged with protecting the public from unreasonable risks of serious injury or death from thousands of consumer goods. Many of these products have a direct safety implication for children.

While the safety of all Americans is of critical importance to lawmakers, the safety of children is of particular interest for this hearing. The Subcommittee on Commerce, Trade, and Consumer Protection will discuss several important legislative initiatives aimed at improving the consumer product safety for children. Not enough is being done to protect consumers—particularly children.

H.R. 2474, introduced by Chairman Rush, aims to increase the maximum civil penalty for violations under the Consumer Product Safety Act. The current limit the CPSC can assess is $1.825 million—the bill seeks to increase the limit to $20 million. Unfortunately, the current penalty is so low that some businesses see it simply as the cost of doing business. So these companies continue to violate CPSC safety violations, putting our children at risk.

The Danny Keysar Child Product Safety Notification Act—H.R. 1699—was introduced by Congresswoman Jan Schakowsky. Mirroring the National Highway Traffic Safety Administration's recall for car seats, H.R. 1699 requires everyday nursery products to come with a prepaid postage registration card for easy dissemination of recall information. Through this legislation, if a product is recalled, more consumers and children will be protected.

The Children's Gasoline Burn Prevention Act—H.R. 814—would require that the CPSC disseminate standards for portable gasoline caps for gasoline containers. Over 1,000 children are treated for burns related to gasoline on an annual basis. By streamlining these standards far less children will be harmed by gasoline.

Finally H.R. 1721—the Pool and Spa Safety Act—vastly increases the safety for consumers who use pools and spas. Over 250 young children drowned in U.S. pools and spas last year. This is a troubling number considering the total amount is much higher. The bill requires that all pools and spas sold in the United States adhere to anti-entrapment standards which are layers of protection that include barriers and safety vacuum releases. It also calls for CPSC to establish a grant program for the States to encourage successful passage of pool and spa safety laws.

I strongly support these important legislative measures and urge passage. This is clearly a substantial first step in ensuring our children are properly protected although more must be done. The budget for the CPSC needs to be increased and we as lawmakers should have an increased vigilance for our country's children.

I

110TH CONGRESS
1ST SESSION

H. R. 814

To require the Consumer Product Safety Commission to issue regulations mandating child-resistant closures on all portable gasoline containers.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2007

Mr. MOORE of Kansas (for himself, Mr. BACHUS, Mr. BURTON of Indiana, Mr. CLAY, Mr. CLEAVER, Mr. COBLE, Mr. CUMMINGS, Mr. LINCOLN DAVIS of Tennessee, Mr. GILLMOR, Mr. GUTIERREZ, Mr. HOLDEN, Mr. HOLT, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY, Ms. ZOE LOFGREN of California, Mrs. MCCARTHY of New York, Mr. MICHAUD, Mr. MORAN of Virginia, Mrs. NAPOLITANO, Mr. PRICE of North Carolina, Ms. SCHAKOWSKY, Ms. SCHWARTZ, Mr. SHERMAN, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To require the Consumer Product Safety Commission to issue regulations mandating child-resistant closures on all portable gasoline containers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Children's Gasoline
5 Burn Prevention Act".

1 **SEC. 2. CHILD-RESISTANT PORTABLE GASOLINE CON-**
2 **TAINERS.**

3 (a) CONSUMER PRODUCT SAFETY STANDARD.—
4 Within 180 days after the date of enactment of this Act,
5 the Consumer Product Safety Commission shall promul-
6 gate, as final consumer product safety standards under
7 section 9 of the Consumer Product Safety Act (15 U.S.C.
8 2058), child-resistance standards for closures on all port-
9 able gasoline containers. Such standards shall be substan-
10 tially the same as the standard ASTM F2517–05, issued
11 by ASTM International, or any successor standard issued
12 by ASTM International.

13 (b) APPLICATION OF CERTAIN PROMULGATION RE-
14 QUIREMENTS.—The requirements of subsections (a)
15 through (f) of section 9 of the Consumer Product Safety
16 Act (15 U.S.C. 2058 (a) through (f)) shall not apply to
17 the consumer product safety standards required by sub-
18 section (a) of this section.

19 (c) DEFINITION.—As used in this Act, the term
20 "portable gasoline container" means any portable gasoline
21 container intended for use by consumers.

22 (d) EFFECTIVE DATE.—The consumer product safe-
23 ty standard required by subsection (a) shall take effect
24 on the date that is 6 months after the date on which such
25 standard shall be promulgated.

1 (e) REPORT.—Not later than 2 years after the date
2 of enactment of this Act, the Consumer Product Safety
3 Commission shall transmit to the Committee on Energy
4 and Commerce of the House of Representatives and the
5 Committee on Commerce, Science, and Transportation of
6 the Senate a report on—
7 (1) the degree of industry compliance with the
8 standard promulgated under subsection (a);
9 (2) any enforcement actions brought by the
10 Commission to enforce such standard; and
11 (3) incidents involving children interacting with
12 portable gasoline containers (including both those
13 that are and are not in compliance with the stand-
14 ard promulgated under subsection (a)).

○

I

110TH CONGRESS
1ST SESSION

H. R. 1699

To direct the Consumer Product Safety Commission to require certain manufacturers to provide consumer product registration forms to facilitate recalls of durable infant and toddler products.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2007

Ms. SCHAKOWSKY (for herself and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To direct the Consumer Product Safety Commission to require certain manufacturers to provide consumer product registration forms to facilitate recalls of durable infant and toddler products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Danny Keysar Child Product Safety Notification Act".

SEC. 2. FINDINGS.

Congress finds the following:

1 (1) Unintentional injuries are the leading cause
2 of death among children, and for every such injury
3 that is fatal, approximately 18 children are hospital-
4 ized and 1,250 are treated by emergency depart-
5 ments for such injuries that are nonfatal.
6 (2) According to the Consumer Product Safety
7 Commission, an average of 50 children under the
8 age of 5 die each year in incidents associated with
9 nursery products, and about 16 of these deaths each
10 year are associated with cribs.
11 (3) In 2003, an estimated 60,700 children
12 under the age of 5 were treated in United States
13 hospital emergency rooms for injuries associated
14 with nursery products, and there were 10,700 inju-
15 ries to children under the age of 5 years associated
16 with strollers alone.
17 (4) Of the 397 recalls issued by the Consumer
18 Product Safety Commission in fiscal year 2005, 109
19 (or 28 percent) were children's products. Children's
20 products were recalled, on average, over 2 times per
21 week, and accounted for 19,635,627 individual units.
22 **SEC. 3. DEFINITIONS.**
23 In this Act:
24 (1) COMMISSION.—The term "Commission"
25 means the Consumer Product Safety Commission.

1 (2) DURABLE INFANT OR TODDLER PROD-
2 UCT.—The term "durable infant or toddler prod-
3 uct"—
4 (A) means a durable product intended for
5 use, or that may be reasonably expected to be
6 used, by children under the age of 5 years; and
7 (B) includes—
8 (i) full-size cribs and nonfull-size
9 cribs;
10 (ii) toddler beds;
11 (iii) high chairs, booster chairs, and
12 hook-on chairs;
13 (iv) bath seats;
14 (v) gates and other enclosures for con-
15 fining a child;
16 (vi) play yards;
17 (vii) stationary activity centers;
18 (viii) infant carriers;
19 (ix) strollers;
20 (x) walkers;
21 (xi) swings;
22 (xii) bassinets and cradles; and
23 (xiii) children's folding chairs.

1 **SEC. 4. CONSUMER PRODUCT REGISTRATION FORMS.**

2 (a) RULEMAKING.—Not later than 270 days after the
3 date of enactment of this Act, the Commission shall, pur-
4 suant to its authority under section 16(b) of the Consumer
5 Product Safety Act (15 U.S.C. 2065(b)), promulgate a
6 final consumer product safety standard under section 7
7 of such Act (15 U.S.C. 2056) to require manufacturers
8 of durable infant or toddler products—

9 (1) to provide consumers with a postage-paid
10 consumer registration form with each such product;

11 (2) to maintain a record of the names, address-
12 es, email addresses, and other contact information of
13 consumers who register their ownership of such
14 products with the manufacturer in order to improve
15 the effectiveness of manufacturer campaigns to re-
16 call such products; and

17 (3) to permanently place the manufacturer
18 name and contact information, model name and
19 number, and the date of manufacture on each dura-
20 ble infant or toddler product.

21 (b) REQUIREMENTS FOR REGISTRATION FORM.—
22 The registration form required to be provided to con-
23 sumers under subsection (a) shall—

24 (1) include spaces for a consumer to provide
25 their name, address, telephone number, and email
26 address;

1 (2) include space sufficiently large to permit
2 easy, legible recording of all desired information;
3 (3) be attached to the surface of each durable
4 infant or toddler product so that, as a practical mat-
5 ter, the consumer must notice and handle the form
6 after purchasing the product;
7 (4) include the manufacturer's name, model
8 name and number for the product, and the date of
9 manufacture;
10 (5) include a message explaining the purpose of
11 the registration and designed to encourage con-
12 sumers to complete the registration;
13 (6) include an option for consumers to register
14 through the Internet; and
15 (7) a statement that information provided by
16 the consumer shall not be used for any purpose
17 other than to facilitate a recall of or safety alert re-
18 garding that product.
19 In issuing regulations under this section, the Commission
20 may prescribe the exact text and format of the required
21 registration form.
22 (c) RECORD KEEPING AND NOTIFICATION REQUIRE-
23 MENTS.—The standard required under this section shall
24 require each manufacturer of a durable infant or toddler
25 product to maintain a record of registrants for each prod-

1 uct manufactured that includes all of the information pro-
2 vided by each consumer registered, and to use such infor-
3 mation to notify such consumers in the event of a vol-
4 untary or involuntary recall of or safety alert regarding
5 such product. Each manufacturer shall maintain such a
6 record for a period of not less than 6 years after the date
7 of manufacture of the product. Consumer information col-
8 lected by a manufacturer under this Act may not be used
9 by the manufacturer, nor disseminated by such manufac-
10 turer to any other party, for any purpose other than notifi-
11 cation to such consumer in the event of a product recall
12 or safety alert.

13 (d) STUDY.—The Commission shall conduct a study
14 at such time as it considers appropriate on the effective-
15 ness of the consumer registration forms in facilitating
16 product recalls. Upon the conclusion of such study, the
17 Commission shall report its findings to Congress.

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110TH CONGRESS
1ST SESSION

H. R. 1721

To increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, by establishing a swimming pool safety grant program administered by the Consumer Product Safety Commission to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2007

Ms. WASSERMAN SCHULTZ (for herself, Mr. WOLF, Mr. CLYBURN, Mr. GRIJALVA, Mr. WEXLER, Mr. SCHIFF, Mr. MOORE of Kansas, Mr. HASTINGS of Florida, Mr. KING of New York, Ms. BEAN, Mr. KLEIN of Florida, Mr. MAHONEY of Florida, Mr. BISHOP of New York, Mr. KLINE of Minnesota, Mr. THOMPSON of California, and Mr. CANNON) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, by establishing a swimming pool safety grant program administered by the Consumer Product Safety Commission to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Pool and Spa Safety Act".

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Federal swimming pool and spa drain cover standard.
Sec. 4. State swimming pool safety grant program.
Sec. 5. Minimum State law requirements.
Sec. 6. Education program.
Sec. 7. Definitions.
Sec. 8. CPSC report.

8 **SEC. 2. FINDINGS.**

9 The Congress finds that—

10 (1) of injury-related deaths, drowning is the
11 second leading cause of death in children aged 1 to
12 14 in the United States;

13 (2) many children die due to pool and spa
14 drowning and entrapment, such as Virginia Graeme
15 Baker, who at age 7 drowned by entrapment in a
16 residential spa, and Preston de Ibern, who at age 5
17 nearly drowned and was left permanently brain dam-
18 aged, finally succumbing to his catastrophic
19 healthcare issues when he was 12 years old;

20 (3) in 2003, 782 children ages 14 and under
21 died as a result of unintentional drowning;

1 (4) adult supervision at all aquatic venues is a
2 critical safety factor in preventing children from
3 drowning; and
4 (5) research studies show that the installation
5 and proper use of barriers or fencing, as well as ad-
6 ditional layers of protection, could substantially re-
7 duce the number of childhood residential swimming
8 pool drownings and near drownings.

9 **SEC. 3. FEDERAL SWIMMING POOL AND SPA DRAIN COVER**
10 **STANDARD.**

11 (a) CONSUMER PRODUCT SAFETY RULE.—The pro-
12 visions of subsection (b) shall be considered to be a con-
13 sumer product safety rule issued by the Consumer Product
14 Safety Commission under section 9 of the Consumer Prod-
15 uct Safety Act (15 U.S.C. 2058).
16 (b) DRAIN COVER STANDARD.—Effective 1 year
17 after the date of enactment of this Act, each swimming
18 pool or spa drain cover manufactured, distributed, or en-
19 tered into commerce in the United States shall conform
20 to the entrapment protection standards of the ASME/
21 ANSI A112.19.8 performance standard, or any successor
22 standard regulating the same.

23 **SEC. 4. STATE SWIMMING POOL SAFETY GRANT PROGRAM.**

24 (a) IN GENERAL.—Subject to the availability of ap-
25 propriations authorized by subsection (e), the Commission

1 shall establish a grant program to provide assistance to
2 eligible States.
3 (b) ELIGIBILITY.—To be eligible for a grant under
4 the program, a State shall—
5 (1) demonstrate to the satisfaction of the Com-
6 mission that it has a State statute, or that, after the
7 date of enactment of this Act, it has enacted a stat-
8 ute, or amended an existing statute, that provides
9 for the enforcement of a law that—
10 (A) except as provided in section
11 5(a)(1)(A)(i), applies to all swimming pools in
12 the State; and
13 (B) meets the minimum State law require-
14 ments of section 5; and
15 (2) submit an application to the Commission at
16 such time, in such form, and containing such addi-
17 tional information as the Commission may require.
18 (c) AMOUNT OF GRANT.—The Commission shall de-
19 termine the amount of a grant awarded under this Act,
20 and shall consider—
21 (1) the population and relative enforcement
22 needs of each qualifying State; and
23 (2) allocation of grant funds in a manner de-
24 signed to provide the maximum benefit from the
25 program in terms of protecting children from drown-

1 ing or entrapment, and, in making that allocation,
2 shall give priority to States that have not received
3 a grant under this Act in a preceding fiscal year.
4 (d) USE OF GRANT FUNDS.—A State receiving a
5 grant under this section shall use—
6 (1) at least 50 percent of amount made avail-
7 able to hire and train enforcement personnel for im-
8 plementation and enforcement of standards under
9 the State swimming pool and spa safety law; and
10 (2) the remainder—
11 (A) to educate pool construction and in-
12 stallation companies and pool service companies
13 about the standards;
14 (B) to educate pool owners, pool operators,
15 and other members of the public about the
16 standards under the swimming pool and spa
17 safety law and about the prevention of drown-
18 ing or entrapment of children using swimming
19 pools and spas; and
20 (C) to defray administrative costs associ-
21 ated with such training and education pro-
22 grams.
23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Commission for
25 each of fiscal years 2008 through 2012 $10,000,000 to

1 carry out this section, such sums to remain available until
2 expended.

3 **SEC. 5. MINIMUM STATE LAW REQUIREMENTS.**

4 (a) IN GENERAL.—

5 (1) SAFETY STANDARDS.—A State meets the
6 minimum State law requirements of this section if—

7 (A) the State requires by statute—

8 (i) the enclosure of all residential
9 pools and spas by barriers to entry that
10 will effectively prevent small children from
11 gaining unsupervised and unfettered access
12 to the pool or spa;

13 (ii) that all pools and spas be
14 equipped with devices and systems de-
15 signed to prevent entrapment by pool or
16 spa drains;

17 (iii) that pools and spas built more
18 than 1 year after the date of enactment of
19 such statute have—

20 (I) more than 1 drain per cir-
21 culation pump;

22 (II) 1 or more unblockable drains
23 per circulation pump; or

24 (III) no main drain; and

(iv) every swimming pool and spa that has a main drain, other than an unblockable drain, be equipped with a drain cover that meets the consumer product safety standard established by section 3; and

(B) the State meets such additional State law requirements for pools and spas as the Commission may establish after public notice and a 30-day public comment period.

(2) USE OF MINIMUM STATE LAW REQUIREMENTS.—The Commission—

(A) shall use the minimum State law requirements under paragraph (1) solely for the purpose of determining the eligibility of a State for a grant under section 4 of this Act; and

(B) may not enforce any requirement under paragraph (1) except for the purpose of determining the eligibility of a State for a grant under section 4 of this Act.

(3) REQUIREMENTS TO REFLECT NATIONAL PERFORMANCE STANDARDS AND COMMISSION GUIDELINES.—In establishing minimum State law requirements under paragraph (1), the Commission shall—

1 (A) consider current or revised national
2 performance standards on pool and spa barrier
3 protection and entrapment prevention; and
4 (B) ensure that any such requirements are
5 consistent with the guidelines contained in the
6 Commission's publication 362, entitled "Safety
7 Barrier Guidelines for Home Pools", the Com-
8 mission's publication entitled "Guidelines for
9 Entrapment Hazards: Making Pools and Spas
10 Safer", and any other pool safety guidelines es-
11 tablished by the Commission.
12 (b) STANDARDS.—Nothing in this section prevents
13 the Commission from promulgating standards regulating
14 pool and spa safety or from relying on an applicable na-
15 tional performance standard.
16 (c) BASIC ACCESS-RELATED SAFETY DEVICES AND
17 EQUIPMENT REQUIREMENTS TO BE CONSIDERED.—In
18 establishing minimum State law requirements for swim-
19 ming pools and spas under subsection (a)(1), the Commis-
20 sion shall consider the following requirements:
21 (1) COVERS.—A safety pool cover.
22 (2) GATES.—A gate with direct access to the
23 swimming pool that is equipped with a self-closing,
24 self-latching device.

1 (3) DOORS.—Any door with direct access to the
2 swimming pool that is equipped with an audible alert
3 device or alarm which sounds when the door is
4 opened.
5 (4) POOL ALARM.—A device designed to provide
6 rapid detection of an entry into the water of a swim-
7 ming pool or spa.
8 (d) ENTRAPMENT, ENTANGLEMENT, AND EVISCERA-
9 TION PREVENTION STANDARDS TO BE REQUIRED.—
10 (1) IN GENERAL.—In establishing additional
11 minimum State law requirements for swimming
12 pools and spas under subsection (a)(1), the Commis-
13 sion shall require, at a minimum, 1 or more of the
14 following (except for pools constructed without a
15 main drain):
16 (A) SAFETY VACUUM RELEASE SYSTEM.—
17 A safety vacuum release system which ceases
18 operation of the pump, reverses the circulation
19 flow, or otherwise provides a vacuum release at
20 a suction outlet when a blockage is detected,
21 that has been tested by an independent third
22 party and found to conform to ASME/ANSI
23 standard A112.19.17 or ASTM standard
24 F2387.

1 (B) SUCTION-LIMITING VENT SYSTEM.—A
2 suction-limiting vent system with a tamper-re-
3 sistant atmospheric opening.
4 (C) GRAVITY DRAINAGE SYSTEM.—A grav-
5 ity drainage system that utilizes a collector
6 tank.
7 (D) AUTOMATIC PUMP SHUT-OFF SYS-
8 TEM.—An automatic pump shut-off system.
9 (E) OTHER SYSTEMS.—Any other system
10 determined by the Commission to be equally ef-
11 fective as, or better than, the systems described
12 in subparagraphs (A) through (E) of this para-
13 graph at preventing or eliminating the risk of
14 injury or death associated with pool drainage
15 systems.
16 (2) APPLICABLE STANDARDS.—Any device or
17 system described in subparagraphs (B) through (E)
18 of paragraph (1) shall meet the requirements of any
19 ASME/ANSI or ASTM performance standard if
20 there is such a standard for such a device or system,
21 or any applicable consumer product safety standard.
22 **SEC. 6. EDUCATION PROGRAM.**
23 (a) IN GENERAL.—The Commission shall establish
24 and carry out an education program to inform the public
25 of methods to prevent drowning and entrapment in swim-

1 ming pools and spas. In carrying out the program, the
2 Commission shall develop—
3 (1) educational materials designed for pool
4 manufacturers, pool service companies, and pool
5 supply retail outlets;
6 (2) educational materials designed for pool own-
7 ers and operators; and
8 (3) a national media campaign to promote
9 awareness of pool and spa safety.
10 (b) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Commission for
12 each of fiscal years 2008 through 2012 $5,000,000 to
13 carry out the education program authorized by subsection
14 (a).
15 **SEC. 7. DEFINITIONS.**
16 In this Act:
17 (1) ASME/ANSI STANDARD.—The term
18 "ASME/ANSI standard" means a safety standard
19 accredited by the American National Standards In-
20 stitute and published by the American Society of
21 Mechanical Engineers.
22 (2) ASTM STANDARD.—The term "ASTM
23 standard" means a safety standard issued by ASTM
24 International, formerly known as the American Soci-
25 ety for Testing and Materials.

1 (3) BARRIER.—The term "barrier" means a
2 fence, dwelling wall, or nondwelling wall, or any
3 combination thereof, which completely surrounds the
4 swimming pool and obstructs access to the swim-
5 ming pool, especially access from the residence or
6 from the yard outside the barrier. A wall of a dwell-
7 ing may service as part of the barrier if it does not
8 contain any door or window that opens to provide
9 access to the swimming pool.
10 (4) COMMISSION.—The term "Commission"
11 means the Consumer Product Safety Commission.
12 (5) MAIN DRAIN.—The term "main drain"
13 means a submerged suction outlet typically located
14 at the bottom of a pool or spa to conduct water to
15 a re-circulating pump.
16 (6) SAFETY VACUUM RELEASE SYSTEM.—The
17 term "safety vacuum release system" means a vacu-
18 um release system capable of providing vacuum re-
19 lease at a suction outlet caused by a high vacuum
20 occurrence due to a suction outlet flow blockage.
21 (7) UNBLOCKABLE DRAIN.—The term
22 "unblockable drain" means a drain of any size and
23 shape that a human body cannot sufficiently block
24 to create a suction entrapment hazard.

1 (8) SWIMMING POOL; SPA.—The term "swim-
2 ming pool" or "spa" means any outdoor or indoor
3 structure intended for swimming or recreational
4 bathing, including in-ground and above-ground
5 structures, and includes hot tubs, spas, portable
6 spas, and non-portable wading pools.

7 **SEC. 8. CPSC REPORT.**

8 Within 1 year after the close of each fiscal year for
9 which grants are made under section 4, the Commission
10 shall submit a report to the Congress evaluating the effec-
11 tiveness of the grant program authorized by that section.

○

I

110TH CONGRESS
1ST SESSION

H. R. 2474

To provide for an increased maximum civil penalty for violations under the Consumer Product Safety Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. RUSH introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To provide for an increased maximum civil penalty for violations under the Consumer Product Safety Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CIVIL PENALTIES OF THE CONSUMER PRODUCT SAFETY COMMISSION.

Section 20(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2069(a)(1)) is amended by striking "$1,250,000" each place it appears and inserting "$20,000,000".

○

Mr. RUSH. We have two witnesses now. Will our witnesses please come forward.

Our first witness this morning is Mr. Edmund Mierzwinski, who is the Consumer Program Director at U.S. PIRG, the United States Public Interest Research Group.

Our second witness is Ms. Sally Greenberg, who is the senior product safety counsel at the Consumers Union.

We want to thank both of the witnesses for appearing before us, and we would ask that you restrict your opening statements to 5 minutes. We will first recognize Mr. Mierzwinski.

Mr. Mierzwinski, you are recognized for 5 minutes for opening testimony.

STATEMENT OF EDMUND MIERZWINSKI, CONSUMER PROGRAM DIRECTOR, UNITED STATES PUBLIC INTEREST RESEARCH GROUP, WASHINGTON, DC

Mr. MIERZWINSKI. Thank you very much, Chairman Rush, Ranking Member Stearns, Vice Chair Schakowsky, and members of the committee.

The U.S. Public Interest Research Group is pleased to offer our views on these important child safety matters before the committee today. To those Members unfamiliar with our work, in 2006, we released our 21st annual toy safety report, building on the passage of the 1994 Child Safety Protection Act, which was supported by the Consumer Federation of America, the Consumers Union, U.S. PIRG, and a number other groups. A number of toys have been recalled in response to the passage of that legislation and our subsequent work, and we have participated in a number of other matters before the Consumer Product Safety Commission as well over the years.

U.S. PIRG is pleased to support the goals of all four of the bills before the committee. We strongly support H.R. 1699, the Danny Keysar Child Product Safety Notification Act. We strongly support H.R. 2474 to increase civil penalties. We support the goals of H.R. 1721, the Pool and Spa Safety Act, that offer suggested amendments to improve the bill. Similarly, we support H.R. 814, the Gasoline Burn Prevention Act, but offer suggested amendments to improve the bill.

The legislation from Vice Chair Schakowsky, H.R. 1699, addresses one of the troubling problems that the CPSC faces, how to ensure that recalled products are actually tracked down and recalled. The legislation would call for an improved product registration card mechanism for finding the recalled products and for making sure that particularly durable infant and toddler products, often which are handed down, often which are kept for many years, have labels on them so that they can be tracked down if recalled.

In the past, dual-use warranty cards have had a low trust factor among consumers. Quite frankly, consumers have not wanted to fill them out because they are afraid of privacy invasions from marketing practices of the companies. This bill strikes the appropriate response. It states that the information that is collected and recall registration cards cannot be used for secondary purposes. Safety is better served by protecting privacy as well.

In regard to H.R. 2474, increasing civil penalties, this legislation sponsored by you, Mr. Chairman, has a simple goal that everyone should support. No company should have a business model that has callous disregard for the law's intent to protect the public from safety hazards. What I am saying is a company should not game the system by deciding that it is cheaper to take the chance of paying a small penalty and get away with not making safe products. You need a big hammer to hit them over the head with. Your bill would give the CPSC that big hammer that it needs to hold companies accountable to protect the safety of the American public.

We support, in addition, H.R. 814, the Children's Gasoline Burn Prevention Act. As Mr. Moore stated, and as you stated in your opening remarks, there is a very simple problem. These gas containers are sold empty; therefore, they do not have to meet existing childproof standards. We would recommend that the bill be expanded to include kerosene containers as well as gasoline containers.

Regarding H.R. 1721, the Pool and Spa Safety Act, this laudable legislation by Representative Wasserman Schultz and a number of cosponsors was introduced in response to a number of horrific tragedies caused by entrapment, entanglement and eviscerment hazards posed by the tremendous suction power of pool and spa filters. It takes a three-part approach. It requires new construction of pools and spas to include drains that meet strong safety standards. It establishes a program of grants to States to encourage greater safety, and it enhances CPSC drowning education programs.

Our only comments on this bill would be that, as you heard at your last hearing on the Consumer Product Safety Commission, it is the "little agency that could." It is the little agency with a $63 million budget and only 400 professional staff.

We would simply encourage you to clarify that the purpose of the grant program is to expand money to the CPSC. If possible, you should include additional new money for someone to run the grant program. I note that in Acting Chairwoman Nord's testimony that she suggests outsourcing the program with the CPSC's getting its costs reimbursed, but that is our primary concern, the agency's new project, and it has reduced the priority of drowning programs in the last several years from a strategic goal to merely a program, so it needs more people to handle this important new program, and I hope the committee can address that issue.

I have a number of other ideas about improving the Consumer Product Safety Commission, but since this is not an oversight hearing, I have left them in my written testimony.

Thank you.

Mr. RUSH. I want to thank you.

[The prepared statement of Mr. Mierzwinski follows:]

Testimony of the U.S. Public Interest Research Group

(U.S. PIRG)

Edmund Mierzwinski, Consumer Program Director

"Legislation

To Improve Consumer Product Safety For Children,

H.R. 2474, H.R. 1699, H.R. 814, And H.R. 1721"

Before The

Commerce, Trade And Consumer Protection Subcommittee

Of The House Committee On Energy And Commerce

The Honorable Bobby Rush, Chairman

6 June 2007

Chairman Rush, Ranking Member Stearns, Vice-Chair Schakowsky and members of the committee: We are pleased to offer the views of the non-partisan, non-profit U.S. Public Interest Research Group and its members on the important child and other product safety matters before the committee today. To those members unfamiliar with our work, in 2006 we released our 21st annual Trouble In Toyland report, following up on our long advocacy campaign, along with the Consumer Federation of America, Consumers Union and others, for passage of the 1994 Child Safety Protection Act. The annual toy reports have resulted in at least 125 CPSC or manufacturer recalls or other safety actions.[1] We also comment regularly before the Consumer Product Safety Commission on a variety of safety matters.

Summary:

U.S. PIRG supports the goals of all four bills before the committee. We strongly support HR 1699, the Danny Keysar Child Product Safety Notification Act. We strongly support HR 2474, to increase maximum civil penalties. We support the goals of HR 1721, the Pool and Spa Safety Act, but offer perfecting amendments to improve the bill. Similarly, we support HR 814, the Children's Gasoline Burn Prevention Act, but offer perfecting amendments to improve the bill.

Discussion:

The Consumer Product Safety Commission is a tiny agency with a massive workload. It regulates 15,000 separate consumer products. Its flat budget of about $63 million dollars and its staff of just over 400 staff (and falling) have tremendous safety responsibilities. In addition, the staff labor with regulatory handcuffs that counterpart agencies do not have, including the notorious Section 6(b) of the Consumer Product Safety Act., a one-of-a-kind provision that places a gag order on the commission's ability to inform the public of safety actions without seeking permission from its regulated entities first. While the consensus bills before you today will not solve all the CPSC's fiscal and regulatory problems, they will give it more regulatory tools to protect the public. Second, they focus on preventable problems that largely affect one of the CPSC's most important constituencies: small children who cannot help themselves.

[1] We say "at least 125" only because due to the difficulty of obtaining information from the CPSC as a result of the unwise restrictions posed by Section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2051–2084, we don't know whether the CPSC has taken additional actions but failed to tell us.

We fully support the following bills with no changes:

HR 1699: the Danny Keysar Child Product Safety Notification Act:
This legislation from Vice-chair Jan Schakowsky addresses one of the troubling problems that the CPSC faces: how to ensure that recalled products are actually tracked down and recalled from the market. The legislation would establish for an improved recall registration card mechanism for finding recalled durable infant or toddler products. In the past, dual-use warranty registration cards have had a low trust factor. Consumers don't fill them out because they will also be used for marketing. As many members of the committee are aware, U.S. PIRG is a strong champion of consumer privacy. We believe that this bill strikes the right balance by prohibiting the use of information on recall registration cards for any secondary purposes. Safety is better served by protecting privacy, too. The bill also requires that manufacturer-contact information be securely placed on these durable products, which are often handed-down to relatives or friends or sold in second-hand shops.

HR 2474, Increasing Civil Penalties:
This legislation sponsored by Chairman Bobby Rush has a simple goal that everyone should support: no company should be able to design a business model with callous disregard for the law's intent to protect the public from safety hazards. No company should ignore safety because it believes that the cost of civil penalties will be less than the cost of compliance. In particular, as Consumers Union points out in its testimony today, a number of recent cases have shown that companies are failing to report product safety hazards under CPSA Section 15(b). These firms are ignoring the law's clear notification of potential hazard requirements and placing the public at risk. The only solution to these and other violations of the act is to increase the penalties for lawbreaking.

We support the following two bills only with suggested amendments:

HR 814, the Children's Gasoline Burn Prevention Act
This legislation from Rep. Dennis Moore and others addresses a simple flaw in the law. The CPSC reports that each year 1,270 children under age 5 are treated in hospital

emergency rooms for injuries resulting from portable gas containers that are not childproof. The reason? These containers are often sold empty, and therefore are not required to meet the child-proof requirements of the 1973 Poison Prevention Act.

We recommend that the bill should be broadened to also apply to kerosene containers, which pose similar burn or poison risks. Also, as Consumers Union points out, the standard that the bill relies on, ASTM F2517-05, can be defeated by about 20% of children, but to strengthen the rule would make it more difficult for some adults to use the cans.

HR 1721, the Pool and Spa Safety Act

This laudable legislation by Rep. Debbie Wasserman Shultz and co-sponsors was introduced in response to a number of horrific tragedies caused by entrapment, entanglement and evisceration hazards posed by the tremendous suction power of pool and spa filters and drains. The bill uses a layered defense approach. It requires new construction of pools and spas to include drains with covers meeting enhanced safety standards. It establishes a program of grants to states to encourage greater pool and spa safety. It enhances CPSC drowning education programs.

We generally support the goals of the legislation provided that it is made clear that its grants program comes from entirely new appropriations and does not reduce the CPSC's ability to carry out its other duties. We believe that this is the intent of the sponsors but with the tiny CPSC facing numerous demands on its limited resources, this should be made clear. We would also note that recently, the CPSC reduced its work[2] on drowning from a strategic goal to a project, suggesting that "resource limitations" were inadequate. So, in addition to the funding for the grants, the Congress must consider adding staff both to administer the grants program and to upgrade the CPSC's capability to run major programs to reduce drowning.

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[2] See, for example, 2007 CPSC Performance Budget , http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2007OperatingPlan.pdf Also see the Federal Register notice at June 7, 2006 (Volume 71, Number 109 [Page 32929-32930] which states the following: "The revised plan will provide an overall guide to the formulation of future agency actions and budget requests. Because of resource limitations, staff is proposing to delete the ``Keeping Children Safe from Drowning'' goal in the current, 2003 Strategic Plan. Work in this area would continue at the project level with expanded public information efforts, such as partnerships with child safety organizations, to reduce child drownings."

We also believe that preference should be given in the grants program such that it encourage new states to establish pool and spa safety programs, rather than simply provide funds for the ongoing programs of states already administering programs. The limited federal funds should be used as a carrot.

We recognize that some of these amendments may be more properly made in the Appropriations Committee.

Finally, we would concur with the Consumers Union in recommending that the bill's education programs be expanded to include coverage of hazards inherent in all pools, including above-the-ground and inflatable pools.

Conclusion

We appreciate the subcommittee's interest in our views. We also want to commend the subcommittee on its commendable efforts to begin early in the Congress to move significant pieces of product safety legislation. The record you are building in your series of hearings will also help more members to understand the severe limitations in both funding and regulatory authority faced by the CPSC. We hope to work with you to encourage, among additional improvements to the Consumer Product Safety Act, the elimination of its Section 6(b) and the improvement of its hazard reporting requirements under Section 15(b), rather than the weakening sought by industry. We further associate ourselves with the detailed testimony on CPSC Reauthorization issues presented by the Consumer Federation of America at the subcommittee's recent hearing on children's safety.[3] We look forward to working with the committee on further product safety inquiries.

[3] Testimony before the subcommittee of Rachel Weintraub, Consumer Federation of America, 15 May 2007, available at http://energycommerce.house.gov/cmte_mtgs/110-ctcp-hrg.051507.Weintraub-testimony.pdf

Mr. RUSH. Our next witness is Ms. Sally Greenberg, who is the senior product safety counsel at the Consumers Union.

Welcome, Ms. Greenberg. You are recognized for 5 minutes.

STATEMENT OF SALLY GREENBERG, SENIOR PRODUCT SAFETY COUNSEL, CONSUMERS UNION, WASHINGTON, DC

Ms. GREENBERG. Thank you, Chairman Rush, and thank you, Ranking Member Stearns and, of course, Vice Chair Schakowsky, who has been such a great leader on product safety for kids particularly.

My name is Sally Greenberg. I am with Consumers Union. I really appreciate—we really appreciate—the opportunity to be here this morning. We support all four bills that are before the subcommittee.

Let me start with H.R. 2474, which is a bill to raise the maximum penalty for violations of the Consumer Product Safety Act. I applaud the Chairman for introducing this important bill, and I particularly applaud him for his earlier stated commitment to doing comprehensive reform of the Consumer Product Safety Commission, because that has been a long time in coming, and we look forward to working with you on those reforms.

The CPSC is currently empowered to impose fines on companies for failing to report safety hazards, but the amount is capped at $1.8 million. We think the cap hampers CPSC's ability to adequately enforce the reporting requirements under 15(b) particularly, and we support raising the cap to $20 million. This increase in potential fines would, we believe, be a strong deterrent for any company that might otherwise be inclined to flout the law. For some companies, the current cap on fines is so low that the threat of a fine will not make a dent in the company's bottom line, and I am thinking particularly about the $750,000 fine that the CPSC imposed on Wal-Mart a few years back for failing to report safety hazards with fitness machines. The calculation is that the $750,000 fine at Wal-Mart was the equivalent of about 1 minute and 33 seconds of cash register receipts on that corporation.

I also want to bring to the subcommittee's attention that, in 2002, Commissioner Moore, who was then acting chairman of the CPSC, told an audience at a product safety conference that perhaps some companies would be less likely to stall—he was recommending that the cap be lifted entirely and said that perhaps some companies would be less likely to stall our agency by putting off reporting hazardous products if we had penalties that were more commensurate with the harm that they caused.

CPSC's Web site is replete with examples of companies that have numerous reports about products that injure consumers that simply did not report those incidents to the CPSC, and I have listed four examples of those incidents where you have companies that had plenty of time and plenty of information, and they just did not get around to reporting it to the CPSC.

Our greatest concern is child product manufacturers in particular, and there is a long history of those manufacturers not reporting problems with products that could have prevented injuries to children, and the fine level needs to be at a point where it serves as a sufficient deterrent to those kinds of decisionmakers within

companies who are considering not reporting to the agency. So we fully support 2474, and thank the chairman for introducing it.

Let me move on to H.R. 1699, the Danny Keysar Child Product Safety Notification Act. We strongly support this bill. It would require product registration cards to be included in durable children's products. We applaud Congresswoman Schakowsky and Congressman Fred Upton for their leadership in introducing the bill.

According to CPSC's statistics, an estimated 59,800 children every year under 5 years old are treated in hospital emergency rooms for injuries associated with nursery products. We have a very ineffective recall system today that poses serious problems for children's products. Moreover, there is a long-standing pattern of children's products being a large proportion of recalls. It tends to be between one-third and one-half of all products recalled every year that are children's products.

The term "recalled products" suggests that a product has been successfully returned, repaired or replaced. In fact, that is rarely the case. Most products that are recalled remain in the marketplace and in consumers' homes, and they threaten the safety of those consumers who use them. Estimates on successful rates of recall for the average product falls somewhere between 10 and 30 percent, so we need much more effective means for informing parents when a product that their child is using poses a safety hazard and has been recalled.

Seventeen-month-old Danny Keysar, as we have heard from Congresswoman Schakowsky, died using a recalled product—that is just tragic—but the information does not get out there. We know this, and we have to do better. That is why H.R. 1699 is so important, the registration card system called for in the bill. It is not a perfect system. There will not be a perfect system. It will represent, I think, a great improvement on what we have today, which is really nothing except using the media to get out to people, and that misses so many.

I want to use an example of the Toro Corporation, and I also want to note that the CPSC had some very interesting hearings themselves several years back on recall effectiveness, and they brought in a bunch of companies who had done some very interesting work. I can talk about that later because I want to address the other bills, but there are many innovative approaches to this, and the industry always comes back with, "Well, it does not work, and people do not really pay attention." that is really not accurate. Toro Corporation had a 75 to 80 percent return on their recall registration cards because they did it the right way, and they made these cards very user friendly, and they were not invading people's privacy, and that worked for consumers.

Others have already talked about or had already talked about the car seat manufacturer being the model. I think that is a good model. I think it is working, and we should use that for moving forward on H.R. 1699.

As for H.R. 814, the Children's Gasoline Burn Prevention Act, we are fully supportive of that. We applaud Congressman Moore and Congressman Bachus for introducing the legislation. Those tragedies that happened in Congressman Moore's district are so preventable with this very simple safety measure. Our credo at Consumers

Union is if you have a product and it proves defective or dangerous, and you can fix it for a reasonable cost, and you do not affect the utility of the product, you ought to move forward very quickly to put those fixes in place. I think that is what H.R. 814 does. We have some statistics in my written testimony.

Am I overtime? Oh, OK. I apologize, Mr. Chairman.

Just one last point on the Pool and Spa Safety Act.

In my written testimony, we have outlined why we support the bill and some of the concerns that we have about how it is going to be implemented, but as I said in my initial statement, we fully support all legislation and look forward to your questions.

Mr. RUSH. Thank you very much.

[The prepared statement of Ms. Greenberg follows:]

TESTIMONY

of

SALLY GREENBERG

SENIOR PRODUCT SAFETY COUNSEL

CONSUMERS UNION

Before the

COMMERCE, TRADE AND CONSUMER PROTECTION SUBCOMMITTEE

of the

HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON

"LEGISLATION TO IMPROVE CONSUMER PRODUCT

SAFETY FOR CHILDREN

H.R. 2474, H.R. 1699, H.R.814,

AND H.R. 1721"

JUNE 6, 2007

Good morning, Chairman Rush, Ranking Member Stearns, and other members of the Subcommittee. My name is Sally Greenberg, Senior Product Safety Counsel for Consumers Union (CU), non-profit publisher of *Consumer Reports*®.[1] Thank you for providing me with the opportunity to come before you today to provide Consumers Union's views on four bills that are aimed at improving the safety of consumer products in this country.

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

H.R. 2474, to Provide For an Increased Maximum Civil Penalty for Violations Under the Consumer Product Safety Act

Consumers Union supports H.R. 2474, a bill to raise the maximum penalty for violations under the Consumer Product Safety Act (CPSA) and applauds Congressman Rush (D-IL) for proposing this important bill. The Consumer Product Safety Commission (CPSC) is currently empowered to impose fines on companies for failing to report product safety hazards. However, Congress has capped the fines at $1.85 million. Congressman Rush's bill would raise that cap to $20 million.

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

This increase in potential fines would be, we believe, a strong deterrent for any company that might otherwise be inclined to flout the law. For some companies, the current cap on fines is so low that the threat of the fine will not make a dent it the company's bottom line. The $750,000 fine that CPSC assessed on Wal-Mart several years ago for failing to report safety hazards with fitness machines cost the company the equivalent of sales rung up in only 1 minute and 33 seconds.

In 2002, Commissioner Thomas Moore, when he was Acting Chairman of the CPSC, supported lifting the cap on fines for failure to report a product safety hazard. He said at the time, "Perhaps 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."

Several recent examples of fines imposed by the CPSC suggest that companies continue to flout the reporting requirements under 15(b) of the Consumer Product Safety Act.

Earlier this year, the CPSC levied over $1 million in civil penalties against two firms for failing to report product safety hazards. On January 12, 2007, the Hoover Company Inc. agreed to pay a civil penalty of $750,000 to settle allegations that it failed to report the sale of vacuum cleaners with defective on-off switches that can overheat. In April 2005, Hoover recalled 636,000 of its vacuum cleaners because of defective on-off switches. CPSC learned in July 2004 that Hoover had notice of 260 consumer incidents, of which 141 involved reports of fire, and determined that Hoover first learned that a vacuum cleaner switch on one of these units overheated and melted in April 1999.

Also in January, 2007, Nexgrill Industries Inc. agreed to pay $300,000 after failing to report a hazard with its gas grills. Between April 2004 and October 2005, Nexgrill received 20 reports of gas grill fires, including three reports of minor burn injuries. CPSC argued that Nexgrill failed to report the defect to the Commission for at least 10 months, even after it had sufficient information that the gas grills contained a defect.

In July 2006, Tiffany and Company was assessed a $262,500 civil penalty for failing to report a hazard with its infant teether rattles. Tiffany received at least three reports of defective solder joints in the teethers between November 2003 and February 2004. CPSC noted that the firm failed to notify consumers who had purchased the teether and did not report the problem to CPSC until after the Commission had opened its own investigation and requested that Tiffany do so.

In 2004, Sears, Roebuck and Company was fined $500,000 in civil penalties in each of two separate settlement agreements with the Consumer Product Safety Commission involving riding mowers. Five years earlier, CPSC had notified Sears of two consumer reports alleging fuel tank leaks on the riding mowers. In both instances, the CPSC advised Sears that the consumer complaints may trigger the agency's reporting requirements under Section 15(b) of the Consumer Product Safety Act (Reference File, 21:0101). Sears never reported the information to the CPSC despite receiving approximately 1,600 reports of fuel leakage and fuel tank cracking associated with the rear-engine riding lawnmowers, triggering the fines.

Children's product manufacturers have been fined in the past on numerous occasions for failing to report product safety hazards, including: $225,000 in 1996 against JBI playground equipment makers, $725,000 in 1996 against COSCO for toddler beds and rails that caused strangulation, $150,000 in 1998 against Binky Griptight pacifiers for a strangulation hazard, $225,000 against Century Products cribs and strollers for a suffocation hazard, $400,000 against Hasbro infant carriers in 2000 for skull fracture and other infant hazards, $200,000 in 2000 against Baby's Dream cribs for fingertip amputation hazards.[2]

While ideally manufacturers let their customers and the CPSC know the moment they hear about a safety problem with one of their products, as the examples herein demonstrate, too often that is not the case. As a result, the CPSC must be able to

[2] See *It's No Accident*, Marla Felcher, Common Courage Press, 2001.

impose a fine large enough to deter companies from failing to report product safety hazards as required under the CPSC statute. For the foregoing reasons, CU supports raising the fines as called for by H.R. 2474.

H.R. 1699, The Danny Keysar Child Product Safety Notification Act

Consumers Union strongly supports H.R. 1699, The Danny Keysar Child Product Safety Notification Act, a bill that calls upon the CPSC to set standards for consumer registration of durable baby products. Registering products with manufacturers will allow consumers to be more easily contacted in the event of a safety recall. We applaud Congresswoman Jan Schakowsky's (D-IL) and Congressman Fred Upton (R-MI) for their leadership in introducing this important bill.

According to the July 28, 2006 *CPSC Nursery Product-Related Injuries and Deaths to Children under age 5* Annual Memorandum, an estimated 59,800 children under age five were treated in hospital emergency rooms for injuries associated with nursery products in 2005. According to the report, an average of 61 children die annually in such incidents. We believe the number of injuries and deaths from using such products is disturbing. Most of these injuries and deaths are preventable. Moreover, when a product poses a substantial safety hazard, it must be recalled. Unfortunately, the recall system that exists today for getting hazardous products out of the marketplace and out of the homes of consumers is woefully lacking.

An ineffective recall system poses the most serious problems for children's products, which represent a large proportion of the products recalled each year. A recent report[3] released by the Chicago advocacy group, Kids in Danger, shows that 111 of the 318 products recalled by the CPSC in 2006 were children's products, representing 35% of all product recalls. And of those 111 products recalled, about a third exposed children to risk of bodily injury – falling, laceration and impact injuries. Indeed, these recalled products caused 177 injuries and six deaths in 2006.

[3] "Unexpected Danger: Children's Product Recalls in 2006," Kids in Danger, March 2007. www.**kidsindanger**.org

There is a longstanding pattern of children's products representing a substantial proportion of all recalled products. In the years from 2001 to 2006, children's product recalls have ranged from one-third to one-half of all products recalled, with a high of 55% in 2001 to a low of 31% in both 2003 and 2004. In 2006 alone, nearly 19 million children's product units were recalled.

The term "recalled product" suggests that a product has been successfully returned, repaired or replaced: in fact, that is rarely the case. Most products that are recalled remain in the marketplace and in consumers' homes, threatening the safety of those consumers who use them. Estimates on successful rates of recall for the average product fall somewhere between 10-30%, though it's difficult to find accurate information from the CPSC on this issue.

Marla Felcher, in her book "*It's No Accident – How Corporations Sell Dangerous Baby Products*," [4] quotes a CPSC study estimating that manufacturers cannot account for 70-90% of sold infant products after they have been recalled.

When one-third to one-half of all recalled products are children's products, and with recall rates typically hovering around 10-30%, it's clear that a large number of potentially harmful products are putting children at risk. Indeed, 17 month old Danny Keysar, for whom this legislation is named, died when his Playskool Travel Lite portable crib collapsed on his neck. That crib had been recalled, but neither Danny's day care center nor Danny's parents had been informed of the recall. This crib model killed 5 other children besides Danny.

Currently, once a product is recalled, the CPSC and the manufacturer draft the recall notice and send it out over the wires. Unfortunately, this vital information often does not reach the very people who most need it. There is no law requiring manufacturers to try to find purchasers of the product or to notify parents or day care centers if a product

[4] Common Courage Press, 2001.

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. Moreover, high chairs, cribs, strollers, infant swings and carriers often continue to be used for months or years after they have been recalled.

That is why H.R. 1699 is so important. While it is not likely to create a perfect system of product registration, such registration cards have been shown to be effective in increasing the contact information manufacturers have on file in the event they must issue a safety recall. Toro Corporation, for example, provided data to the CPSC showing that the return rate for its postage paid cards presently included with mowers sold at Toro dealerships is 75-80 percent. That shrinks to 35-40 percent for mowers sold through mass retailer outlets. The return rates for the non-postage paid card is 10-20 percent.

Further, since March 1993, by federal regulation, car seat manufacturers are required to provide a simple product registration card of the kind specified in H.R. 1699.[5] This legislation is clear- the card is not to be a warranty or marketing card of the sort that many consumers have come to ignore because such cards ask intrusive questions and appear to be created solely for marketing purposes. H.R. 1699 also calls for registration cards to include an explanation of their narrow safety purpose – to facilitate notification of consumers in the event of a recall.

In a 2003 National Highway Traffic Safety Administration survey, the agency found that almost three-quarters (73%) of parents/caregivers who said they obtained a new car seat new also said that a registration card came with the seat. Of these, 53% said they mailed back the card.[6] According to NHTSA , the average completion rate for recalls of child restraints went from 25% to 50% after the child restraint registration system went into effect.

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[5] 49 CFR Parts 571 and 588, Docket No. 74-09, Fed.Reg. September 10, 1992).

[6] Motor Vehicle Occupant Safety Survey, http://www.nhtsa.dot.gov/people/injury/research/2003MVOSSVol5/pages/ExecSumm.htm

Members of the Subcommittee might be interested to know that in 2001 consumer groups submitted a petition to the CPSC [7] asking for a standard that would require registration cards on products for children. The petition called for many of same requirements that are set out in H.R. 1699, including ensuring that the card is postage paid and calling for straightforward consumer contact information and assurances that the information will only be used in the event of a recall, so the cards don't become a sales or marketing vehicle.[8] In a 2-1 vote, the Commission denied the petition on April 28, 2003, despite evidence that such cards have improved registration of car seats substantially.

There are attendant hurdles associated with consumer access to information about recalled products. For example, once a product is recalled by the 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, or whether the recall outreach used for a particular product was effective. We would recommend that the Committee work with the CPSC to close this information gap.

H.R. 814, Children's Gasoline Burn Prevention Act

CU supports H.R. 814, Children's Gasoline Burn Prevention Act, to give the CPSC the authority to require child resistant closures on gasoline containers. We applaud Congressmen Moore (D-KS) and Bachus (R-AL) for introducing the legislation. Currently, the CPSC isn't empowered to regulate gas cans because these containers aren't sold with gasoline inside. This bill will correct that problem, allowing the CPSC to require child-resistant packaging on gasoline containers, as they already do with other dangerous containers like household cleaners under the Poison Prevention Act.

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[7] **Federal Register** , Vol. 66, No. 148, Wednesday, August 1, 2001
[8] Id.

Congressman Moore introduced his bill after a four year old boy in Kansas died, and his three-year-old brother was permanently scarred, when the children opened and spilled the contents of a gas can, causing the gasoline vapors to be ignited by a hot water heater.

Gasoline is dangerous because it is highly volatile—the fumes are capable of ignition up to 12 feet away from a pooled source. The inherent danger is further multiplied by its explosive potential. When ignited, gasoline vapors form a fireball with 10 times the heat released in the liquid.[9]

CPSC staff reviewed 209 children's clothing burn injury reports received from March 2003 through June 2004 and found that more than one-half involved gasoline or other flammable liquids.[10]

Our analysis of CPSC incident data shows that about 3 children under age 5 die and more than 2000 are treated in hospital emergency rooms each year from incidents involving gasoline. Data show that while about 27 percent of the injuries involving gasoline are from thermal burns, a majority of incidents are from poisoning and chemical burns. A requirement for effective child-resistant closures will protect against all these hazards to young children.

We strongly support H.R. 814 and believe that the standard referenced in the H.R. 814, ASTM F2517-05 ("Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use") is good. We want members of the Subcommittee to be aware that the standard itself will likely allow up to 20% of children to defeat the child resistance closure. If the standard is made stronger, it may reduce the general public's ability to use the gas cans.

Finally, we believe this bill could be strengthened by expanding its scope to cover portable kerosene containers that also lack a requirement for child-resistant closures.

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[9] **Childhood Burn Injuries Related to Gasoline Can Home Storage,** ***Pediatrics,*** 1997, 99.3.e3, Christopher S. Kennedy and Jane F. Knapp.
[10] http://www.cpsc.gov/CPSCPUB/PREREL/prhtml05/05028.html

Although the incident rate for kerosene containers is a fraction of those for gasoline containers, the hazards are the same.

H.R. 1721 – Pool and Spa Safety Act

CU supports Rep. Wasserman Shultz's (D-FL) proposal to increase the safety of swimming pools and spas. Pools and spas present the greatest home safety hazard to children, each year claiming about 260 lives of children under 5. Another 2,725 young children are treated annually in hospital emergency rooms for submersion injuries – mostly in residential pools. These deaths and injuries are tragic, yet preventable. As a result, CU believes that a comprehensive approach will provide multiple layers of protection and is the most effective way of reducing spa and pool drowning incidents.

We strongly support Section 3 of H.R. 1721, which calls on CPSC to adopt an entrapment protection standard for all swimming pools or spa drains within one year of the bill's enactment. Consumers Union regrets that such a standard was never made mandatory by the CPSC, and is terribly saddened by the tragic drownings of the two children mentioned in the bill, 7 year-old Virginia Graeme Baker and 5 year-old Preston de Ibern because of a poorly designed drain.

We support the bill's proposed grant program to encourage states to improve their pool and spa safety laws and provide safety education programs. To be effective, the $5 million annual grant, to be administered by the CPSC, must not a part of the CPSC's inadequate $63.5 million annual budget. We recommend that this grant money be prioritized based on drowning incident rates per state, and should be used to fund new programs, not subsidize existing ones. We also think that a $5 million annual grant for each of the next five years is not enough to both encourage states to improve pool and spa safety laws, and also to develop effective drowning prevention campaigns.

We are also concerned that this bill does not adequately address many of the safety issues involving above-ground pools, particularly inflatable pools, which groups like

ASTM have identified as an emerging hazard. Unsafe design and the lack of safety standards make inflatable and other types of above ground pools particularly hazardous. The result is rapidly escalating drowning incidents as these low-cost pools become more popular in the consumer marketplace.[11]

Of the various layers of protection required to increase the safety of pools and spas, we believe that adequate fencing is the most important. However, since the CPSC does not likely have enforcement authority over fence installation, any grant program should focus on encouraging States, as their first priority, to require by law adequate fencing around pools and spas.

We also believe that making safety devices such as pool alarms a mandatory part of a pool's design is well within the authority of the CPSC. Two states, New York and Connecticut, have laws requiring alarms for all new pools. We think there should be a federal requirement for all pools to incorporate intrusion alarm systems.

Having endorsed pool alarms, however, we hasten to add that not all pool alarms work effectively. When CU tested six popular alarms for publication in *Consumer Reports* magazine (June 2006, p 7.), we found that only two met the voluntary industry standard (ASTM F2208). Three models failed to alarm within the required time and, as a result, could provide a false sense of security. Another model had such a serious problem with false alarms that an owner might be prompted to shut the device off.

Indeed, CU found that the pool alarms that failed our tests did not comply with the industry safety standard, so CU petitioned the CPSC in 2006 to make the ASTM standard mandatory for all pool alarms sold. In response to our petition, a CPSC official informed us that the Commission is working with ASTM to upgrade the standard. However, while upgrading the standard may be useful, the problem lies with widespread

[11] Based on CU's analysis of CPSC data, the number of drowning incidents in portable pools has been rapidly escalating at an average rate of about 50 percent per year since 2000. CPSC data indicate 4 drownings in 2000 in portable pools; by 2005, this number had grown to 29.

noncompliance with the standard, a problem CPSC has yet to address, either in response to our petition or on its own.

CU shares the goals H.R. 1721 and believes that pools and spas can be made inherently safer through better design and incorporation of safety devices. We support the proposed grant program and educational campaigns provided adequate funding is made available to make these programs effective.

Conclusion

Consumers Union supports all four of the bills before the Subcommittee this morning. We believe that if a product proves hazardous and can be made safer for a reasonable cost and the utility of the product preserved, we should take the steps to make that product safer. The bills you are considering this morning embody that basic principle. We look forward to working with Subcommittee members in the coming months on these and other important product safety initiatives.

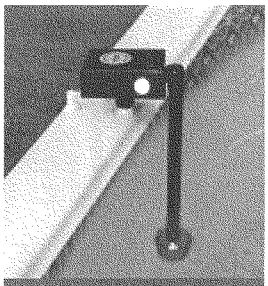
SAFETY ALERT

THREE POOL ALARMS 'NOT ACCEPTABLE'

On average, more than 300 children under the age of 15 drown in swimming pools every year, according to federal data. Pool alarms are designed to raise an alert if people enter the water when they're not supposed to. But in our tests, only two of seven alarms worked well. Three were rated Not Acceptable.

How alarms work. Most use sensors to detect motion in the water. Some float; others attach to the pool's side. Some work with both in- and above-ground pools; others with one type. Under ASTM International's voluntary standards, an 85-plus-decibel alarm must sound poolside and in the house within 20 seconds when an 18-pound mannequin falls into the pool, and there must be no false alarms in a 15-mph wind or when a basketball plops into the pool.

CR's take. Choose one of the two Poolguards. The Pool S.O.S., PoolEye PE21, and Pool Patrol were Not Acceptable: They failed to sound an alarm within 20 seconds. The PoolEye PE13 isn't recommended because it sounded many false alarms. We also tested the Safety Turtle Standard System, a wrist sensor that sends an alarm when submerged, but it works only on the child wearing it and needs an additional receiver to sound off at both pool and house. Even effective alarms are no substitute for fencing a pool and latching doors and gates, says Julie Gilchrist, M.D., an epidemiologist at the federal Centers for Disease Control and Prevention.



THIS ONE WORKED Our tests showed that the Poolguard PGRM-AG would sound an alarm if a small child fell in.

Quick Ratings Pool alarms

Within groups, in price order.

Brand & model	Type	Price	Meets standard?	Comments
Poolguard PGRM-AG	Above-ground	$140	Yes	Alarmed within 20 seconds.
Poolguard PGRM-2	In-ground	225	Yes	Alarmed within 20 seconds.
NOT RECOMMENDED				
PoolEye PE13	Above-ground	110	No	Alarmed within 20 seconds; prone to false alarms.
NOT ACCEPTABLE				
Pool S.O.S. PA-100	In- or above-ground	80	No	Failed to alarm within 20 seconds.
PoolEye PE21	In-ground	150	No	Failed to alarm within 20 seconds.
Pool Patrol PA-30	In- or above-ground	200	No	Failed to alarm within 20 seconds.

NOW HEAR THIS: GOOD HEADSETS FOR BLUETOOTH CELL PHONES

Bluetooth, the technology that lets you use a cell phone with a wireless headset, is coming on strong. More Bluetooth phones are available, at prices that start around $130. Bluetooth headsets cost as little as $30, and many are smaller than ever. They eliminate fumbling for a ringing phone and are more convenient than a wired headset. When paired with a cell phone that has voice activation (virtually all Bluetooth models do), the devices can make or take calls, even if the phone is up to about 30 feet away. (They beep or vibrate when you're called.) Here's how to choose a Bluetooth headset, plus good choices from recent tests.

Compactness costs. A small, sleek headset can cost more than $150 and will probably have a smaller battery and thus less talk time per charge.

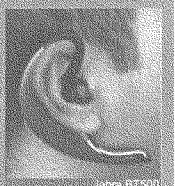
Setup takes time. Bluetooth phones and headsets must be electronically introduced, in a sometimes tricky procedure called pairing. Some models have a button to simplify the process. Most Bluetooth devices are monogamous. If you buy a second Bluetooth headset or want to connect with other Bluetooth devices—a printer, a PDA—your phone has to sever ties with the old headset before pairing with the new partner.

Charging differs. All models come with wall chargers; a car charger is typically $10 to $30. Some come with a USB cable for recharging via a computer's USB port. Talk time per charge varies from about four to nine hours.

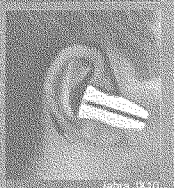
Try several headsets. Make sure buttons are easy to reach and to identify by touch. Some headsets can mute or hold a call. Look for an audible low-battery warning. Small headsets won't wiggle on your ear as larger ones can.

Assess voice commands. Most Bluetooth phones will voice-dial once you teach them that "Mom," let's say, is a certain number. The most sophisticated let you dial any number by speaking it into the headset, and instantly summon voicemail and other common applications.

CR's take. There are several good choices. The Jabra BT350, $80, provides nine hours of talk time on a charge, but it may wiggle. The Jabra BT500, $120, is stable, hangs comfortably behind the ear, and has a pairing button for simple setup. Talk time is eight hours per charge. The Jabra JX10, $180, and Motorola H700, $120, are small, light, and stable, but their talk time is only about half as long. The Jabra has a pairing button. The Motorola has a low-battery alarm; the Jabras don't, but they do have a USB charging cable.



Jabra BT500



Jabra JX10

JABRA JABBER The BT500 sits behind your ear and gives eight hours of talk time per charge. The JX10 is sleeker but allows half the time.

Mr. RUSH. The Chair recognizes himself for 5 minutes of questioning.

Ms. Greenberg, do you know whether other similar agencies have overall caps on the amount of civil penalties that they can assess? Are the CPSC's limitations rare in this instance?

Ms. GREENBERG. I do know that the FTC, for example, does not have limits on—it does not cap fines that the agency can impose on those who violate the FTC statute. I do not believe that NHTSA has a cap on fines that it can impose, and I think that the general concept of having a cap on fines for companies who violate a law just sort of goes against, I think, common sense. You really do not want companies—as Ed Mierzwinski just said, you do not want companies figuring that this is the cost of doing business, not reporting something.

Section 15(b) is so important to CPSC because it really acts as its early warning system. So I think anything we can do to encourage companies and also to deter companies for failing to report is really important.

Mr. RUSH. Mr. Moore has, as you indicate in your testimony, indicated that he is opposed to caps at all. He wants to eliminate them altogether; is that right? I think, in your written testimony, the Acting Chairman is not in favor of the caps of our bill.

Do you have any knowledge about whether or not the CPSC—what their response is to the overall bill?

Ms. GREENBERG. Raising the caps? Well, I remember former Chairman Stratton's commenting on caps, and I think one of his concerns was it would lead to greater litigation, and I am not sure I completely understand that argument.

I would think that the leadership officials at the CPSC would want every possible power that they can muster and that Congress would give them to make sure that companies are complying with their laws. So it surprised me a little bit that the former chairman of the Commission did not want that additional power to ensure that companies were reporting for this very important early warning system that CPSC has. Otherwise, I have not heard compelling arguments about why that cap even exists and why it should not be either raised or simply there ought to be no cap. I think it impairs the effectiveness of the CPSC.

Mr. RUSH. Thank you.

Mr. Mierzwinski, according to the Acting Chairman's written testimony, Ms. Nord's written testimony, she states that the agency would need more resources to implement all of the bills if they became law, all of the bills that we are considering today.

Please state what your opinion is on the level of additional CPSC resources that might be required to implement these bills.

Mr. MIERZWINSKI. Well, Mr. Chairman, I think that the matter of the CPSC reauthorization has not been carried out since, I believe, 1990, and the matters have not been adequately reviewed on an overall basis, but for these particular bills. I think that what we are looking at is that the agency has had a diminishing number of full-time equivalents; its budget has been relatively flat over the years, and we spend very little money on this agency that regulates 15,000 separate products. We are asking it to conduct a couple of rulemakings to initiate a grant-making process. It would seem that

it would need at least several new staffing slots just to deal with these bills.

I think the money is probably modest, but I would hope that the committee can move these bills and then also move separately oversight and possibly a reauthorization that results in increasing the resources of the Commission in the long run. They may be able to juggle things around with existing resources. Although, I do note that, on the pool bill, I think it would be useful to have an additional person to administer the grant program, and we probably would agree with them on that.

Mr. RUSH. Thank you very much.

The Chair now recognizes the ranking member, Mr. Stearns, for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

I think, when you have bills like this, I think, as a parent of three boys and seeing them around swimming pools when they were young, and also experiencing having the gas can in the garage and the possibility they could open it themselves, it makes you concerned as a parent, and I am very sympathetic.

Also, though, as a small businessman, I look at the economic cost/benefit analysis for some of this, and I was struck that, when Dennis Moore was over here talking about his particular bill in dealing with the caps on the gasoline cans, he mentioned that 1,200 children were in hospitals because of it. He did not indicate how many died. I understand from staff, roughly there are 80 million children in the United States. So as to the cost/benefit analysis, whatever you do, you are talking about, because 1,200 ended up in the hospital, it is 0.000015 of the 80 million, so it is a very small significant.

Now, one child ending up in a hospital is a tragedy, and a death is absolutely unnecessary, and I think what is being proposed here is not unreasonable, but the question I have for both of you is do you ever take into account the cost/benefit analysis here?

You are dealing with the Pool and Spa Safety Act. As I understand it, we have had 300 children who were killed, and this is out of 80 million. So do you ever consider the cost/benefit analysis for—is there one point where you would say, "Is 0.000015 such a small percent that it may be not significant in the totality in looking at this issue dealing with caps on gasoline cans?"

Ms. Greenberg.

Ms. GREENBERG. I think I would probably go back to our sort of working philosophy as a consumer organization and an organization that cares very deeply about safety.

When the Consumer Product Safety Commission was set up, there had been a congressional study looking at all kinds of terrible injuries that happened to children, and——

Mr. STEARNS. And you take into account the overall percentages when you look at this, or you just look at the deaths and the incidents?

Ms. GREENBERG. Well, what we look at is can a product be——

Mr. STEARNS. Improved regardless of the statistics?

Ms. GREENBERG. Can a product—well, you know, 1,200 kids in the hospital is—maybe we evaluate that differently.

Mr. STEARNS. No. I think it is terrible, but I am saying, relative to 80 million children, it is a very small percentage.

Ms. GREENBERG. Yes.

Mr. STEARNS. So you are saying you do take the statistics into account?

Ms. GREENBERG. What we try to do is look at how much are fixed costs, and if it can be done for a reasonable amount——

Mr. STEARNS. Go ahead and do it.

Ms. GREENBERG. We are talking about a gas cap. It is a change in design.

Mr. STEARNS. Right. I understand. I think that is a good example. I think a gas can can be taken care of much like you have got vitamins or you have medicine that has that cap on it so that it is childproof. I agree.

Do you agree with her? Is that pretty much——

Mr. MIERZWINSKI. Mr. Stearns, I would agree with her, but I would have to say the cost/benefit analysis is only a tool. I think it can be easily overused in measuring the value of a consumer's life versus the need for a health and safety standard. I do not know that it is necessarily the right approach in all circumstances.

Mr. STEARNS. But in lots of these cases, the parents of these children are delinquent, too. We know that the child ends up in the hospital or there is death, but there is some culpability for the parents in not supervising their children. Wouldn't you agree on that?

Ms. GREENBERG. Well, again, when CPSC was set up, Congress, the panel which is a bipartisan panel that set the Consumer Product Safety Commission up, was very focused on making products safer, not on parents' behavior, because it isn't a child's fault if a parent's attention has waned or they have been called off to deal with another problem with a child. We deal with this all the time in the area of product safety, this notion of product misuse or parental negligence or whatever.

Mr. STEARNS. So you don't take that much into account.

Ms. GREENBERG. If we did, there would be a lot more injured or dead children today.

Mr. STEARNS. In the areas of increasing civil fines, this letter I put into the record for the National Association of Manufacturers points out that CPSC has never even gone up to the $1.8 million in fine. And now we are asking for it to go up to $20 million in fine. So each of the instances you cite does not amount to the full penalty authorized.

What information do you have that a $1.825 million civil penalty is not sufficient when there is no evidence they have ever used it and now you want to go up by 1,000 percent supposedly? So the question is why go up so much when the CPSC has not even used the amount that they have as a penalty?

Ms. GREENBERG. We didn't make the decisions that CPSC made to impose fines. In my view, in some of the cases much higher fines probably were warranted. The powers that be at the CPSC perhaps didn't agree with our philosophy on that.

Mr. STEARNS. So you would go up to $20 million.

Ms. GREENBERG. I don't want to commit to a specific number. What I do think is important is that the Commission, the CPSC, have the ability to impose a fine that is not specifically set out. The

$20 million fine gives them more leeway to impose higher fines. But I don't think when you see the litany of companies that fail to report, I don't think the fines are serving as an adequate deterrent to nonreporting. We see many, many examples of companies that do not come forward and report.

So I personally believe that there ought be no cap. I don't think that companies should have an opportunity to make a cost/benefit analysis about maybe we won't report because we are not likely to get fined the full amount. I don't think that makes sense for any Federal agency to have to work under that constraint. So that would be my preference. But given that we have a $1.825 million, I think $20 million fine is a much bigger threat.

Mr. STEARNS. Thank you, Mr. Chairman. I think she is indicating that she would go up to $100 million. You are saying that if there is no ceiling, in your opinion you could go up to $500 million. So thank you, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentle lady from Illinois Ms. Schakowsky for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

I want to talk a little bit about this cost/benefit ratio. When we start getting into 1,200 children out of 80 million children, that is really not the question. It is 1,200 children versus how much would it cost a company to make a small and responsible change in their product. And if you want to just get into dollar figures, how much does it cost to care for a severely burned child in a hospital, for how long, throughout their whole life, it is just kind of ridiculous when we are talking about a very small cost to improve a product that can save 1,200 very precious children. And so I think the argument is a little bit specious, especially, as you said, the philosophy is let's look at what it would really cost to improve a product.

And so I want to talk a little bit about my bill on the recall registration. I have looked at Acting Chairman Nord's testimony, and she points out a petition that was acted on in 2001 and making recall registration cards, and they found that this wasn't useful. Well, for one thing, they were talking about doing it for all children's products.

I want to make it very clear that in my bill we are specifically listing the products, and they are the durable children's products, as you pointed out, Ms. Greenberg, that stay in the home for a long time or often passed on to the next generation of children. And so we are talking about very specific products.

But the other thing that I wanted to ask you both about is that they say that these cards are ignored and returned. And I want to once again get on the record, if you would, the refutation of that argument, because while no one is claiming that this is a perfect mechanism and that it will result in every consumer knowing about the recall, is it not true that there is evidence of significant improvement? And if I could start with you, Ms. Greenberg, and then go to Mr. Mierzwinski.

Ms. GREENBERG. Significant improvement in——

Ms. SCHAKOWSKY. The number of consumers that then know about the product recall.

Ms. GREENBERG. Your bill very clearly lays out what the card should state. As my colleague pointed out, people are very cynical

about these recall cards, or these cards in general, not the recall cards, but these warranty cards that you get, because they ask you all sorts of personal questions, and so people don't return them. It is not the model we should be looking at.

With NHTSA, as you pointed out, the number of cards returned, NHTSA requires every manufacturer of a car seat to include a card, and the card return rate is 10 times what it was before the regulation went into place. And NHTSA is very specific in its regulation about what the card should say, what kind of information it is asking for and what it is not asking for. And it is asking for information in case of a recall. I have seen these cards. I have sent them in. I bought car seats. And they are very good. They say, mail this card now. They are postage paid. They do everything short of walking the consumer to the mailbox. They make it very easy. And now with cell phone portability, number portability, people have cell phone numbers that stay with them presumably for life. So there are ways to get in touch with consumers. And I think these cards have proven their effectiveness.

We know there are companies like Toro which has found them to be very effective when done right. They ask specific questions. They are not a marketing effort. They are not perfect. There is always going to be a percentage of consumers who won't return them. But it gets us many steps ahead of where we are today.

And the Danny Keysar situation where a kid is confronting or parents are confronting a product that has been recalled, and they didn't know about it, and the kid is injured or killed is just an untenable, terrible situation, and we should do everything, I think, to try to make sure that doesn't happen again. And this is a big step forward.

Mr. MIERZWINSKI. Thank you, Representative. And I would concur with Ms. Greenberg that the NHTSA situation offers a lot of guidance to the CPSC. In addition to their successful card programs, think about their successful marketing programs: Buckle Up, Kids in the Back. These are programs that work if we had a card that we trusted and the CPSC consumer groups would get behind it, and we could help you and help the CPSC make it work.

Mr. RUSH. The gentle lady's time is up.

The Chair now recognizes the gentleman from Texas Dr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman.

Staying on the concept of the card for just a minute, has there been any study to look at if the return rate for cards is increased if it is coupled with a rebate or something of value that would be returned to the consumer if they fill out the card?

Ms. GREENBERG. Congressman, I think I can respond to that, not with respect to the NHTSA situation, because they don't require car manufacturers to give a rebate or reward for returning the card, but some companies have done that, and that has been a successful strategy.

As I said, the CPSC held a couple of hearings a few years ago on recall effectiveness, and what you had is a bunch of companies coming forward and describing some very interesting and innovative ways to improve the recall effectiveness. I wish the CPSC had gone a few steps further and put some of those in place, but be that

as it may, what they found is that when they offered a reward or a rebate, yes, consumers responded more positively.

Mr. BURGESS. Again, the CPSC isn't here today to ask them. Kids are growing so fast, so products and toys that are bought for the nursery, a child outgrows them before they use up their shelf life. And if they have got a younger sibling on the way, that is a good thing.

I have never done this myself, but people in my family are great students of a thing on the Internet called eBay. What happens when someone sells their product on eBay; are they obligated to provide that follow-on information as far as the mailing card is concerned?

Ms. GREENBERG. Well, right now, since we don't—maybe with car seats it happens. I haven't seen it. But since we don't have product registration cards now, it is hard to say whether we would be able to incorporate that into eBay.

Mr. BURGESS. So a crib or a beach ball or a baseball or something, a small object that a child could ingest, if these things are sold on eBay, there is really no requirement for the seller to provide that follow-on information?

Ms. GREENBERG. No, Congressman, but I think that is an interesting idea.

Mr. BURGESS. If we increase—and we will get to the cap in just a minute—but if we increase the cap, of course I can see a company might say I am going to offer a rebate thinking this cap scares me to death because it is up to $20 million; but then is the company that sold the beach ball or the baseball glove or whatever, is the company still going to be liable when that product is resold on eBay after the child outgrows its usefulness?

Ms. GREENBERG. The cap is for reporting incidents related to product safety. It is section 15(b) of the Consumer Product Safety Act, and that is simply a requirement that companies report when they hear about incidents. So I don't think it would relate specifically to your eBay scenario.

Mr. BURGESS. At the present time we really don't have a good way to track resales at garage sales, even hand-me-downs within families, for these products.

Ms. GREENBERG. I, too, wish Commissioner Nord was here, because I know the CPSC is doing some interesting, innovative work on that.

Mr. BURGESS. Since I am so new at this, talk to me for just a minute about the fines. Right now how is that? And either of you, please feel free to answer this. Right now the fine is $1.875 million or thereabouts. How is that money allocated? If a company is fined $1 million, does that money all go to CPSC, does it go to the general fund, does the Department of Justice get it, does it go to the victim; what happens to the dollars?

Ms. GREENBERG. The U.S. Treasury. It goes into the general fund. It goes into the U.S. Treasury. It doesn't go into CPSC's budget, if that is what you are asking.

Mr. BURGESS. How much is spent just in the course of litigation to recover those monies?

Ms. GREENBERG. I don't have a strong sense of the litigation costs for CPSC, but they don't litigate very often. I do know that.

Mr. BURGESS. Is there a danger—with a vastly expanding cap, is there a danger of an unwillingness to settle on a fine because now they are at risk for such a higher settlement that more will go to litigation?

Ms. GREENBERG. That is the argument that has been certainly put forward.

Ed, did you want to respond to that?

Mr. MIERZWINSKI. I would just say, Congressman, that I think that argument is a red herring being put forward by companies that are regularly before the CPSC. The way I think that this system works today is that companies do their own, if you will, benefit/cost analysis, and they say the maximum fine is $1.83 million. Wal-Mart only paid $750,000.

Mr. BURGESS. On that issue, is there a danger then for MOFA reporting. We expand that fine a whole bunch, and is the CPSC just going to be flooded with data from companies that don't want to be caught in the situation of not having reported their problems?

Ms. GREENBERG. Well, I think it would be useful to look at what other agencies have experienced on this issue of fines and caps on fines.

Mr. BURGESS. If the Commissioner were here, we could ask.

Ms. GREENBERG. I don't think that has been a problem in other Federal agencies, the fact there isn't a cap on fines.

Mr. BURGESS. We should ask the question before we enter into that, so it would be a fair question to ask.

Mr. Chairman, you have been indulgent, and I know we have got to get on to other things. I yield back.

Mr. RUSH. Thank you, gentleman.

The Chair now recognize the coauthor of H.R. 1721, Ms. Wasserman Schultz of Florida. She is not a member of the committee, but the Chair recognizes her for 5 minutes for questions.

Ms. WASSERMAN SCHULTZ. Thank you very much, Mr. Chairman. And, Mr. Chairman, I want to thank you and Ranking Member Stearns for your support of this issue and for including this legislation in your hearing today.

I also want to, although I understand she has already been recognized, recognize Nancy Baker, who has been a tireless advocate on behalf of this legislation, which is named after her daughter Graeme Baker, who drowned in a suction drain entrapment accident; and Congressmen Hill, Matheson and Weiner, who are members of the subcommittee that are cosponsors of the bill.

I actually have a question for Ms. Greenberg. I noted in your testimony your support for pool alarms and their possible inclusion in this legislation. Every drowning expert I have worked with over the last 10 years has said that pool alarms are not the best first line of defense because they only address the problem after the child has already fallen into the pool.

Now, since you note in your testimony that pool alarms sometimes do, sometimes don't meet the national safety standards, the ASTM guidelines, and quite honestly, although I think they probably are at about 85 decibels, which is very, very loud, in the event that you are standing in the laundry room dealing with the practical reality of what happens when supervision lapses, if someone is standing in the laundry room and their dryer and washing ma-

chine are going, and the child falls in the pool, and the pool alarm goes off and they don't hear it, then we haven't addressed the problem. So can you speak to your support for pool alarms, because I sponsored the law in Florida which does not include pool alarms, and I remain completely unconvinced that that is wise.

Ms. GREENBERG. I confess that I am not an expert in pool alarms. I included it because Consumers Union tested pool alarms. I think we have got a series of safety devices that are all imperfect. Pool alarms is one of them. Hopefully you are not in the laundry room. It increases, I think, a parent's or a caregiver's opportunity to be notified if a child gets into the water and you don't want them there.

So it is certainly not a perfect solution. We said in our testimony, as you noted, that the best strategy for preventing kids getting into pools without parental supervision is to have a fence around the pool, but we know we can't make that happen on a Federal level. That has to be done on the State level. That is why your legislation is so good. It encourages States to do that.

But I have a colleague with me who has worked extensively on pool alarms, and I would be glad to answer any questions on the record or ask Don Mace, who is here from our Yonkers office, who is an engineer and worked on standards with pool alarms and worked on the testing that we did for Consumers Union. Maybe we can talk with you later.

Ms. WASSERMAN SCHULTZ. If you can follow up with me, because the chairman has extended a courtesy to me as a nonmember of the committee, and I would appreciate it.

And also as a member of the Appropriations Committee, I want to tell you both that I fully intend to pursue an appropriation for both the grant program and the education program if this legislation hopefully becomes law, and really have been an advocate on the Appropriations Committee of increasing the CPSC's budget. We actually did that in the Appropriations Subcommittee on Financial Services yesterday. So I sincerely hope—and you will have my full advocacy to make sure that it is not absorbed into the existing budget of the CPSC.

So, Mr. Chairman, thank you for the courtesy. I appreciate it. I yield back the balance of my time.

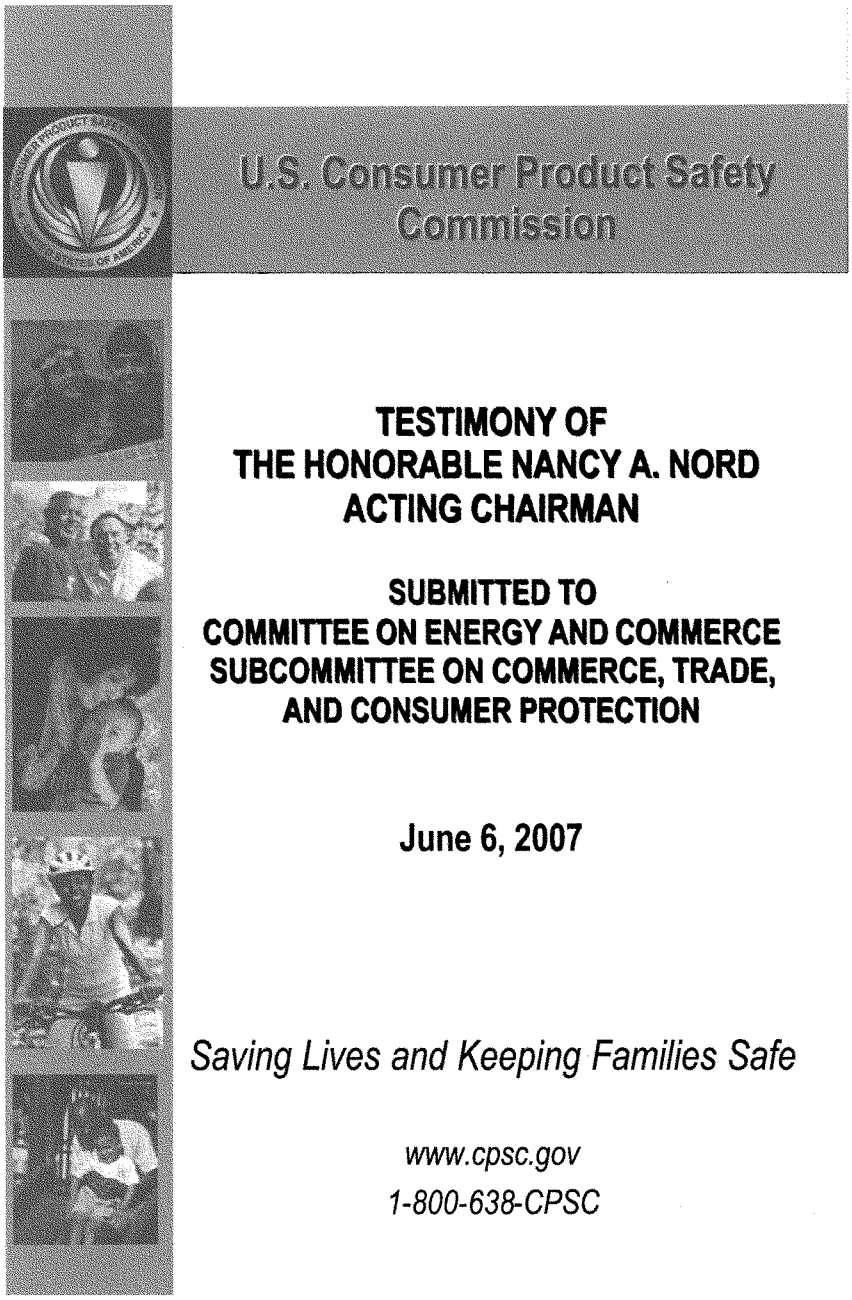
Mr. RUSH. Thank you very much.

That concludes the testimony of the witnesses, and that concludes the hearing. Again, I want to thank the witnesses for coming forward. I certainly want to reiterate our condolences and also our compassion and our thanks to Ms. Baker for attending today. And I want to remind members of the subcommittee that the record is open for 30 days for additional testimony and questions, and submit the questions in writing to whomever.

Thank you so much. Hearing no objections, the subcommittee is adjourned.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



TESTIMONY OF
THE HONORABLE NANCY A. NORD
ACTING CHAIRMAN

SUBMITTED TO
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION

June 6, 2007

Saving Lives and Keeping Families Safe

www.cpsc.gov
1-800-638-CPSC

Good morning Mr. Chairman.

Thank you for the opportunity to come before the Subcommittee again this morning to discuss product safety issues of mutual concern. Specifically, I am pleased to provide information regarding several bills introduced this Congress to address several product safety issues, including child resistant gasoline can closures, pool and spa safety, product registration for durable juvenile products, and the civil penalty limit under the Consumer Product Safety Act (CPSA).

However, before addressing these specific issues, I would like to take this opportunity to update the subcommittee regarding the activities of the U.S. Consumer Product Safety Commission (CPSC) since my last appearance before you in May. In particular, I would like to briefly discuss my recent trip to China to discuss with Chinese officials the need to improve the safety of consumer products imported from that country.

You and the other members of the subcommittee have expressed understandable concern over the growing number of product recalls of imported products, including those from China. As I have relayed to you

previously, about two-thirds of all product recalls under our jurisdiction are of imported products, and about two-thirds of these recalls of imports have been of products manufactured in China.

In meetings with Chinese officials in Beijing during the week of May 21, I and several of my colleagues from the CPSC proposed to the Chinese a number of activities 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 our hope that these discussions will lead to tangible and measurable results. While this is by no means the only thing we are doing to address these product-related safety issues, it is, we believe, a significant development, and I would be happy to provide you or your staff with a fuller briefing on this and our other agency efforts to address the increasingly important issue of imports.

Also, by way of reminder, Mr. Chairman, you will recall that, although the Commission has been without a quorum for over four months, we continue to be very active on a host of fronts. For example, our Office of Compliance and Field Operations is on pace this year to set another record

number of product recalls (possibly in excess of last year's all-time high of 466 recalls). We are doing twice the number of incident investigations from that done when our staff was much larger. On the regulatory front, we are presently engaged in 14 active product safety rulemaking procedures, again a record high for the agency. (While the Commission obviously cannot vote on these until our quorum is restored, staff work continues unabated.) And in the other key area of public information and education, we have never been busier as we attempt to raise awareness of not only product recalls but also broader issues, like pool and ATV safety.

Regarding the topic at hand, Mr. Chairman:

You asked that I address four specific bills introduced during the 110th Congress. Before I do so, I would like to make clear that the Commission has taken no formal position on these or any other legislation now pending before Congress.

I would also like to note, as you well know, that the last time the CPSC was authorized under the CPSA and the last time any of the other major statutes we administer were updated by Congress was 1990. All things

considered, I believe it is in the best interest of consumer product safety to look to possible modernization of these statutes, as well as looking at the resources of the agency, to address both general and specific product safety issues. I believe this broader approach is to be preferred over "regulation by legislation" on specific products and product categories. 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 make sure we continue to understand and anticipate emerging product safety hazards as, for example, whether and to what extent incorporating nanomaterials into consumer products might affect consumer safety.

Having said that, the bills before the subcommittee for discussion today are relatively distinct from one another except for two commonalities. First, all the bills evidence a genuine desire to address real and difficult product safety issues. Second, should any, or all, of these bills be enacted into law, we will require additional resources to implement and enforce them. As you know, Mr. Chairman, the CPSC is relatively small, with just over 400 full-time employees (FTEs) and a budget of just over $62 million in FY 2007. While other, larger agencies may be able to realign priorities and

resources to implement new legislation, we operate on a very small margin at the CPSC and any significant new commitment of people, time or money will result in fewer resources being available for some other area or activity. In other words, we will need to take resources away from existing projects to implement the projects addressed in these bills unless you can assure additional resources for these new activities.

HR 814

The Children's Gasoline Burn Prevention Act, H.R. 814, would require the CPSC to issue regulations mandating child-resistant closures on all portable gasoline containers. There currently exists a voluntary ASTM standard for child resistance of portable fuel containers for consumer use. That standard is referenced in the legislation. Additionally, CPSC staff has recommended a change to the standard that is currently being balloted.

H.R. 814 would require promulgation of the ASTM consensus standard, or "any successor standard issued by ASTM International" as a mandatory consumer product safety standard. The "any successor standard" language would appear to be a problematic

delegation of legislative authority to the private sector. As discussed below with respect to H.R. 1721, Public Law 101-608, dealing with a mandatory standard for automatic garage door openers, may provide a better model for consideration.

Furthermore, while H.R. 814 would waive many of the rulemaking findings required by our statutes, it does not waive or address time consuming rulemaking requirements applicable to the CPSC imposed by external statutes such as the Regulatory Flexibility Act (cost/benefit analysis), Small Business Regulatory Enforcement Fairness Act (impact on small business and other small entities) or the National Environmental Policy Act. I would offer assistance from my staff to address such technical issues with the bill.

HR 1721

The Pool and Spa Safety Act, H.R. 1721, seeks to increase the safety of swimming pools and spas. Swimming pool and spa safety is a major and long-term concern of the CPSC, and the agency has dedicated significant resources to this issue over the years. While we underscore that there is no substitute for diligent supervision, the CPSC recommends multiple

layers of protection to guard against child drownings. Constructing and maintaining barriers to prevent children from gaining access to pools is an essential first step that every pool owner must take. In addition to these barriers, the CPSC recommends additional layers of protections such as safety covers.

The CPSC is also very concerned about deaths resulting from entrapment and recently updated its publication entitled "Guidelines for Entrapment Hazards: Making Pools and Spas Safer." In 2005 CPSC's annual comprehensive national safety campaign focused on pool drain entrapment hazards. In 2006 the education campaign focused on the hazards associated with increasingly popular inflatable pools, and this year's campaign, just launched over Memorial Day, warns that children's drownings are a silent death that do not usually involve calls for help or the alerting sound of thrashing water.

H.R. 1721 would make mandatory the current (at the time of enactment) ASME/ANSI voluntary drain cover standard that was crafted to help prevent the tragedy of pool and spa entrapments. With regard to this provision, a technical change in the bill's language would be helpful to keep the

standard current subsequent to becoming effective as a consumer product safety standard under Section 9 of the CPSA. I again call to your attention language in Public Law 101-608 which is a mandatory standard for automatic garage door openers passed by Congress in 1990. This law gives the Commission flexibility to adapt the mandatory standard in response to any revisions that may be made to the voluntary standard after the date that the law was enacted.

Additionally, H.R. 1721 establishes a pool safety grant program, to assist states that currently have laws or subsequently enact laws that meet certain minimum requirements outlined in the legislation. The CPSC has never provided grants and lacks the staff expertise and administrative infrastructure required to issue or oversee grants. I would recommend that the committee consider adding language to the bill that would direct an outside agency with such expertise and infrastructure to provide grant administration services, including audit services, on a reimbursable basis to the CPSC. The CPSC would retain authority to make the final determination of grant awards, and these costs could be paid from the appropriated funds for the grant program.

HR 1699

H.R. 1699, the Danny Keysar Child Product Safety Notification Act, directs the CPSC to require manufacturers of certain durable infant and toddler products to provide registration cards with each such product, to maintain that information, and to permanently place the manufacturer's name and other information on each such product.

By way of background, the CPSC was petitioned in 2001 by the Consumer Federation of America to require, among other things, that manufacturers (or distributors, retailers or importers) of products intended for children provide a registration card along with every product and to maintain that information for a minimum of twenty years or the useful life of the product, whichever was longer.

Subsequently, under the Consumer Product Safety Act (CPSA) the Commission's General Counsel docketed that part of the Federation's petition that addressed product registration cards and directed staff to prepare a briefing package for Commission consideration. The Commission requested public comment and held a public hearing to discuss the merits of the petition. A number of interested stakeholders

presented their views both in writing and at the public hearing, including the Consumer Federation of America, U.S. PIRG, Consumers Union, the Toy Industry Association, the Juvenile Products Manufacturers Association and the International Mass Retail Association.

After considering these comments and other relevant data (including that detailing the experiences of NHTSA respecting car safety seats), the Commission did not grant the petition. In its briefing package addressing the petition, the staff expressed reservations about the effectiveness of a registration card program. The staff noted that the cards are frequently ignored and not returned; that people move frequently with the result that, after three years, the ability to reach even those few people who return cards has gone down dramatically; and that registration cards would not be passed on to subsequent purchasers. The staff noted that recall effectiveness has been a challenging issue since the Commission's earliest days.

In considering this legislation, the Committee should be aware that the agency is currently addressing recall effectiveness in a number of different ways. For example, we have done a limited, but on-going study of past

recalls which shows, among other things, that people are more likely to respond to recalls when the product is an expensive one and that the hazards most likely to get consumers' attention are fire and electrical hazards. Earlier this week we "went live" with our Consumer Opinion Forum, an on-line consumer survey mechanism. In April we initiated the "Drive to One Million" to encourage consumers and others to subscribe to receive notification of all CPSC recalls by e-mail. Later this summer, we will hold two consumer focus groups to discuss recall effectiveness, including how consumers respond to product registration cards. These are just some of the things we are doing in this area.

As stated above, H.R. 1699 would require product registration cards for durable infant or toddler products. While the Commission would, of course, work to implement the legislation and meet its deadlines if it were enacted into law, certain technical changes to the language of the bill would help to clarify Congressional intent and direction should the Committee decide to proceed with this legislation. For example, clarification of the definition of a durable infant or toddler product would be helpful in determining what products, if any, are intended to be covered beyond those specifically identified in the legislation.

Additionally, the language of Section 4(a) of the bill directs the CPSC to issue a rule under section 7 of the CPSA "pursuant to its authority under section 16(b). These references create a conflict; section 16(b) permits a two step rulemaking process whereas Section 7 requires a lengthier, three step process. Rulemaking under Section 7 requires a number of findings to assure that rules adequately address risks without undue burden on commerce. Given these statutory requirements and further external constraints such as the seventy-five (75) day comment period required on proposed regulations pursuant to the North American Free Trade Agreement, it is unlikely that the stated 270 day time frame for a final rule could be met. Again, I offer my staff's assistance to work with committee staff to address these concerns about the technical provisions of the bill.

HR 2474

The final bill that we are discussing today is H.R. 2474, which would significantly increase the current maximum civil penalty for violations under the CPSA from $1,825,000 to $20,000,000. Before enacting an increase of that magnitude, the Committee should seriously

consider both the need for such an increase and the impact it could have on the operations of the Commission. With respect to need, it is not clear that the current penalty cap needs to be increased to encourage more reporting. The overwhelming number of penalties that we impose are for violations of Section 15 (b) of the CPSA requiring reporting from product sellers, and in fact, the number of reports has been increasing in recent years.

I am also very concerned about the impact this change could have on the operations of the Commission. For example, the Committee should be aware that Section 15 (b) is written in very broad and somewhat imprecise terms and requires that companies make judgment calls about its applicability in specific cases. (This is to be contrasted with reporting statutes for other agencies where the reporting trigger is better defined.) When the staff disagrees with the judgment calls made by the company (or believes that the company has ignored its responsibility under the Act), we will seek penalties. We are generally able to negotiate a settlement without litigation, but if the stakes are greatly increased under this legislation, I would expect that more litigation will result. Litigation adds time and

expense to the process and ultimately could impact our ability to achieve voluntary recalls.

If the scope of the reporting obligation is not limited or at least clarified, then a penalty cap of this magnitude could cause established manufacturers and retailers to greatly expand the amount and quality of information that they report to the agency under Section 15 to avoid a significant penalty. Rather than making efforts to winnow out the unimportant information from that which we should be reviewing, we anticipate that those companies will report most everything to the agency and could easily overwhelm the agency's resources for timely identification of potential hazards. Conversely, a sudden tenfold increase could have the effect of driving some bad actors underground. The perverse result of that could be to have more unsafe products in the stream of commerce without early alerts to the CPSC.

The issue of penalties is more complex than just the amount of the ceiling under the Consumer Product Safety Act. To begin with, it is unclear why the legislation amends only the CPSA and not the other

statutes we administer. These statutes (particularly the Federal Hazardous Substances Act and the Flammable Fabrics Act) also contain provisions for civil penalties, with amounts and ceilings that are generally parallel to those found in the CPSA. If there is a policy reason for raising the amounts in the CPSA but not elsewhere, it would be helpful to have that articulated. Another issue that has arisen is whether the Commission, in determining penalty amounts, may consider only those factors expressly enumerated in the statutes or whether other relevant factors can come into play. For example, the CPSA does not mention the number of past violations as a factor to consider in determining size of a civil penalty; however, our Compliance staff believes that this can be a very relevant factor in assessing penalties. We also have the authority to impose criminal penalties under our statutes, but the statutes take different approaches on whether offenses must be committed knowingly or willfully and whether prior violations are relevant. In addition, it would be most helpful to have authority to seek asset forfeitures in these cases, an authority we do not now have.

While I am sympathetic to the Committee's desire to assure compliance with the CPSA and other statutes we administer, I am most concerned that merely raising the penalty cap will have consequences to the operations of the agency that the Committee has not fully anticipated. I would be happy to make staff available to discuss these issues in more detail.

Thank you again, Mr. Chairman, for the opportunity to come before the committee to discuss these important safety issues and related legislation. I appreciate our continued dialogue and look forward to answering your questions.

July 5, 2007

The Honorable Nancy A. Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Nord:

Thank you for your testimony that was submitted to the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, June 6, 2007, at the hearing entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721."

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Please begin the responses to each Member on a new page.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, July 13, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-225-2525** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Jan Schakowsky
Subcommittee on Commerce, Trade, and Consumer Protection

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Nancy Nord, Acting Chairman

Tel: 301 504-7901

July 13, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of July 5, 2007, related to the hearing by the Subcommittee on Commerce, Trade and Consumer Protection entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721." Attached to your letter were additional questions submitted by Chairman Bobby L. Rush and Congresswoman Jan Schakowsky.

Please find enclosed my answers to these questions. I should note that these responses reflect my own views and have not been considered by the Commission which, as you know, continues to lack a quorum.

Sincerely,

Nancy A. Nord
Acting Chairman

Enclosures

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Bobby L. Rush

1. *Civil Penalties. Do you agree with certain consumer groups that state that increasing the overall civil penalties cap imposed on the CPSC from the current $1.8 million would provide greater economic disincentive to committing violations or other bad behavior? Why or why not?*

I agree with the general theory that higher penalties could provide greater economic disincentive to committing violations. I also believe, however, that raising the caps too high or too quickly could have perverse effects of driving some companies underground and others to report so much information as to overwhelm CPSC's Compliance staff. For this reason, if Congress is going to legislate, I recommend that the caps be increased more gradually, over four years, to $10 million.

- *Do you agree that CPSC attorneys would be in a more powerful negotiating position if a manufacturer or other firm knew that the agency had a civil penalties cap that was higher than the current one?*

If a CPSC attorney seeks a penalty that is much higher than a firm believes is justified, that firm might well refuse to settle and choose to litigate instead. This happens occasionally even at CPSC's current penalty levels.

- *Would anything in this bill require the CPSC to seek the maximum penalties available?*

No such requirement is apparent on the face of the bill; however, the current statutory scheme only mentions five factors that can be taken into account in considering penalty amounts. Some have argued that the Commission lacks discretion to consider other factors. For this reason, I have recommended a clarifying amendment.

- *At what steps in the process must CPSC staff seek Commission approval of any civil penalty sought? Why is the approval process sufficient or not to satisfy any concerns about the appropriateness of penalties?*

In civil cases, the staff need only seek approval after a tentative penalty settlement has been reached. In practice, the Compliance staff generally consults with the Office of General Counsel and each Commissioner's counsel before commencing negotiations with the firm. A change in the penalty cap may require the Commission to establish new procedures in order to be sure that the staff has sufficient guidance. At present, of course, the Commission lacks a quorum, leaving the staff without any official guidance.

I have recommended amendments to the Consumer Product Safety Act, Federal Hazardous Substances Act and Flammable Fabrics Act clarifying the factors that may be

considered in determining penalty amounts. I also recommend that Congress consider authorizing CPSC to seek civil penalties administratively in an amount up to $2 million.

2. *CPSC Resources. In your written testimony, you emphasize the need for more CPSC resources to implement these bills. Can you tell us the level of increased resources that would be required, assuming that all the bills become law?*

CPSC staff estimates that the total cost to the agency of implementing the provisions of all four bills would be approximately $4,298,000. A spreadsheet identifying these costs is attached.

3. *Nursery Product Recalls. Do you support the goal of H.R. 1699, which is to require manufacturers to notify consumers directly if any nursery product (among a defined list of such products) is recalled?*

I believe that firms should give consumers direct notice of recalls wherever possible. When staff looked at a similar proposal in 2003, concerns were raised about whether such a process would be effective. Because of these concerns, I recommend that if Congress chooses to legislate, the bill be modified to give the Commission some discretion to choose the types of nursery products to address initially and then allow time to evaluate the effects of registration cards for those products before deciding whether to mandate registration cards for another tier of products.

- *Do you agree that consumers are more likely to fill in and return product registration cards that are both privacy protected and postage paid than cards that require consumers to pay their own postage or that contain no privacy reassurance?*

Yes.

The Honorable Jan Schakowsky

1. *In your testimony, you point out that CPSC was petitioned in 2001 to do a rulemaking on recall registration cards for products intended for children. Was the scope of the petition different from the scope of H.R. 1699?*

In 2001, the Commission received a petition from the Consumer Federation of America ("CFA") asking the Commission to issue a rule concerning product registration cards. Specifically, the petition requested a rule "requiring manufacturers (or distributors, retailers, or importers) of products intended for children provide along with every product a Consumer Registration Card that allows the purchaser to register information through the mail or electronically." The petition further specified that the rule should require that registration cards: (1) collect only information needed to contact the purchaser (e.g., name and address or email address); (2) have the postage paid by the manufacturer (distributor, retailer, or importer); (3) provide the name and model number of the product purchased; (4) state that the information collected will only be used to advise the purchaser of a recall or other important safety information. The petition also asked that the rule require the manufacturer (or distributor, retailer, or importer) to maintain this information for a minimum of 20 years, or the useful life of the product, whichever is longer, and that the rule require manufacturers (or distributors, retailers, or importers) provide reports to CPSC on the return rate of these cards.

The scope of H.R. 1699 appears to be more limited than the scope of the CFA petition. H.R. 1699 covers "durable infant and toddler products" whereas the CFA petition asked for a rule requiring product registration cards for "products intended for children." Also, the rule directed by H.R. 1699 would require only manufacturers to provide registration forms to consumers while the CFA petition also mentioned distributors, retailers and importers. (Note, however, that the CPSA definition of "manufacturer" includes importers.)

2. *Your testimony also states that the CPSC rejected the petition, concluding that product registration would not be effective because "people move frequently with the result that, after three years, the ability to reach even those few people has gone down dramatically." For registration of car seats, NHTSA also recognized this problem and offered a suggestion – "adding a space for an e-mail address on the registration form could make initial recall notification faster. It could also be helpful in locating seat owners that have changed residences but retained their e-mail address." H.R. 1699 follows this suggestion and requires a line on the registration card for including e-mail addresses. Do you think inclusion of e-mail addresses would help alleviate CPSC staff concern about the continued effectiveness of the relevant product registration database?*

CPSC staff notes that email addresses may help somewhat. Staff is, however, aware of a study done in 2002 that indicates that over 30% of email addresses are changed every year, which raises concerns about the continued effectiveness of the database.

3. *You also stated that CPSC staff expressed reservations about the effectiveness of recall registration cards and reviewed the data from NHTSA. NHTSA's review found that car seat registration increased from a rate of 3 percent prior to the 1993 card requirement to an average of 27 percent for the years 1996 to 2000 after the card requirement was in effect. That is nearly a ten-fold increase. Given these statistics, why do you believe registration cards are not effective?*

After reviewing the information in the study that evaluated the NHTSA requirement, CPSC statisticians note that while the rates did go up after the standard was implemented, there is not sufficient information to determine whether the increase was due to the standard or to some other reason. This is because the study was an observational study, and observational studies do not control all the factors that change. The analyst needs to introduce statistical controls for these factors. The only factor introduced in the study was the time between manufacture and recall. There may be other factors that affected the recall rates such as the price of the car seat, the type(s) of recall actions involved, the manufacturer (registration and recall varied by manufacturer), type of car seat, etc. CPSC staff further notes that registration cards are not likely to be useful for all types of products. If the product being recalled is an inexpensive item, has a useful life of only a few years, and the recall is occurring several years after production, the likelihood of getting the items back is low. A product registration card has a better chance of being used if the product is relatively expensive and has a longer useful life span.

4. *Your testimony also states that cards "are ignored and not returned." In its 2003 Motor Vehicle Occupant Safety Survey, NHTSA found that 53 percent of the parents or caregivers who found the recall registration cards when they purchased car seats returned them. Given that a majority of consumers have returned product registration cards, why don't you support the requirement?*

I refer you to my response to question 3 with regard to the fact that registration cards are not likely to be useful for all types of products. Also, it is staff's understanding that the 53% number comes from information provided by a subset of consumers who participated in a telephone survey. The figure that results from self-reporting by consumers is higher than what the manufacturers reported based upon the actual number of cards returned to them.

5. *Your testimony highlights CPSC steps, including holding focus groups and making efforts to increase the recall listserv, to improve recall effectiveness. From this work, what recommendations do you have to reach consumers who own recalled products*

more effectively? What concrete steps has the CPSC taken over the past five years to improve recall effectiveness?

The focus groups I mentioned are scheduled for later this year. Therefore, we do not yet have any specific recommendations flowing from that work. We also plan to make use of our new Consumer Opinion Forum to get input from the public on recall effectiveness issues.

We have launched our "Drive to a Million" campaign, which seeks to reach a million subscribers to the CPSC recall notification listserv. We have already succeeded in getting thousands of new subscribers, who will receive direct notice of all future recalls. I would be delighted to have your support for this project. For example, perhaps you would consider including information about it in your next newsletter to constituents.

Over the last three years, the staff has taken a number of other concrete steps to improve recall effectiveness. These include:

a. analyzed repair and return rates for larger recalls to identify more successful efforts and the elements common to them;
b. developed and implemented new Recall Progress report forms, giving greater emphasis to changes in incidents and injuries as a measure of recall effectiveness;
c. adopted a new practice of notifying major retailers of all CPSC recalls;
d. stepped up the number of Recall Verification Inspections of recalling firms;
e. began notifying retailer headquarters as well as the recalling firm of problems disclosed during recall checks;
f. undertook new practice of routinely conducting internet searches for sale of recalled products;
g. inspected firms dealing in remainders to ensure that they do not sell recalled products;
h. worked with third-party auction sites to prevent consumers from selling recalled products;
i. obtained a civil penalty from a firm that failed to stop selling recalled products as it had agreed to do;
j. launched a pilot program to notify Chinese manufacturers of products recalled in the United States;
k. began notifying the Chinese government of the name of Chinese manufacturers of recalled products; and
l. formalized a program for notifying the governments of other nations where a recalled product was also sold.

In addition to these initiatives, I have directed the staff to add the Attorneys General of each State (or their designees) to the list of people who are automatically notified of our recalls. A number of States now have legislation relating to execution of consumer product recalls.

6. *While your testimony emphasizes that product registration cards will not work perfectly, do you acknowledge that they can produce an improvement over the current method of relying on the media to communicate recall information? Are you opposed to taking any action unless it results in close to a 100 percent recall effectiveness rate?*

Registration cards may produce an improvement relative to a media strategy in some cases but are not likely to do so in all cases. I have supported numerous actions taken by staff (see above) which have improved recall effectiveness without approaching a 100 percent recall effectiveness rate.

7. *Do you agree that the current system is not reaching many consumers who own recalled products and that this failure is leading to deaths and injuries?*

Unfortunately, it is often difficult to compare the rates of death and injury before a recall with those prevailing after a recall. In some larger cases we have analyzed, the data generally show a significant decline in post-recall injuries (even when repair or return rates are low). We are keenly aware of cases where there are deaths or severe injuries caused by a product that has been recalled. When we believe that more action by a firm is warranted, we do not hesitate to press for it.

8. *Your testimony states that the CPSC has found that consumers are more likely to respond to recalls when the product is more expensive or poses fire or electrical hazards. Has the CPSC studied participation rates for products that are designed to cradle, hold, or protect children, such as cribs, high chairs, and other durable nursery products?*

I am not aware of any recent, systematic study of these products from the standpoint of recall effectiveness.

9. *H.R. 2474, which you do not seem to support, deals with the broad issue of CPSC's ability to assess fines against manufacturers, retailers or importers who fail to comply with CPSC statutes. While you indicate that you prefer a "broad" approach, you oppose this effort. What leads you to the conclusion that increasing the cap will not result in greater compliance with section 15 of the Consumer Product Safety Act and other CPSC rules (repair, replacement and notification section)? What studies has the CPSC conducted that support your conclusion?*

I disagree that H.R. 2474 deals with the penalty issue broadly. The CPSC administers five statutes, of which three provide for both civil and criminal penalties. H.R. 2474 deals with civil penalties under only one of these statutes. It would raise the $1.825 million civil penalty cap by a factor of ten for violations of the Consumer Product Safety Act but leave the same $ 1.825 million cap in place for violations of the other statutes. I think that the Congress should address the issue more comprehensively.

I do not oppose some upward adjustment of the penalty cap. I am concerned that a sudden, ten-fold increase in the cap could have adverse consequences for the agency. For example, it could lead some companies to report much more than is legally necessary or desirable, putting a much greater burden on the staff to separate the wheat from the chaff. For that reason, I recommend that Congress, if it chooses to legislate here, adopt a somewhat lower cap, and phase it in over a period of years.

10. Why will more money at stake in civil penalties assessed translate into more litigation? What evidence supports your assertion or assumption?

I do not believe that every company will refuse to settle if the penalty cap is raised. However, I think that some companies, when faced with substantially higher penalties, will resort to litigation, further straining our resources and those of the Justice Department, on whose assistance we depend in federal litigation.

ESTIMATED COSTS OF PENDING LEGISLATION AFFECTING CPSC

Legislation			Costs (dollars in thousands)				
H.R.	Title	Provision	FTEs	S&B[1]	Other Costs[2]	Indirect Costs[3]	Total
814	Children's Gasoline Burn Prevention Act	Sec. 2 - Child Resistant Portable Gasoline Containers (Standard)	1.5	$169	$0	$42	$211
		Sec. 2(e) - Report	1.5	$169	$0	$42	$211
1699	Danny Keysar Child Products Safety Notification Act	Sec. 4 (a) - Consumer Product Registration Forms (Standard)	5	$563	$0	$141	$703
		Sec. 4(d) - Study	2	$225	$0	$56	$281
1721	Pool and Spa Safety Act	Sec. 3 - Swimming Pool and Drain Cover Standard	1.5	$169	$0	$42	$211
		Sec. 4 State Swimming Pool Safety Grant Program	4.5	$506	$20	$127	$653
		Sec. 6 - Education Program	2.5	$281	$0	$70	$352
		Sec. 8 - Report (on Sec. 4 Grant effectiveness)	2	$225	$20	$56	$301
2474	To provide for an increased maximum civil penalty for violations under the CPSA	Sec. 1 - Civil Penalities of the CPSC	8	$900	$250	$225	$1,375
			28.5	$3,206	$290	$802	$4,298

[1] Average salary of a GS-13/6 with benefits applied to all FTE staff ($112,500).
[2] Other costs are direct costs such as travel and contract support.
[3] 25% of salary and benefit costs to represent indirect costs such as space, IT support, printing, supplies, etc.

July 16, 2007

The Honorable Nancy A. Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Nord:

Thank you for your testimony that was submitted to the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, June 6, 2007, at the hearing entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721."

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. The attached questions are in addition to the questions sent to you on July 5, 2007. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Wednesday, July 25, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-225-2525** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Nancy Nord, Acting Chairman

Tel: 301 504-7901

July 25, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of July 16, 2007, related to the hearing by the Subcommittee on Commerce, Trade and Consumer Protection entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474. H.R. 1699, H.R. 814, and H.R. 1721." Attached to your letter were additional questions submitted by Ranking Member Cliff Stearns.

Please find enclosed my answers to these questions. I should note that these responses reflect my own views and have not been considered by the Commission which, as you know, continues to lack a quorum.

Sincerely,

Nancy Nord

Nancy A. Nord
Acting Chairman

Enclosures

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade and Consumer Protection

The Honorable Cliff Stearns

1.) H.R. 814 requires the Commission to promulgate a standard substantially the same as the current ASTM standard. **Are the current industry standards defective in any way or structured in such a way as to inhibit compliance?**

The current standard, ASTM F 2517-2005, *Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use,* uses the U.S. Consumer Product Safety Commission's (CPSC) Poison Prevention Packaging Act (PPPA) protocol as a framework for its testing requirements; however, the ASTM standard does not follow the PPA protocol requirements exactly. Some currently proposed changes to the ASTM standard would strengthen it by bringing it more in line with the CPSC protocol, while other proposed changes would weaken it.

a.) **Does H.R. 814 effectively mandate the current voluntary standard? In what way, if any, would a CPSC-promulgated standard differ from the industry standard?**

As introduced, H.R. 814 directs CPSC to promulgate as a final consumer product safety standard the current ASTM voluntary standard, or any successor standard issued by ASTM International. CPSC staff has discussed with Committee staff a suggested revision to H.R. 814 that would allow the Commission to make a formal determination that a proposed revision to the current ASTM voluntary standard does not carry out the purposes of the Act, and in such case, the proposed revision would then not be incorporated into the mandatory standard.

If the CPSC were given authority to promulgate a standard in this regard, the Commission would have to make certain findings to proceed with rulemaking. It is difficult to predict and inappropriate to prejudge the results of that deliberative process.

2.) The Committee received testimony that child-resistant caps for gasoline containers could be strengthened further but such increases would invariably prohibit the ability of approximately 20% of the adult population to open the containers. **Do you agree such an effect could occur?**

As noted above, H.R. 814 relies on ASTM F 2517-2005 in which a child resistant closure passes if it cannot be opened by 80% of the child test participants. CPSC staff believes that further strengthening child resistant caps could have negative consequences by making it more difficult for some adults to use the containers. Adults who have difficulty opening a container may defeat the child resistant (CR) features of it or may resort to using non-CR containers.

3.) **Would legislation providing CPSC authority to promulgate a standard for gasoline or flammable liquid containers, rather than mandating the standard as contemplated by H.R. 814, provide the same benefit with more flexibility to protect consumers?**

As noted above, if the CPSC were given authority to promulgate a standard in this case, the Commission would have to make certain findings to proceed with rulemaking. Assuming that the Commission could make the requisite findings to promulgate a rule in this case, it is inappropriate to prejudge the results of that deliberative process. It can be noted, however, that CPSC's staff comments have been well received during the ASTM voluntary standards process, and staff does not believe that for this particular issue there would be much difference between the two approaches.

4.) Does the current ASTM standard for child resistant caps on portable gas containers reduce the risk of hazard to children?

CPSC staff believes that the current ASTM F 2517-2005 standard reduces the risk of children gaining access to the contents of portable gasoline containers.

a.) Would a standard promulgated by the CPSC differ materially from the current industry standard?

As noted above, if the CPSC were given authority to promulgate a standard in this case, the Commission would have to make certain findings to proceed with rulemaking, and it is difficult to predict and inappropriate to prejudge the results of that deliberative process. It can be noted, however, that the CPSC staff has worked closely with the ASTM subcommittee and supports the requirements contained in the current standard. Staff also supports the change under consideration for inclusion in the voluntary standard that would instruct children that they can use their teeth to try to open containers during the test.

5.) As part of its rulemaking process for final standards, the CPSC is required under the CPSC Act to make a finding that voluntary standards are either not effective or are not being followed.

a.) Is there substantial compliance with the current voluntary standard?

CPSC staff does not know the compliance rate with the current voluntary standard. The staff would need to collect and test a representative sample of gasoline containers in order to develop this information. However, CPSC staff notes that several manufacturers and a representative of the relevant trade association (Portable Fuel Container Manufacturers Association) participate on the ASTM subcommittee.

b.) What is the effect of Section 2(b) of the H.R. 814 that eliminates the requirements of Section 9 (a)-(f) of the CPSC Act?

Elimination of CPSA Section 9(a)-(f) for the purpose of adopting a final safety rule pertaining to portable gasoline containers would eliminate the current procedural requirement of issuing an advance notice of proposed rulemaking ("ANPR") and notice of proposed rulemaking ("NPR")

and potentially permit the CPSC to adopt a final rule without the Administrative Procedures Act requirement of providing the public with prior notice and an opportunity to submit comments on the proposed rule. This bill would also eliminate the required findings that the Commission currently must make in the ANPR and NPR rulemaking stages. For example, in the NPR stage of rulemaking, the Commission is required to perform a preliminary cost benefit analysis of the rule and an analysis of reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits. (See Section 9(c) of the CPSA). The bill would also eliminate findings required in the Final Rule stage, such as a final cost benefit regulatory analysis, a description of any alternatives to the final rule considered by the Commission, a summary of any significant issues raised by comments submitted during the public comment period, a determination that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, and a determination that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated. (See Section 9(f) of the CPSA). Section 2(b) of H.R. 814 would also eliminate the requirement of the Commission to rely upon a voluntary standard when the voluntary standard adequately addresses the risk of injury and there is likely to be substantial compliance with it. (See Section 9(b)(2) of the CPSA). However, other statutory requirements such as those of the Regulatory Flexibility Act, Congressional Review Act, and National Environmental Policy Act would continue to apply to the rulemaking.

6.) The CPSC is on record that it is not clear that an increase in the civil penalty cap is needed. What evidence is there that raising the fine by 1000% is appropriate? What might be the unintended consequences of such an increase? Is the CPSC concerned that companies would no longer leave anything to chance and report everything, overloading the agency's resources and thereby impeding rather than improving the agency's ability to remove harmful products from commerce?

As I stated in my testimony submitted to the Subcommittee, it is <u>not</u> clear that the current penalty cap needs to be increased to encourage more reporting. The overwhelming number of penalties that are imposed by the CPSC are for violations of Section 15(b) of the Consumer Product Safety Act (CPSA) that requires reporting from product sellers, and in fact, the number of reports has been increasing in recent years.

Unlike the statutes of other agencies with self-reporting provisions, Section 15(b) is written in very broad and somewhat imprecise terms and requires that companies make judgment calls about its applicability in specific cases. When the staff disagrees with the judgment calls made by a company, the Commission will seek penalties. Generally, staff is able to negotiate a settlement without litigation. If the stakes were greatly increased, more litigation will result which adds time and expense to the process and ultimately could impact CPSC's ability to achieve voluntary recalls.

Additionally, if the scope of the reporting obligation under Section 15(b) is not limited or at least clarified, then a sudden penalty cap increase of this magnitude could cause manufacturers and retailers to greatly expand the amount of information that they report to the agency under Section 15 in order to avoid a significant penalty. This could easily overwhelm the agency's resources

for timely identification of potential hazards with a result that the staff will miss hazards that we would otherwise investigate.

If the Congress elects to increase the CPSC's civil penalty cap, I have proposed that the increase not be as great and be phased in. A gradual increase reduces the likelihood of an unmanageable surge in unnecessary reports from firms or, conversely, of some firms not submitting necessary reports.

7.) In 2005, the CPSC authored a study on pool safety and recommended pool safety standards. A number of states have used this study to adopt pool safety laws. **Why have other States not acted similarly? Pool safety is an important issue but why should Congress allocate taxpayer money to encourage the adoption of standards that are well known in the consumer safety arena?**

In 2005, CPSC revised and published its *Guidelines for Entrapment Hazards: Making Pools and Spas Safer*. CPSC has also published *Safety Barrier Guidelines for Home Pools* and other pool safety publications, as well as conducted annual national safety campaigns, that provide information that helps to reduce drownings in the nation's pools and spas.

States may respond to CPSC's safety information differently from one another because pool safety hazards and the drowning issue in general may be perceived differently in a state with a smaller rather than a larger number of residential and commercial pools, or with a shorter rather than a longer swimming season. Most pool safety issues are addressed by laws and building codes that are approved and enforced at the state and municipal levels of government, so as a matter of public policy, Congress would have to decide if it is appropriate to provide federal grants to incent states to enact safety laws in this regard.

8.) H.R. 1721 proposes a grant program to be administered by the Commission. **Does the CPSC have a view about the appropriateness of it managing such a program? Has the CPSC ever administered this type of program in any area? How would the Commission set this program up? Do you believe the CPSC is organized to set up the grant program?**

While the CPSC administered a very limited educational institution funding project in the late 1980s, the staff has no experience with managing a full-scale grants program. The experience and knowledge base needed to administer a national grants program is specialized and discrete and includes certified auditing skills as well as working knowledge of the Federal government's extensive grants management regulations. Because the CPSC does not have the staff experience needed to award and administer grants, there would be significant start-up costs. CPSC staff estimates that the agency would have to contract with another agency with experience in grants management or at a minimum hire a grants contract specialist, an auditor, and up to two program specialists to manage the program and do the required implementation reports to Congress.

9.) H.R. 1699 proposes a child product safety registration program modeled on the National Highway Transportation Safety Administration (NHTSA) car seat registration program. NHTSA, however, reported that the car seat product recall registration database is 90 percent degraded after 3 years.

a.) Is product registration an effective tool to facilitate product recalls for nursery products given the short period of usefulness to the consumer when children outgrow them quickly?

Product registration would be most effective for durable nursery products that are recalled within the first year or two of production. After that time, in addition to home and email address lists degrading, many nursery products have been sold or passed along to other consumers.

b.) Do you have any suggestions on how this data can be maintained or updated to improve recall success more than 3 years out?

If consumers contact the company for any reason, the company representative could ask them if they would be willing to provide or update their data strictly for the "recall database." This also could be implemented on the company's website by having a "Recall Database" form that consumers could use to register products for that particular company. Additionally, promotion of the use of registration cards by the manufacturer or retailer and targeting the consumer with an outreach program might also contribute to effectiveness.

c.) Will effectiveness be hampered by the resale market and other venues that consumers use to dispose of their used child products?

Because these infant and toddler products are "durable" by definition, their utility long outlasts the needs of the original owners. Accordingly, these products are often sold or passed along to new owners, and then subsequent owners, after the early years of a child's life. Resale and donation of infant products is widespread. It is not clear how a registration program would reach consumers who acquire products second hand.

d.) Will the program be biased in favor of those who purchase the child products new? How do we address the problem of products bought on resale?

First time users are the ones who will benefit the most from this program if they choose to fill out the cards and return them. One way of addressing the issue of products bought on resale is through CPSC's program that provides consumers with email notification when there is a product recall.

July 5, 2007

The Honorable Thomas Moore
Commissioner
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioner Moore:

Chairman Nord submitted testimony to the Subcommittee on Commerce, Trade, and Consumer Protection on Wednesday, June 6, 2007, at the hearing entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721."

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to Chairman Nord from certain Members of the Committee. At the request of the Chairman of the Subcommittee, you are also being asked to respond to these questions. In preparing your answers to these questions, please address your response to the Members who have submitted the questions and include the text of the Member's question along with your response. Please begin the responses to each Member on a new page.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Friday, July 13, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building, Washington, D.C. 20515** and faxed to **202-225-2525** to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at **valerie.baron@mail.house.gov** in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Valerie Baron at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Hearing:
Legislation to Improve Consumer Product Safety for Children:
H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721
June 6, 2007

Questions and Responses for the Record

To Commissioner Thomas H. Moore:

QUESTIONS FOR THE RECORD FROM THE HONORABLE BOBBY L. RUSH

1. **Civil Penalties:** Do you agree with certain consumer groups that state that increasing the overall civil penalties cap imposed on the CPSC from the current $1.8 million would provide greater economic *disincentive* to committing violations or other bad behavior? Why or why not?

RESPONSE: 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. 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 went 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 and to clarify whether the Commission has the discretion to supplement the statutory list.

Do you agree that CPSC attorneys would be in a more powerful negotiating position if a manufacturer or other firm knew that the agency had a civil penalties cap that was higher than the current one?

RESPONSE: Yes. 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.

Would anything in this bill require the CPSC to seek the maximum penalties available?

RESPONSE: The bill does not require the CPSC to seek any particular civil penalty amount. The agency would continue to be governed by the factors laid out in our statute.

At what stage in the process must CPSC staff seek Commission approval of any civil penalties sought? Why is the approval process sufficient or not to satisfy any concerns about the appropriateness of penalties?

RESPONSE: Our staff preliminarily negotiates a civil penalty with a company and then brings the negotiated settlement agreement to the Commission for its approval or disapproval. Companies are aware when they sign the settlement agreement that it is subject to Commission approval and could be rejected. The Commission has on occasion rejected a staff proposed settlement. When settlement negotiations with the staff break down, the staff will send a request to the Commission to refer the case to the Department of Justice. Many cases settle prior to the actual referral. I think the two-level approach, with the staff doing the face-to-face negotiating and the Commission making the ultimate decision is a good approach.

2. **CPSC Resources:** In your written testimony, (referring to Acting Chairman Nord's written testimony) you emphasize the need for more CPSC resources to implement these bills. Can you tell me the level of increased resources that would be required, assuming that all the bills become law?

RESPONSE: The pool safety bill contains resources for the Commission, although the Commission may need resources to hire an employee with grant administration experience. While some argue that the Commission should farm out the administration of the grants program, I see no need to do that. The Commission has made grants in the past. It funded grants in the late 1980's at several universities to develop new safety packaging for medicines and household chemicals under the Poison Prevention Packaging Act that would be easier for adults to use but still be child-resistant. It has largely been a lack of resources to make grants, not the lack of grant expertise, which has kept the agency from making grants in recent years. In addition, the bill would require an annual report on the effectiveness of the grant program. The latter provision may not be terribly resource intensive if the Commission requires the States that receive grants to report to the Commission on the effectiveness of the grants and if these reports are then accepted by Congress as the reports required in section 8 of the bill. If, on the other hand, the Commission had to fund special studies to determine the effectiveness of each grant, this could cost $150,000 or more per grant. I would estimate the additional cost to the Commission of the additional employee to be approximately $125,000.

The civil penalty bill may require another FTE in the Office of Compliance for the first year. As experience with the revised amount grows, and staff becomes more comfortable leaving the small penalties that they have become accustomed to assessing behind, additional attorney positions may be necessary, but I see no huge increase in our budget requirements because of this bill. Under our current cap, we had a major retailer hire one of the most expensive lawyers in the area to fight us over a potential million dollar penalty. I doubt they would have fought any harder against a twenty million dollar penalty. Neither amount would have made a dent in their profit margin. So we have already faced, and accommodated, significant battles over civil penalties with the current cap (although we have experienced significant loss of personnel since that time). The cost of the additional attorney would depend on the grade at which the person was hired, but I would estimate $150,000 for that position.

Product registration cards: the cost of the rulemaking required by this bill is hard to calculate. If the Commission had to try to make the cost/benefit and other findings normally made in a rulemaking proceeding, it would be much more costly than if those findings were waived. Additionally, several years down the road, after the card program had been in place for a period of time, the Commission would need funds for a special study on the effectiveness of the card program. Again, it is difficult to project the cost of this future study, but I would guess that it would run somewhere between $300,000 and $500,000. The staff would be able to give a better

estimate closer to the actual time the study was to be performed. Any such study may be hampered by a lack of data about card return rates with these types of products, prior to the new registration card being required. The agency would want to assess the impact of the new card by comparing the warranty card return rates before the law went into effect with the return rates on the new card. For a complete assessment of the effectiveness of the cards, the agency would also want to look at the recall response rate of products with old style warranty cards and compare it to the recall response rate to recalls under the new regime. This would tell us how effective the new cards, and the direct notification consumers would receive from the manufacturer in the event of a recall, were at spurring consumers to take advantage of the recall remedy. I do not know if data exists about current warranty card return rates and the recall responses generated by them, to make such a comparison.

The gas can bill and the product registration card bills would also result in increased compliance costs to monitor companies' conformance with their provisions.

3. **Nursery Product Recalls:** Do you support the goal of H.R. 1699, which is to require manufacturers to notify consumers directly if any nursery product (among a defined list of such products) is recalled?

RESPONSE: In March of 2003, I voted to grant a petition filed by the Consumer Federation of America that would have begun a rulemaking on the use of product registration cards to enhance recall effectiveness. I said at the time that I was not sure if the proposed remedy of product registration cards was necessarily the appropriate solution because we needed to define the problem first. I saw the rulemaking as an opportunity to define the problem and its scope and to look for solutions to any problems found. The Commission did not vote to proceed with rulemaking although both of the other Commissioners indicated an interest in looking at the issues informally. I do think that the implementation of H.R. 1699 could give the Commission invaluable information about whether product registration card programs should or should not be expanded to cover other products.

For a more complete discussion of the recall effectiveness issues, please see my response to question number 6 in your earlier set of questions for the hearing record on "Protecting Our Children: Current Issues in Children's Product Safety, May 15, 2007.

Do you agree that consumers are more likely to fill in and return product registration cards that are both privacy protected and postage paid than cards that require consumers to pay their own postage or that contain no privacy reassurance?

RESPONSE: I do agree that a card that is clearly marked that it will be used for recall purposes only and that contains no marketing information is more likely to be filled out and returned by a consumer than the typical cards that come with products today.

STATEMENT OF DAVID ASSELIN

The NAM Coalition on CPSC (Coalition) represents manufacturers, distributors, importers or retailers of consumer products. All of the members of our Coalition are committed to ensuring the safety of consumer products sold in this country. The Coalition would appreciate your including this letter in the hearing record, and I will be sending the names of Coalition members wishing to be added as cosignatories.

The Coalition supports the important mission of the CPSC. The marketplace needs to be free of unsafe consumer products that could pose a risk of injury to consumers, particularly to our most valuable population, our children. Over the years, the agency's budget has not grown as fast as other regulatory agencies with comparable authority. CPSC has compensated by taking measures to ensure it uses its resources efficiently, just as so many manufacturers have had to do in recent years.

We support increased funding for the CPSC to increase import surveillance and compliance, upgrade technology, laboratory renovation and for bolstering the staff, particularly in technical areas and where retirements are impacting the Commission's mission. We believe that the CPSC has sufficient authority to carry out its critical mission if it is properly resourced.

The Coalition understands that your subcommittee will hold a hearing June 6th on several bills concerning the Consumer Product Safety Commission. Two of these bills, H.R. 2474 and H.R. 1699 are of concern to the Coalition. H.R. 2474 seeks to increase the maximum civil penalty for violations under the Consumer Product Safety Act. H.R. 1699 would require certain manufacturers to provide consumer product registration forms to facilitate recalls of durable infant and toddler products.

H.R. 2474: Civil penalties actually apply to any violation of one of 11 prohibited acts under Section 19 of the CPSA. Failure to file a report under Section 15(b) is but one of the violations enumerated. The statute needs to be clarified to distinguish between instances that involve a failure to report incidents that evidence a defect with injury and those that involve sale of product that violates a per se requirement.

Civil penalties are assessed up to $7,000 per violation. The maximum civil penalty for any related series of violations is currently $1.825 million. Congress has directed the Commission to adjust the maximum penalty amounts every five years to account for inflation. Originally the maximum amount was $500,000, which has more than tripled because of the adjustment escalations in the existing enabling statute.

H.R. 2474 would substantially increase the maximum civil penalty for failure to report or violations of section 19. Under the bill, any related series of violations would carry a maximum penalty of $20 million, or an increase of more than 1,000 percent from current penalty levels. Such an increase could actually prove to be counter-productive to the mission of the CPSC.

Current penalties are more than adequate to deter companies from failing to report serious product defects. Companies do report defective products, as evidenced by hundreds of voluntary recalls conducted each year with the support of the CPSC, versus the handful of civil penalty actions announced by the Commission. Companies that fail to report not only face substantial civil penalties, but also risk bad publicity and increased product liability exposure. These factors are significant deterrents to any failure to report.

Increasing the cap on civil penalties to the level contemplated by H.R. 2474 could be counter productive. Rather than encouraging prompt reporting, it could act as a deterrent to companies when they are contemplating a voluntary recall. It would change the nature of the present voluntary compliance and penalty process to be more adversarial, with more defensiveness and pre-litigation maneuvering and less emphasis on getting unsafe products out of the marketplace quickly. Such a move could also be a financial and administrative burden on the CPSC because costly and time-consuming litigation would replace the current, almost entirely voluntary, non-litigation process.

There is no evidence that the current $1.825 million penalty cap frustrates enforcement. The Commission has yet to impose the current maximum cap of $1.825 million on any company for a violation of Section 19. Moreover, in cases involving violations of the Flammable Fabrics Act or the Federal Hazardous Substances Act, or in cases where the CPSC alleges a series of unrelated violations, the Commission has sought penalties substantially in excess of $1.825 million. For example, in a 2001 lawsuit against Wal-Mart and Icon Health & Fitness for alleged failure to report defective exercise equipment, the CPSC was able to seek civil penalties of $9 million for six counts involving various models (applying the $1.5 million cap then in effect.) Applying similar multipliers to the penalty levels proposed under H.R. 2474, the CPSC could have sought penalties of $120 million in the Wal-Mart case,

or could pursue similar penalties in any case alleging failure to report multiple defects, such as cases involving different product models. The prospect of such astronomical penalties, which could bankrupt many companies, could lead to enforcement policies out of all proportion to actual violations.

H.R. 1699. Manufacturers have been providing consumers with product registration cards for years. These cards require the consumer to be pro-active. FMVSS 213, the Federal standard for child restraint systems, requires manufacturers to instruct consumers to register child restraint systems for use in motor vehicles upon purchase. Statistics show that approximately 12 percent of consumers do so. Such products are fairly expensive (usually costing upwards of $50) and are associated with protecting and saving the lives of children. One would think that this would be a strong incentive to register them, but, as noted above, that is not the case.

The low response rate is not the only factor to look at when considering product registration cards. The data collected and the utility of the information deteriorates over time. Census studies indicate that 40 million people change addresses annually in the US. The utility of a database is even more limited with children's products because they are often donated, handed down or sold to other consumers at thrift stores and yard sales. The information collected becomes ineffective at that point, since the manufacturer has no way of contacting the secondary consumer.

A study conducted by the National Highway Traffic Safety Administration in 2002 on product registration cards for child safety seats found that the usefulness of the database maintained for child safety seats had declined to 10–13 percent after only three years.

The Commission studied this issue in depth for several years and concluded that mandating such a card is not beneficial. Every recall is different depending on specific circumstances and each recall campaign needs to be seen as an individual entity, with an action plan developed by the manufacturer and CPSC working together to make it the most effective as possible. An over-reliance on product registration cards will not improve overall recall effectiveness.

It would be a much better use of resources if the CPSC were to continue to work with manufacturers to come up with ways to improve overall product recall effectiveness, using the power of the Internet and other innovative techniques, rather than have the Commission dictate a system that is marginally effective.

In conclusion, the CPSC is considered the global leader in the area of product safety due to its domestic programs and international initiatives. Other nations are setting up programs based on the CPSC model. Coalition members have, in the past, been good partners with the CPSC, to institute the two reference proposals would be a step back at a time when we should be looking forward.

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