

**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2009**

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**WEDNESDAY, APRIL 30, 2008**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 3:02 p.m., in room SD-192, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin and Brownback.

**CONSUMER PRODUCT SAFETY COMMISSION**

**STATEMENTS OF:**

**NANCY A. NORD, ACTING CHAIRMAN**  
**THOMAS H. MOORE, COMMISSIONER**

**OPENING STATEMENT OF SENATOR RICHARD J. DURBIN**

Senator DURBIN. Good afternoon. I am pleased to welcome you to this hearing today before the Financial Services and General Government Appropriations Subcommittee.

Today we will discuss the President's fiscal year 2009 budget request for the Consumer Product Safety Commission (CPSC). Testifying before us will be Acting Chairman Nancy Nord and Commissioner Thomas Moore.

**THEN AND NOW**

Last year, thanks to investigative reporting by the Chicago Tribune, which won a Pulitzer Prize for its work, I became concerned about toy safety issues. With the spotlight shining on some deadly toys, America became much more aware of the dangers of toys on store shelves, often ones coming from China.

At this time last year, we were reviewing the budget of an agency that had been neglected and underfunded for years. We acted together on a bipartisan basis last year to boost funding from a level of \$63 million to \$80 million, a dramatic increase by today's budget standards. The House and Senate both passed reauthorization bills to improve CPSC's abilities to protect the public.

So now, with the 28 percent increase in funding last year and an expected final reauthorization that will, if the Senate prevails, give the CPSC new tools, we will be able to prevent dangerous products from reaching stores, ensure faster recalls, and allow families ac-

cess to information on existing safety complaints. I think the Consumer Product Safety Commission has the potential to become an exemplary watchdog agency.

The Commission has gone from a high of 978 full-time employees in 1980 to a low of 380 employees in January of this year. Now that it is turning around, because CPSC has the funding we provided to replace the key staff it has lost over the years, I hope the Commission will swiftly hire all the needed technical experts and investigators to get the agency back to better fulfill its mission.

We discussed last year in detail the dilapidated laboratory that CPSC uses to test toys. I understand that Bob, one of the toy testers, has since retired. Bob became a very famous figure in America, as we talked about his workbench and his testing laboratory.

But soon CPSC will move to a new and improved testing laboratory. We provided funding last year to enable that timetable to be accelerated, and with funds requested in fiscal year 2009, the Commission will be able to move into the space a year earlier than expected.

#### FISCAL YEAR 2009 PRESIDENT'S BUDGET

While good things are being done with funding provided last year, unfortunately, the President did not join in the cheer. The President froze funding for this agency for the next fiscal year at the \$80 million level. So while the agency is hiring new staff, the fiscal year 2009 budget proposal by the President would just maintain the staff and not continue to build the professional staff that is needed to protect consumers across America. I do not agree with the President. There has been a dramatic upsurge in imports into the United States, a dramatic increase in products that have to be reviewed by this Commission to make sure that American families are safe.

#### MISINFORMED APPROACHES TO CONSUMER PROTECTION

At this point, I hope that we can move forward. I hope that we can understand that some of the challenges are very obvious. A CPSC engineer was asked to design a new study of the mechanics and stability of all-terrain vehicles (ATVs). He proposed a cursory review of the latest ATV's on a budget of about \$40,000. He was turned down because it cost too much, he was told. How can \$40,000 be too much to study a vehicle that literally is responsible for the deaths of hundreds of people and sends hundreds of thousands to emergency rooms each year? It is clearly a case of penny-wise and pound-foolish.

In 2001, CPSC issued an administrative complaint, a first step in litigation leading to a recall, against Daisy Manufacturing Company about their Powerline Airguns. Airgun's BBs were getting stuck in the gun, so children thought the guns were empty and began aiming and shooting at each other. Due to the high velocity BBs, this resulted in deaths and serious injuries among kids. Daisy alleged there was a misuse of the product and an education campaign would solve the problem.

The Commission alleged a defect, which caused the BB to lodge in the gun so that an administrative complaint was issued, but it was then dismissed by the CPSC in 2003 under a new administra-

tion. One of the factors leading to the settlement action was that Daisy Company could have gone out of business if there had been a recall.

Mr. Moore, at the time, your statement took issue with that settlement action, and I quote. “The bottom line is that we are not the business protection agency. We are the Consumer Product Safety Commission. Our responsibility is to protect the public from dangerous consumer products. If we lose sight of that, we will get entangled in endless discussions of company finances while consumers are being put at risk of death or serious injury.”

These are clearly issues and many others that we will have to consider, and we will talk about them as we get into this hearing. But at this point, let me turn to my ranking member, Senator Brownback of Kansas.

#### STATEMENT OF SENATOR SAM BROWNBACK

Senator BROWNBACK. Thank you, Mr. Chairman.

The hearing we did last year on the Consumer Product Safety Commission was an excellent hearing. I thought it was a groundbreaking hearing, and I am pleased to see progress is being made.

I would like to thank Acting Chairman Nord and Commissioner Moore. I will begin by commending you for the steps you have taken to improve the agency and the work and the safety of imported consumer products since our September 12, 2007 hearing. I understand that you used the additional resources we appropriated to improve your import surveillance activities, modernize your product testing, and hire additional product safety inspectors. It is unfortunate that such advances were not made until after all the toy recalls, bad press, and congressional hearings.

We discussed the issue of imported products from China at great length in our earlier hearing, so I will be briefer on that today. But clearly, China is our biggest regulatory challenge since 70 percent of all defective products are coming from that country—70 percent. We must continue to focus our efforts on stopping dangerous and even lethal products from reaching American consumers. This is where the problem is and this is where our focus, I believe, should be. It is hoeing where the weeds are.

I am glad to hear the continuing dialogue with the Chinese and the enhanced ways your agency is communicating with them, but I am concerned that dialogue just is not enough. The memorandum of understanding (MOU) that you have signed with the Chinese must be honored and you must verify—verify—that the Chinese are holding up their end of the bargain. I would recommend that you hold annual, rather than biennial, product safety summits with the Chinese. I still believe that we cannot merely trust China to do what is right.

Certainly regarding product safety, they have given us every reason not to trust them. In fact, just yesterday a Food and Drug Administration (FDA) official testified before a House subcommittee that FDA’s working hypothesis is that the contamination of heparin was intentional. Although FDA has not proven this yet, it speaks volumes about the grave concerns we must have about all products coming from China.

I hope that during today's hearing you will be able to identify specific ways you intend to hold China accountable. Again, this is where the problem is and this is where our focus should be. It is a totalitarian system. It does not have a free press. It has graft and corruption that operate within the political system. I think by looking at the exterior factors you would expect a series of problems to probably arise.

So Ms. Nord and Mr. Moore, I thank you for your commitment to protect America's consumers. I look forward to hearing your detailed testimony and what we can do to particularly address the issue of the products that we are seeing coming in from China.

Thank you, Mr. Chairman.

Senator DURBIN. Thanks, Senator Brownback.

I now invite testimony from Chairman Nord and Commissioner Moore. Please proceed.

Ms. NORD. Thank you, Mr. Chairman, Senator Brownback.

A lot has happened at the CPSC since the last time I appeared before you, thanks in large measure to the leadership of this subcommittee and to you personally, Chairman Durbin and Senator Brownback.

The CPSC received a nearly 28 percent increase in our fiscal year 2008 appropriation, and I can report to you that we are putting these new funds to very good use this year and are building a foundation for further growth in 2009.

The consumer product landscape is changing with globalization and a surge in imported products, more technologically complex products, and a dramatic increase in Internet sales. As this landscape changes, so must we.

This afternoon I want to highlight changes we are making with the increase in our 2008 funding and discuss our 2009 budget proposals which are built on this foundation.

The first change is staffing. We started fiscal year 2008 anticipating a staffing level for the year of around 400. Instead, for the first time in many years, the CPSC will end the fiscal year with more people on staff than at the beginning of the year. Our ambitious goal is to begin fiscal year 2009, this October, with the full complement of staff requested for the entire year, an increase of over 50 people since this past January.

While we are staffing up throughout the agency, we are making a special effort to increase our compliance and field staff who are part of CPSC's new Import Surveillance Division, which is a centerpiece of our new import safety initiative. For the first time we will have a team of permanent full-time personnel at selected key ports, supported by a team of technicians, scientists, and lawyers at headquarters, with full access to Customs' technology that will give our team real-time information on consumer product shipments bound for the United States. When a suspect shipment warrants inspection, we will be using the newly acquired XRF technology to screen for violative products.

The second change is in our laboratory. Our lab team tests products sent from our field staff to identify defects and violations, and they provide the scientific backbone to support our rulemakings such as the one we are pushing forward now on upholstered furniture. With more field inspectors and compliance officers, the work

of the lab will grow significantly. As you know very well, the laboratory is housed in a substandard facility. The fiscal year 2008 funding you provided allowed us to begin the modernization a year earlier than we had anticipated, and our fiscal year 2009 budget request allows us to plan to move into a new modern laboratory by the end of 2009. It is anticipated that the new facility will increase our efficiency by accommodating not only our lab staff, but also other technical and scientific staff who work closely with them.

The third change concerns our data management and information technology (IT). The CPSC receives an enormous amount of information, close to half a million individual product incident reports each year. And I have here a couple of samples of a 1-day's run of data of product reports from two different databases. Processing, investigating, and responding to this information is an enormously complex undertaking. Yet it is in this data that we find the clues that point to possible emerging hazards.

Unfortunately, due to the age and limitations of our IT infrastructure, this data is entered in numerous systems that are not integrated with each other. These two databases which have consumer complaints and product incident reports are not integrated. They do not talk to each other. Thus, we have to rely on the keen eyes and the institutional memories of our experienced staff to pick up trends and patterns, an inadequate approach as the agency grows and as our more seasoned staff retires.

Our IT improvement plan will connect these data systems to allow staff to more effectively identify patterns and flag hazards as they emerge. The recently launched early warning system, which initially is focusing on nursery products in the sleep environment, is a pilot program for this data integration project.

Our fiscal year 2009 budget request proposes to build a more comprehensive plan on the foundation provided by the early warning system. We will keep the subcommittee informed of the progress of this work since we do anticipate that additional funding will be needed in fiscal year 2010 to bring the new system online.

Before concluding, I would like to reference two legislative developments that will impact our funding needs.

First, Congress passed the Virginia Graeme Baker Pool and Spa Safety Act after our budget plans were finalized this past December. That law directs us to undertake a number of new enforcement and education requirements and to administer a new grant program. We anticipate returning with an amendment to our budget request for additional funds.

#### PREPARED STATEMENT

We also anticipate that the CPSC reauthorization bill will be finalized soon. In addition to giving us needed new authorities, it appears that the final bill will include many new mandates for the agency, including as many as 40 new rulemaking requirements. When it is enacted, we undoubtedly will need additional resources above our 2009 budget proposal. In this regard, I look forward to continuing to work with the members and staff to make sure that we have those resources that we need to continue to serve our most important stakeholder, the American consumer.

Thank you.

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

PREPARED STATEMENT OF THE HONORABLE NANCY A. NORD

Thank you for this opportunity to present to you the appropriation request for the U.S. Consumer Product Safety Commission (CPSC) for fiscal year 2009. As the Committee members know, the CPSC is a small, independent and bipartisan agency created by Congress. Our mission is to protect the public from unreasonable risks of injury and death associated with more than 15,000 types of consumer products.

Last December, the appropriations committees significantly increased CPSC's fiscal year 2008 budget by over 27 percent above the previous year. I want to begin my testimony by thanking the Committee, and specifically the Chairman, for your strong support of our agency and our safety mission. The funds that you have provided are helping us lay the necessary groundwork for the agency's expanded initiatives that are presented in the agency's fiscal year 2009 budget request.

FISCAL YEAR 2009 BUDGET REQUEST

For fiscal year 2009, the CPSC is requesting \$80 million to carry out our various safety missions for America's families. While the agency's final appropriation for fiscal year 2008 was also \$80 million, there are significant expenditures in 2008 that do not recur in 2009. Therefore, an additional \$11,800,000 is available in the agency's 2009 budget request compared to the 2008 funding level. With these fiscal year 2008 and 2009 funds, the CPSC will be able to complete the modernization of our testing laboratory, begin to overhaul our information technology (IT) infrastructure, and hire more staff.

The facilities, staff and IT systems provided by this funding will combine to create the foundation we need to begin to build the agency's newest safety programs, including the Early Warning System that I initiated last year to enhance our ability to identify emerging hazards and the Import Safety Initiative that will allow the agency, for the first time in its history, to have a full-time presence at the Nation's ports. These expenditures for laboratory facilities, workspace and IT infrastructure are critical capital investments that must be made now to accommodate current and expected future growth of the agency, especially in tandem with our projected staff increase.

MEETING THE CHALLENGE OF IMPORTED PRODUCTS

Since the CPSC's inception in 1973, the agency's work has contributed substantially to the decline in the rate of deaths and injuries related to hazardous consumer products. Today, the American home environment has never been safer. However, the international marketplace is dynamic, and there is always more work to be done and new challenges to be met.

Perhaps the greatest of these is the import safety challenge. Most of the consumer products that we use today are no longer manufactured in the United States. For example, over 85 percent of toys and 59 percent of electrical products are manufactured in other countries, notably in China. The number of products imported into the United States showed a 200 percent increase from 1997 to 2006.

The Commission has taken aggressive steps to meet this challenge, including ongoing dialogue and initiatives with the Chinese Government; working with the private sector, including Chinese manufacturers directly; and increased surveillance and enforcement activities at the borders and within the marketplace.

To provide a comprehensive and coordinated effort to ensure greater import compliance with recognized American safety standards, the Commission in 2004 created the Office of International Programs. Through this Office we have established a formal relationship between the CPSC and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), our counterpart agency in China. Formal working groups and action plans with the Chinese Government were set up to focus on key product areas, and they continue to make progress on their immediate goals of developing strategies to address safety problems and to respond quickly to urgent product safety issues.

Last autumn, the CPSC sponsored the U.S.-Sino Product Safety Summit where significant agreements were signed with AQSIQ to strengthen these working groups. China has pledged to increase pre-export inspections, improve compliance with mandatory and consensus standards, and crack down on repeat violators of U.S. safety standards. While we recognize that China is a huge country with thousands of manufacturing facilities and that implementation of these agreements cannot be accomplished overnight, we have begun to see positive results. The CPSC will

continue to work with the Chinese to assure that they fully implement their commitments.

The initial steps that the CPSC has taken to assure the safety of imported goods are an important beginning to our goal of maximizing Chinese industry compliance with U.S. product safety requirements. In this regard, it is essential to convey to them a full understanding of U.S. regulatory requirements. Summaries of provisions of nearly 300 U.S. mandatory and consensus consumer product safety standards are now available in Chinese. We are posting timely information briefs on our website in Chinese, and our plans include links to full Chinese texts and audio-visual products. The agency is also participating in industry-specific safety seminars and retail and vendor training seminars on-site in China.

#### BUILDING A NEW IMPORT SURVEILLANCE DIVISION

The CPSC is hiring new staff in the areas of hazard identification and reduction, as well as in compliance and field operations. CPSC's number of actual FTEs at the start of calendar year 2008 was under 390; our aggressive goal is to increase that number to 439 by October 1, 2008—a 13 percent increase with more than 50 new employees. Additionally, increased staff training and performance initiatives will enhance retention of CPSC's experienced and skilled employees.

These personnel will enable the agency to expand its monitoring, inspection and testing of products, and especially children's products, as part of our Import Safety Initiative. Our new Import Surveillance Division is designed to be the front line of defense working to prevent dangerous toys and other hazardous products from entering the country and reaching American consumers.

These employees will be specialists trained specifically in import surveillance procedures and will work closely with other Government agencies and with CPSC's compliance officers, technical staff, attorneys, and laboratory personnel. CPSC's new port investigators will track cargo and, with Customs' officials, stop and inspect suspect shipments. High impact ports will be targeted and new measures of import compliance will be established to better assess progress.

#### MODERNIZING CPSC'S TESTING LABORATORY

When our import surveillance and compliance officers find suspect products, those products are sent to our laboratory to determine if they violate standards or are defective. Therefore, our laboratory is an integral and critical part of our operation. As you know, and as your staff has witnessed first-hand, CPSC's testing laboratory needs to be modernized to create efficiencies and to better support CPSC's product safety work, including the new work generated by the Import Safety Initiative. As presently configured, the laboratory space is inefficient to say the least, though our staff there do an incredible job with the tools that they have at hand.

Our new funding has allowed the agency in 2008 to begin to implement plans that not only address the needs of the laboratory but also anticipate critical and immediate workspace issues for a growing staff. The Commission has been able to move forward with site selection and will make a substantial payment to the General Services Administration of \$8 million in fiscal year 2008 so that we can move into the new laboratory a year earlier than otherwise expected. An additional payment of \$6 million is requested in CPSC's fiscal year 2009 budget proposal to complete the laboratory project.

By accelerating our laboratory modernization plan, we will provide not only a modern facility for our engineers and scientists to conduct their testing and investigations but also office space for an additional 70 employees to be relocated from CPSC's headquarters office. These employees will be those who work closely with the laboratory staff. This action will allow further efficiencies and improvements in office space at our headquarters site.

#### IMPROVING CPSC'S IT INFRASTRUCTURE

Per the Committee's interest, the agency is also spending new funding on important improvements to our information technology (IT) infrastructure. The need for increased funding for IT has been a constant in CPSC's budget proposals over the years. Our IT systems have not been fully modernized since 1993 when the agency last relocated its headquarters. As directed by the Committee, CPSC's 2009 budget request includes a report on our information technology modernization requirements.

Achieving the agency mission is dependent on our IT systems because our work requires electronic accessibility of information to maintain productivity. The increased emphasis on import safety demands greater reliance than ever before on in-

tegrating CPSC databases and accessing other agencies' databases, such as those of U.S. Customs and Border Protection, in a seamless fashion.

With new funding in fiscal year 2008, the CPSC has permanently established a long-sought capital fund to replace aging and outdated IT equipment on a systematic basis and a fund to support development of more advanced electronic applications. Additionally, a one-time expenditure of \$2.3 million is allowing the agency to replace its resource management information system which is so outmoded that vendor support is being withdrawn.

Funding in fiscal year 2009 will continue this modernization effort and include the development of our IT improvement plan to convert our current data systems from a client-server environment to a web-based environment; full integration of the Document Management System; updating current, outdated database platforms to one, mainstream platform; and converting current, disparate data systems to one data system.

These IT improvements are essential to the agency's Import Safety Initiative. Improved electronic data exchanges with Customs' databases in the future will enhance the Government's capabilities to identify, track and stop hazardous products from entering the United States. Our IT plan will also include a new system that can track historical changes of addresses and names for foreign companies which will provide for more rapid identification of hazardous imported products. The new system will also integrate several third party sources of information that will yield improved monitoring. Finally, it will potentially give us, for the first time, an effective tool to flag and guard against foreign suppliers who repeatedly ignore our product safety requirements.

#### ESTABLISHING A NEW EARLY WARNING SYSTEM

The new IT improvements will also support our new Early Warning System (EWS) which I initiated last year to enhance our current hazard identification systems. The goal of the EWS is to systematically identify and respond to children's product safety hazards starting with cribs, bassinets and playpens. This initiative is important because it is designed to address emerging hazards more quickly and effectively. Through an enhanced identification system, the agency will be able to detect product hazard patterns more promptly as they emerge.

#### ONGOING CPSC ACTIVITIES

While I have discussed CPSC's new systems, programs and infrastructure at length, it is also important to recognize the critical ongoing work of the agency in standards setting, domestic enforcement and public education.

Though the Commission was without a quorum for the better part of 2007, I am pleased to report that the agency was able to make progress on a number of fronts. As a result of last year's staff work, the Commission was able to vote earlier this year, before the quorum again expired, on a final rule to update our clothing textile flammability standard and on a notice of proposed rulemaking on upholstered furniture flammability.

#### *Reducing Carbon Monoxide Poisonings*

Additionally, the Commission completed a great amount of work to reduce carbon monoxide (CO) poisonings.

First, the Commission issued a mandatory rule last year for a new danger label for portable generators to warn consumers about CO poisoning and to encourage safe use. The regulation became effective on May 14, 2007, for all portable generators manufactured or imported after that date.

Second, the Commission issued an advance notice of proposed rulemaking in December 2006 to initiate a multi-faceted proceeding that includes as its goal reducing consumer exposure to CO through technical means and performance standards that will enable and encourage proper generator placement outdoors.

Third, the CPSC awarded a contract to develop a prototype generator engine with reduced CO in the exhaust.

Fourth, CPSC staff has an interagency agreement with the National Institute of Standards and Technology (NIST) to conduct physical testing and indoor air quality modeling of in-home CO infiltration in various styles of homes when a generator is used in various locations.

Finally, CPSC staff conducted a proof-of-concept demonstration of a remote CO sensing automatic shut-off device, as well as an interlock concept in which a CO sensor was located in the generator. The results of these investigations will help determine practical and effective performance requirements for portable generators and provide the basis for subsequent rulemaking activity.

*Implementing a New Mattress Flammability Standard*

In 2007, the CPSC's new mattress flammability standard became effective. The staff estimates that the new standard, when fully effective, will prevent as many as 270 deaths and 1,330 injuries annually.

In implementing the new standard, CPSC staff has sponsored and participated in education seminars for manufacturers and retailers. Staff has also developed a dedicated mattress information webpage and prepared and distributed several reference documents and informational brochures.

In addition to the progress the agency has made on these rulemakings, the CPSC is continuing its work in the voluntary standards process by providing expert advice, technical assistance, and information based on data analyses of how deaths and injuries occurred. Staff is currently supporting the development or revision of over sixty voluntary standards, including those to reduce fires related to candles, batteries, appliances and other electrical products.

*Enforcement and Compliance Efforts*

CPSC's Office of Compliance completed 473 cooperative recalls in 2007 involving approximately 100 million product units. While those 473 recalls in 2007 were heavily publicized in the media, they were only marginally above the 467 cooperative recalls that were completed in 2006, and in fact, they involved fewer than the 120 million product units in 2006. The increased media attention on the CPSC in 2007 did, however, have the salutary effect of raising both public awareness of the agency's safety mission and its effectiveness in removing products from the marketplace that violate mandatory standards or present a substantial risk of injury to the public.

To assist industry in recalling products and complying with our regulations easily and quickly, the agency relies on Fast Track product recalls to streamline the process for firms that are willing and prepared to recall their products promptly. Because every defective product presents a risk of injury or death, removing hazardous products from the marketplace faster can prevent more injuries and save more lives. Recalls under the Fast Track program are conducted without the need for a time-consuming hazard analysis and, over 90 percent of the time, are implemented within 20 days of a firm's report to the CPSC. For non-Fast Track corrective actions, we also established new efficiency goals to complete key actions within a specified time period.

*Educating the Public*

CPSC's Office of Public Affairs is very active in educating the public and informing consumers of recalls and emerging hazards. In 2007, that Office issued more than 350 press releases on product recalls and safety information and completed more than 20 safety campaigns on such topics as all-terrain vehicles; mattress safety; stove, television and furniture tipovers; portable generator dangers; and outdoor and indoor drowning prevention. American consumers viewed safety information announced by the CPSC more than a half billion times through television interviews, video news releases, free publications, and the Neighborhood Safety Network.

I am especially proud of that Office's work on outreach to the Spanish-speaking community. In 2007, we translated the Neighborhood Safety Network Toolkit into Spanish, as well as several safety publications and three times the number of press releases as in the previous year. The CPSC coordinated a Lead Poisoning Prevention Web site in cooperation with other Federal agencies and the National Council of La Raza.

Before concluding, I should note that the House and the Senate have passed different versions of reauthorization legislation for the CPSC. CPSC's fiscal year 2009 budget request does not include funding increases in the event that Congress finalizes this legislation and the President signs it. Since it is clear that the final legislation would impose substantial new regulatory, enforcement and other mandates on the CPSC, we will, of course, be in further contact with the appropriations Committees in that regard at the appropriate time.

The CPSC is an agency that is undergoing change, like no other agency of Government, with significant budget increases, comprehensive reauthorization, and national attention unlike ever before in its history. As we make the transitions that accompany this change, I look forward to continuing to work closely with the Committee. Our common goal is to assure the safety of the products that American families bring into their homes, schools and recreation areas. I am honored to serve the American public as Acting Chairman of the Consumer Product Safety Commission at this time of great challenge and great opportunity, and I look forward to answering your questions.

Thank you.

Senator DURBIN. Commissioner Moore.

SUMMARY STATEMENT OF THOMAS H. MOORE

Mr. MOORE. Mr. Chairman, Mr. Ranking Member, thank you for providing me with this opportunity to present testimony before you today on the U.S. Consumer Product Safety Commission's fiscal year 2009 appropriations request.

For our current fiscal year 2008, Congress, led by this subcommittee, took up the cause of the American consumer by focusing on, and addressing, the serious deficiencies at the Commission resulting from our most recent years of shrinking resources. Our agency was appropriated \$80 million, a \$16.75 million increase over the administration's request.

For fiscal year 2009, the President's funding request for the agency is \$80 million, which is equal to the level of funding provided by Congress for fiscal year 2008. With this amount of funding, we propose to hire up to a level of 444 full-time employees. Additionally, we propose to continue our efforts to acquire a modern, state-of-the-art laboratory facility and to acquire additional office space, which we will need to accommodate some of our new hires.

The fiscal year 2009 request on its face is a request for level funding from 2008. However, there are a number of one-time expenses occurring in 2008 that are not anticipated in 2009. Not having those expenses in 2009 provides the Commission with \$5.8 million to direct toward activities which would give indications of growth as opposed to stagnation or movement in the negative direction.

Most important to me is our now present ability to rebuild our staff. CPSC is a staff-intensive organization, as I have said previously. At the heart of CPSC's operation is its staff, without question our greatest and most important asset.

In addition to Congress' focus on Commission appropriation issues, both Chambers, the House and the Senate, have passed reauthorization legislation. Both bills provide significant increases in our authorization levels for future years at the Commission. The bills would require the Commission to undertake a number of activities that I am not taking into consideration as I present this statement. I cannot say at this time what resources we would need to fully implement any new requirements. When a final package is agreed upon and signed into law, we certainly intend to communicate with this subcommittee with respect to any future requirements and their effect on Commission resources.

Also, last December, the President signed into law the Pool and Spa Safety Act. For fiscal year 2009, the act authorizes \$7 million for the Commission to carry out its requirements. Our staff has done an estimate of the cost of carrying out the requirements of the act and has advised the Commission that for fiscal year 2009, we would need an additional—an additional—\$7.887 million. The President's request of \$80 million does not include this funding and Congress would have to include additional funds above the President's request for the Commission to carry out the act's requirements.

Mr. Chairman, I want to thank this subcommittee for your recognition of the importance of our agency with respect to product

safety for American consumers. The sale of unsafe consumer products remains a major national problem. Because of your attention and assistance, we are now on the way back to firm footing in preventing unsafe, potentially harmful consumer products from causing deaths and injuries to American consumers. The continued support of this subcommittee is essential to a successful fulfillment of our mission.

PREPARED STATEMENT

I thank you again, and I am now available to respond to questions that you may have. Thank you.

Senator DURBIN. Thank you, Mr. Commissioner.

[The statement follows:]

PREPARED STATEMENT OF THOMAS H. MOORE

Mr. Chairman, Ranking Member, and members of the subcommittee, thank you for providing me with this opportunity to present testimony before you today on the U.S. Consumer Product Safety Commission's (CPSC) fiscal year 2009 appropriations request.

In summary, for fiscal year 2009, the President's funding request for the agency is \$80,000,000 which is equal to the level of funding provided by Congress for fiscal year 2008. With this level of funding, we propose to hire up to 444 Full Time Equivalents (FTEs) from our budget submission level of approximately 380 FTEs. Additionally, we propose to continue our efforts to acquire a modern laboratory facility and to acquire additional office space, which we will need to accommodate some of our new hires.

However, it must be noted that the fiscal year 2009 funding request does not take into consideration the cost of implementing the requirements of the "Virginia Graeme Baker Pool and Spa Safety Act" nor does the 2009 funding request address the cost of implementing possible requirements of any final passage of a conference agreement on the "Consumer Product Safety Commission Reform Act" as passed by the Senate and the "Consumer Product Safety Modernization Act" as passed by the House.

On December 19, 2007, the President signed into law the Virginia Graeme Baker Pool and Spa Safety Act which is aimed at reducing the 260 pool and spa drownings each year involving children younger than 5 and reducing suction entrapment deaths and injuries. The act addresses pool and spa safety issues by specifying requirements that would make pools and spas safer. The act also authorizes the Commission to establish an incentive-based grant program for States, subject to the availability of appropriations. Additionally, the act requires the Commission to "establish and carry out an education program to inform the public of methods to prevent drowning and entrapment in swimming pools and spas."

For fiscal year 2009, the act authorizes \$7 million for the Commission to carry out these requirements. Our staff has done an estimate of the cost of carrying out the requirements of the act and advised the Commission that, for fiscal year 2009, we would need an additional \$7.887 million—which would provide for start-up cost, contract cost, the cost of an additional 6 FTEs, and other costs associated with implementing the requirements of the act. As I have indicated, the President's request of \$80 million does not include funding for these activities and Congress would have to include additional funds, above the President's request, for the Commission to carry out these requirements.

IMPACT OF FISCAL YEAR 2008 FUNDING

In order to fully understand our fiscal year 2009 request, we must first look at what is transpiring for us in fiscal year 2008. In fiscal year 2008, the administration's budget contemplated funding the Commission at \$63,250,000 which would have resulted in an all-time low funded staffing level of 401 FTEs; a decrease of 19 FTEs from the fiscal year 2007 funded level. As I indicated in my written statement to this subcommittee last year, such a funding level would have had a devastating effect on the agency's ability to maintain the broad range of skilled staff we need to address the full scope of the 15,000 types of consumer products under our jurisdiction. Congress, led by this subcommittee, took up the cause of the American consumer by focusing on, and addressing, the serious deficiencies at the Com-

mission resulting from our most recent years of shrinking resources by appropriating \$80 million, a \$16.75 million increase over the administration's request.

With the additional resources, the Commission has been able to start the process of reversing the effects of the Commission's downward spiral in staffing. The Commission is now able to begin filling critical vacancies, moving our staff level in the positive direction toward 420 FTEs. We have also started a process to reacquire headquarters office space that we forfeited in order to reduce our operating cost.

Part of our staffing increase has been directed to an import safety initiative through the creation of a new Import Surveillance Division in the Office of Compliance and Field Operations. For the first time, CPSC will have permanent, full-time product safety investigators at key ports of entry throughout the United States. Initially, we have identified up to 10 ports where we will assign personnel.

We are also implementing an Early Warning System (EWS) initiative which is designed to identify emerging product safety hazard patterns more quickly and effectively in children's products such as cribs, bassinets and play yards (playpens). Fiscal year 2008 funding will allow staff to continue to develop and implement processes and procedures to evaluate and characterize hazard scenarios and failure modes which should alert the Commission staff that a product hazard may exist and quick action to address it must ensue.

The additional resources for fiscal year 2008 will also allow the Commission to move in the direction of expediting the acquisition of a new state-of-the-art laboratory facility and equipment. We will commit \$8 million of fiscal year 2008 funding toward this effort. The Commission is taking the approach of acquiring a new facility as opposed to modernizing the present laboratory site based on current projections by CPSC staff, GSA, and OMB that acquiring a new facility would be a more cost effective, more expeditious, and more efficient process for the Commission than rehabilitating the present laboratory site.

Our laboratory situation is well known to most people who have focused on the problems presented by the Commission's limited resource allocations in recent budgets. We have been trying, through various avenues, to remodel or rebuild our existing facility for many years. We now appear to be getting closer to the reality of a new testing laboratory. The process with GSA has been frustrating, with their stated deadlines to us slipping again and again. Last year when GSA gave us the preliminary estimate of how much they were going to raise the rent at the current laboratory facility (with no improvements) it seemed the last straw. (They have since backed off substantially from the threatened initial rent increase.)

Finally, after much discussion, GSA was willing to start the process of looking at what other facilities might be available to see if the option of moving the lab was more cost effective than rebuilding the present one. Perhaps, by the end of this fiscal year we will have a much better handle on that option, but given the fits and starts of this process I am not as confident as I would like to be about the outcome. The cost estimates we are operating on are numbers from OMB and GSA, based on the assumption that we will indeed find appropriate new space for all of our current and future testing needs as well as office space for perhaps as many as 70 of our other employees. I am hopeful that at the end of this process we will have a clear picture of the efficiency and cost effectiveness of moving in this direction. For now, I must simply go on what information staff is presenting to me on this issue and I have consented to fully exploring this option.

We are also able, for the first time, to establish in our base funding, a capital fund to replace aging and outdated Information Technology (IT) equipment and we are able to dedicate funds to further the process of developing more advanced electronic applications for our IT system. These advanced electronic applications will be essential to the Commission's Import Safety and EWS initiatives as well as an important element in converting our current, disparate database systems to a one-stop data acquisition system. Moreover, we are able to replace our outmoded resource management information system, for which vendor support was withdrawn due to the age of the system. Not included in this budget are resources to integrate and modernize our various database systems into one larger searchable format, an improvement to our data analysis capabilities that we have wanted for a long time. If Congress requires the agency to create additional publicly accessible databases—a move I strongly support—being able to do that in the context of improving our overall data capabilities would be especially helpful.

The fiscal year 2008 increase will additionally provide for other important product safety related activities such as a modest increase in our contract funds for our rule-making, research, and project support. And, because we need to be able to compete with other governmental agencies and the private sector for qualified candidates to fill our vacancies, the budget increases funds for our staff training and staff performance incentives.

Most important to me in our fiscal year 2008 increase is our now present ability to begin rebuilding our staff. CPSC has been under a glaring spotlight for the last year. While it is not always a comfortable position for the agency to be in, for me, it has been welcomed and much needed attention. It brought to light, especially for Congress, the woeful state of the agency's resources, from its declining staffing levels to its aging and inadequate laboratory facilities. For too many years the agency had been forced to put a brave face on its situation by claiming it could do more with less. When we stopped getting enough resources to meet our basic needs that claim began to ring hollow and the agency was left without the necessary tools to properly police the consumer product marketplace.

Now, not only has Congress shown a willingness to give us the resources we so desperately need, but it has also positioned itself to increase our authorities and responsibilities. I am very thankful for Congress' efforts on our behalf. I do hope, however, that any final authorization bill that Congress passes gives the Commission the necessary time it will need to rebuild to meet our current responsibilities. Once we reach that point, then we can give full concentration to tackling the many new responsibilities that are projected to be part of a final reauthorization package.

Our fiscal year 2009 budget assumes that we will have 444 staff on board for the beginning of fiscal year 2009. This requires us to add nearly 65 new employees, a 17 percent increase over our budget submission level. That will bring us almost back to our fiscal year 2005 staffing level of 446 FTEs. When I first came to the agency in 1995, we had final FTE authority of 487 FTEs and averaged 474 FTEs on board for the year. So we still will need to hire another 30 people in fiscal year 2010 just to get us back up to our 1995 staffing level, a staffing level at which we handled that year's existing responsibilities fairly comfortably.

Over time we hope to be able to hire and train capable replacements for those that have left, but the experience that we have lost due to their departure will take years to recover. I am very optimistic that now, with the change in attitude about the Commission's importance that has manifested itself in our increased funding levels, we will be able to reverse the negative perceptions about the Commission and move in a positive direction on our staffing issues and, therefore, on product safety.

#### CPSC'S SAFETY WORK CAN CONTINUE IN FISCAL YEAR 2009

By most measures, CPSC provides both tremendous service and tremendous value to the American people and we are very proud of our staff's accomplishments. Our agency is the major factor in the substantial decline in the rate of deaths and injuries related to consumer products since 1974. During that time, through our standards work, compliance efforts, industry partnerships, and consumer information, there has been a 43 percent reduction in residential fire deaths, a 74 percent reduction in consumer product-related electrocutions, a 41 percent reduction in consumer product-related carbon monoxide deaths, an 83 percent reduction in poisoning deaths of children younger than 5 years of age, an 88 percent reduction in baby walker injuries and an 84 percent reduction in crib-related deaths.

The fiscal year 2009 request, on its face, is a request for level funding from fiscal year 2008. What we really have, however, amounts to a \$5.8 million increase. Assuming the projections on the lab are accurate, we will spend \$2 million less on the lab in 2009 and we have another \$3.8 million in other non-recurring, one-time costs that we are funding in 2008 that we don't fund in 2009 for a total of \$5.8 million in additional funds for 2009.

Of that, \$2.457 million will go to maintaining the costs of the 420 employees we anticipate having on board in fiscal year 2008, along with increases in other fixed costs such as rent. Another \$3.218 million will go to hiring 24 new employees to supplement and to provide support for the Import Safety Initiative. We have also targeted \$125,000 for travel for the U.S.-Sino Product Safety Summit. While I note that both the pending reauthorization bills anticipate the Commission receiving additional funding for the modernization of our testing and research laboratory, our budget requests for both fiscal year 2008 and fiscal year 2009 are constructed to utilize a large portion of the funding increases provided by Congress for the laboratory modernization, certainly a greatly needed improvement. The rest of the increases begin the crucial staff rebuilding and the acquisition of additional office space to accommodate the additional staff. Those concentrations leaves us little for anything else.

Now, there are certainly many questions remaining unanswered at this time concerning reauthorization legislation requirements. I know that there are many questions about what should be included as part of our request for our fiscal year 2009 budget. At this particular moment, it is extremely difficult to determine what additional staff and funds we will need to meet the new responsibilities that Congress

may give us. We have made no attempt to do that in the fiscal year 2009 budget request as that would have been premature. The Acting Chairman's office in a response to a question presented by House appropriators had staff prepare estimates as to what those resources might be (some of those estimates are already going through second revisions), but we are all flying somewhat blindly until we have a final bill with definite requirements and timelines for Commission action. I hope that the deadlines in the final bill will take into account the time needed to hire and train new employees, to find them adequate office space and to integrate them and their skills into our existing workforce. The Commission hasn't had to hire at this pace since it was first established back in the 1970s.

We at the Commission strongly feel that many, many deaths and injuries have been prevented as a result of the heightened attention given to safety issues by manufacturers and consumers due to CPSC's leadership. However, we are very mindful that the product safety landscape is ever evolving because of more technologically complex products as well as an ever growing emphasis on imports. Last year's heightened activities with respect to imported toys, in particular, clearly illustrate the benefits of a strong CPSC Federal presence in today's consumer product marketplace and therefore provide substantial justification for present and future funding to keep our safety programs intact.

#### CONCLUSION

As I have indicated, Congress is poised to come to agreement on a final reauthorization package. Both bills under consideration provide significant increases in our authorization levels for future years at the Commission. The authorization levels reflect my own views on how growth should be contemplated for the Commission, and I am hoping that future appropriations will be in line with the House and Senate final agreed upon authorization levels.

As I have previously discussed, the bills would also require the Commission to undertake a number of activities that I am not taking into consideration as I present this statement. The final legislative package will most certainly contain some significant new regulatory, enforcement and other mandates that could have some effect on what resources we would need to fully implement all of the requirements. When a final determination is made, we certainly intend to communicate with this subcommittee with respect to future requirements and their effect on Commission resources.

Mr. Chairman, I want to thank this subcommittee for your recognition of the importance of our agency with respect to product safety for American consumers. The sale of unsafe consumer products remains a major national problem. Because of your attention and assistance, we are now on the way back to firm footing in preventing unsafe, potentially harmful consumer products from causing deaths and injuries to American consumers. The continued support of this subcommittee is essential to a successful fulfillment of our mission.

#### STAFFING LEVELS

Senator DURBIN. Chairman Nord, if I recall, it was in December when it was clear that we were sending you this pretty substantial increase in your appropriation to \$80 million, and I was asking the staff here what kind of staffing levels you had last year at this time. We think it was around 400 million FTE's. Pardon me. 400 FTE's.

Ms. NORD. You have been dealing with other agencies way too long.

Senator DURBIN. I am not sure there is any agency with 400 million. But 400 FTE's.

Now, historically we have talked about where this agency has been. 980 is the high watermark and now apparently at 380, the low watermark. So the question I have is that in the 4-or 5-month period of time that we have sent you the new resources to staff up, it appears you are staffing down. It appears you are losing ground. Some 5 percent of your employees have left and not been replaced, instead of an additional 10 percent being hired. So can you give us

an indication of why the trend line is moving in the wrong direction?

Ms. NORD. Well, we see attrition on a regular basis. You generally see one or two every month leave, and those people have to be replaced to keep you even. But since January, we have brought on 21 new hires. We have got 12 offers out right now. We have got well over 30, almost 40 new positions that are in the mix for being put out for advertisement. So we are working really very, very aggressively to get up to that goal of starting the fiscal year with 444 FTE's.

Senator DURBIN. So are the 21 that you have hired included in the 380 number?

Ms. NORD. If they are on board, they would be included in our current staffing.

Senator DURBIN. What is your current staffing? What number?

Ms. NORD. It is approximately 385 to 390. I will have to give you the precise number.

Senator DURBIN. Well, I do not want you to go out and pick the first person off the street, and I am sure you would not want to.

Ms. NORD. No.

Senator DURBIN. But we sure want to make certain that you understand the sense of urgency. I will tell you why, and I think you know it better than I do.

The biggest scandal last year involved toys. We know that the design for toys for this coming holiday season in December—those were all agreed on last year, and they are currently under manufacture and currently being shipped to the United States. So the new dolls, the new games, whatever they happen to be are on their way. Clearly, we have to be ready to make sure that the American families do not go through the same thing next holiday season that they did the last one.

Ms. NORD. I do understand your sense of urgency and I share that, Senator.

The thing that I would like to point out is that the type of people we are seeking to hire are statisticians, scientists, toxicologists, human factors, engineers. These people are essential to our operations, but they are also in demand in other Government agencies who are also now trying to staff up, as well as in the private sector. So this is something we are committed to doing. We are working full out right now to get ourselves up to the 444. That is our goal and we are working very hard to reach it.

Senator DURBIN. We are going to keep in touch with you to monitor your progress—

Ms. NORD. Good.

Senator DURBIN [continuing]. And hope that you can reach the 444 with competent individuals as quickly as possible.

#### NEW IMPORT SAFETY INITIATIVE

Let me ask you about the import safety initiative, which will allow you to put permanent, full-time product safety investigators at key ports. How many ports will be part of this initiative and how many investigators will be placed at these ports?

Ms. NORD. We are going to be putting people at 10 different ports. Our overall division is going to be approximately, I believe,

12 people, and I would prefer to give your staff privately the locations of those ports, if I could.

Senator DURBIN. May I ask, if you are talking about one person or slightly more than one person per port, what kind of workload will that person face?

Ms. NORD. Well, they will certainly face a very heavy workload, but the thing that needs to be remembered here is, first, we have to start someplace.

And second, we do anticipate that this is a program that will grow based on our experiences this year.

Third, these people are not out there standing alone. They are supported by technical staff back at headquarters and also, very, very importantly, they are going to be working hand in glove with their colleagues from Customs. And that relationship between CPSC and Customs has grown wonderfully well over this past year, and I am very encouraged by the support that we are getting.

Senator DURBIN. Are you considering any new technology in these ports for the detection of lead or other dangerous substances?

Ms. NORD. Yes. Because of the increased funding that we were able to receive from you, we have now acquired what is known as XRF technology. This is important because it allows us to screen for potential violations. What we had to do before is if the inspector's eye saw something that they thought was suspicious, that product had to be sent back to Washington for testing, and that was a process that took a great deal of time. So this allows us to screen it right there quickly. We can then separate out the things that pass from the things that need a further look.

WILL THERE BE A CPSC PRESENCE IN CHINA?

Senator DURBIN. My last question. Do you expect to place any staff in China?

Ms. NORD. If I have my way, we will.

Senator DURBIN. You are the Acting Chairman.

Ms. NORD. Yes. We have been having conversations with the Beijing Embassy and with the State Department about having a foreign service national assigned to us over there. If we are to send CPSC staff there and put them there, that is a big undertaking for our agency. I believe it requires a vote of the Commission, and at this point, you know, we do not have a quorum. But I think that would be a good thing to do. So I will certainly be voting for it.

Senator DURBIN. I am going to turn this over to Senator Brownback. I have to step out while he questions, but I will be returning.

Senator BROWNBACK. Thank you, Mr. Chairman.

Are you conducting any surprise inspections in China now?

Ms. NORD. We do not do inspections per se in China as, for example, the FDA does. What we are doing is all our recall notices go directly to our counterpart agency in China, and they investigate them. We are now getting very detailed reports back from them as to their findings. We have monthly video conferences where we go over each of the recalls and what their investigations found.

Senator BROWNBACk. What about doing surprise inspections in China? You were talking about putting personnel or somebody at the Embassy there. What about doing surprise inspections?

Ms. NORD. It is clear actually that under our statute we only regulate American product sellers. So we would not have the legal authority to go into a Chinese-owned plant with an American inspector and do an inspection. What will happen is that the Chinese Government does that, and if we have people in China, then they could certainly participate in those inspections, but they would have to be done by the Chinese since they would be inspecting Chinese factories.

Senator BROWNBACk. Therein lies the rub, if you will, because we are getting so much from China and we are having so many problems and their system is so different from ours. That is the problem. You could kind of say, well, okay, China has a free press and so they are going to kind of track these issues or get some light on them. Well, they do not. If they had an open political system where you would have different political parties battling this around, well, okay, maybe that would be something that would produce it. They do not. It is well known the corruption and graft that is taking place at local levels in China. The national level of the Chinese Government is trying to get some competitiveness at a local level because of primarily dealing with graft and corruption that they are trying to get out of the system but is there.

So I do not know how we depend upon the Chinese Government to assure that we get a decent product without us being there and in on surprise inspections.

Ms. NORD. We cannot look to the Chinese Government to enforce American safety laws, and we do not intend to. But what we can do is put in place a number of different kinds of processes that will push toward an ultimate result of safer products, and that is what we were trying to do with the agreements that we signed last September that created a framework for this ongoing activity. That is what we are trying to do with our monthly meetings with the Chinese. That is what we are trying to do with the training sessions that go on in China.

But having said all that, it is very, very important that we also understand that we have got to be looking at layers of protection. We can do all that with China, but we have got to make sure that we are vigilant at the ports, that we have got police on the beat, that is to say, that we recall products when we find violations, and that we put penalties in place.

But one of the things that I think is important for you to know, Senator, is that, first of all, the number of toy recalls and lead paint violations is going way down. And also it is important and I think very good news that we have not yet seen any products manufactured after the point of our agreements that have been recalled for lead paint violations.

Senator BROWNBACk. If I could before my time is up, have the total number of consumer product recalls on imported items from China increased or decreased since September 2007, and not just the lead-based products?

Ms. NORD. I am sorry. I did not have that statistic. The number of recalls that we have done in fiscal year 2008 is going up, but

those are products that were already in the marketplace. They are not new products that have entered the marketplace since September. So they are things from 2005, 2006, that kind of thing.

Senator BROWNBACK. Just to conclude on this, when you catch it, the horse is already out of the barn. It is in the consumer marketplace here and that is where we catch it when we ought to be backing up a lot earlier on this. I do not have confidence that, with whatever kind of cooperation we get from the Chinese Government, that they are going to catch this. And at the point at which we catch it, it has already entered the consumer marketplace.

Ms. NORD. That is why the layers of protection is such an important concept. Obviously, consumers are better off if the product is manufactured safely in the first place, and that is what we have to be shooting for.

Senator BROWNBACK. Thank you.  
Thank you, Mr. Chairman.

#### CPSA REAUTHORIZATION

Senator DURBIN. Chairman Nord, when the Consumer Product Safety Commission Reform Act was pending, Commissioner Moore and you sent letters to Chairman Inouye about it, and you have alluded to it in your testimony today. Now, of course, this bill, having passed the Senate, is subject to conference with the House in terms of its outcome.

I just want to make sure that I understand what you have said today. If this bill as passed in the Senate was enacted into law, would this give you more tools and more authority to do your job?

Ms. NORD. It would certainly give us more tools and more authority.

Senator DURBIN. Is there any way that you think provisions of this bill would make your job more difficult?

Ms. NORD. There are a number of new mandates in the legislation and they have very, very short time deadlines on them. So we will either have to come back to you with a plan for staffing up, to the extent we can, or reallocating existing resources, taking things off existing projects and putting them on what is there.

Senator DURBIN. Can you give me any examples of those mandates as you are sitting there?

Ms. NORD. Oh, gosh. The bill set out a whole schedule for doing rulemakings on children's products, durable infant products.

Senator DURBIN. Like tracking labels for children's products?

Ms. NORD. Well, no, doing rulemakings on putting in place rules dealing with durable children's products.

Senator DURBIN. Such as a comprehensive ban on lead?

Ms. NORD. Well, that certainly is there as well, but I was speaking of something else.

Senator DURBIN. I am trying to get down to what you are speaking of. I am not trying to misstate you.

Ms. NORD. The bill tells us on a schedule we are to finalize two rulemakings every year on durable children's products. It also, as you point out, has the ban on lead, and we are working very hard with the authorizers' staff to—

Senator DURBIN. I hope you do not disagree with that mandate.

Ms. NORD. Oh, of course, not.

## CONSUMER COMPLAINT DATABASE

Senator DURBIN. What about the online product safety database enhancing public access to product safety information? Does that exist today?

Ms. NORD. No, it does not.

Senator DURBIN. Do you know what it would take to put that database in operation? Have you considered that?

Ms. NORD. Yes. I have asked our information technology people to give us some estimates, and they have advised me that to do what is described in the Senate bill as it passed would take approximately \$20 million in startup costs and about \$2.5 million to \$3.5 million annual maintenance cost.

If I may expand, the database is a very good example of why we really need to get a better handle overall on our information technology needs. Unfortunately, because the agency has been short funded, we have put together databases on an as-needed basis. They are stovepiped. They do not communicate with each other, and for our staff to have the tools it really needs to do its work, we have got to modernize our IT resources.

## SENATE CPSC REAUTHORIZATION BILL AND COST ESTIMATES

Senator DURBIN. I would like to ask you, if you would, to take a look at the bill that passed the Senate.

Ms. NORD. Yes.

Senator DURBIN. And if you would give us your best estimate from your staff of where you consider to be the most expensive and the most challenging elements of that bill, I would like to know because I want to get this bill passed. We have been working hard to get the conference committee to go to work on it, and I want to be thinking in terms of next year's appropriation as to what will be needed. For example, this database requirement here. If people can come up with a reasonable estimate of what that might cost, I want to be thinking ahead about what that might require in the next appropriation bill.

I believe in this bill. I introduced an earlier bill which was very similar to it. Senator Pryor improved on it and did a great job leading it through the floor on a bipartisan basis. But I want to think ahead to what these new challenges might be and what their costs might be. It certainly is not going to be served with a remake of the \$80 million fiscal year appropriation for this year. It is going to take more.

Ms. NORD. We will need an amendment, and I will be happy to do that.

Senator DURBIN. If you would, please, I would appreciate that very much.

## MOST IMPORTANT ELEMENTS OF CPSC REAUTHORIZATION BILL

Commissioner Moore, your letter in reference to this bill was much more supportive in terms of the tools that it would give to your Commission. As you reflect on that, were there any specifics that you had in mind that you think could really make a difference in the way you do your job?

Mr. MOORE. Certainly given the increase in the number of products coming in through our ports, the ability to expand our study and our interest in products as we meet them at the ports, at the docks, I think is very important. To the extent that we can turn products around if they are violative—they do not meet standards—I think the more effective we can be in controlling product safety problems.

Senator DURBIN. Mr. Moore, I think we all understand what happened last year. It was a troubling time for many American families. There were questions raised about toys in particular but other products as well. And a lot of people came up to me in my State and to other Senators and said, what is safe? What is it safe to buy? And I could not tell them. I really did not know the answer to that question. I could not make a recommendation of what to do.

#### ARE WE BETTER OFF NOW?

Do you feel that there is anything happening at the Commission today which gives you confidence that the next holiday season will be any different or any better?

Mr. MOORE. Well, I think one of the most risky elements of products out there most recently has been lead in children's toys, and I think there has been enough publicity and enough vocal concerns raised about that, that I think the public is very much aware. Also manufacturers are very much aware. And, I think to the extent that we can eliminate that particular problem, that is a major consideration.

Senator DURBIN. It is.

Chairman Nord, let me ask you the same question. Can you tell me with any degree of certainty that the next holiday season, that families can have more peace of mind in the toys and products that they are purchasing, that we will have done a better job or that the process will be any safer?

Ms. NORD. Last Christmas, the toys, because of what happened, were the most tested and examined in the history of our country. We need to build on that. I think that the toy industry safety initiative is a really interesting proposal because, to Senator Brownback's concern, it really does force an examination of the Chinese factories. I think that if I could have one thing only from the authorization bill—this is something I asked for last summer—it is to have certification authority. That would do so much to help us. It would drive testing. It would give us another tool for imports. That simple thing.

#### CERTIFICATION AUTHORITY

Senator DURBIN. Certifying laboratories?

Ms. NORD. No. Certify that toys meet all relevant standards.

Senator DURBIN. Where would the certification take place?

Ms. NORD. The importer and the product seller would have to get it certified.

Senator DURBIN. Where?

Ms. NORD. If it was manufactured in China, they would have to have it tested there.

Senator DURBIN. So there would be laboratories doing this work.

Ms. NORD. Absolutely.

Senator DURBIN. That we would certify.

Ms. NORD. Absolutely.

Senator DURBIN. And that would, obviously, mean that some CPSC employees would have to be traveling to these laboratories.

Ms. NORD. Well, we would certainly be traveling to these laboratories, but I think we would be setting up a structure that would make sure that the quality control is in place, but that all flows from that simple certification requirement.

Senator DURBIN. Is there any effort underway now, even absent this new reform bill, to establish these laboratories in China, not Government laboratories, but private laboratories, the names of which we might recognize?

Ms. NORD. There are many ongoing efforts. I think the community has anticipated that the bill will pass, and that sets out a very full third party, independent testing and certification requirement. And so they are gearing up for that now.

Senator DURBIN. And are you involved at all in that current undertaking?

Ms. NORD. Yes.

Senator DURBIN. What does the CPSC do?

Ms. NORD. Well, our staff is working very closely with the other Government players who have experience doing this in other areas. I mean, we have an ongoing relationship with all the testing and certification accreditation bodies. You know them as well as I, UL, ANSI, ASTM, and there are many others that have a role to play here, and we work daily with them.

#### ENDING REMARKS

Senator DURBIN. I do not have any further questions. I want to thank Commissioner Moore and Chairman Nord for being here today.

We are looking forward to receiving your best estimate of what impact the new reform bill might have on your agency. I encourage you as quickly as possible in a professional way to try to get staffed up to make sure that we have the technical staff and investigators, both here in the United States and overseas. If there is any need of this subcommittee or Congress to be involved to help you locate your people in other places, I hope you will turn to us because I hope I made it clear that I do not want to live through what we did last year, and I am sure you do not either.

Ms. NORD. You can be assured of that, Senator.

Senator DURBIN. We learned from that experience, and we owe it to the American people, all of us in Congress and in the executive branch, to do a better job.

#### ADDITIONAL COMMITTEE QUESTIONS

So the record will be open if my colleagues have questions that they might submit for your consideration. We have made a couple of requests of you here, and I thank you for joining us today.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

## QUESTIONS SUBMITTED TO NANCY A. NORD

## QUESTIONS SUBMITTED TO SENATOR RICHARD J. DURBIN

## NEW IMPORT SAFETY INITIATIVE

*Question.* How will this initiative change your stated goal for fiscal year 2008 for Import Surveillance, which was for staff to conduct port-of-entry surveillance for 1 product for which fire safety standards are in effect?

With the funding increase from fiscal year 2008 and knowing of the limited goals listed in your fiscal year 2008 budget justification, will any of your fiscal year 2009 stated goals for import safety and interaction with China be able to be accelerated into this year?

I know you are using XRF technology. Are there other functional technologies being considered for inspection?

*Answer.* The 2008 stated goal for one port-of-entry surveillance for fire safety contemplated a focus on compliance with CPSC's new mattress flammability standard. That important initiative is underway. While the stated goals in the Consumer Product Safety Commission's (CPSC) Performance Budget and Operating Plan cannot be changed without a vote of the Commission (and the Commission currently lacks a quorum), the CPSC has been able to use the additional funds provided for fiscal year 2008 to strengthen its import surveillance activities. A substantial portion of the new funds have been used to create the new Import Surveillance Division within the Office of Compliance. This new division includes, for the first time in CPSC history, personnel who work at the ports-of-entry on a full-time basis. The new division already has a staff of 11 employees, most of whom are new to the agency (although all have had significant prior experience in import safety). This increased presence at the ports is yielding a larger number of import samples to be evaluated for conformity with mandatory safety standards.

CPSC staff is currently using our new XRF technology at the ports, and it has proven to be a very efficient and effective screening system in identifying products that may contain lead or be coated with lead paint. CPSC staff is exploring whether there are other functional technologies that could be used for inspection at the ports.

## UPDATE ON U.S.-CHINA AGREEMENT

*Question.* Last year, you announced an agreement between the United States and China on lead paint and consumer product safety.

Can you give me an update on any progress? Do you believe that you'll soon be signing a specific follow up agreement to the framework agreement you announced last year?

What do you see as the tangible benefits of finishing a formal agreement?

Have you observed improvements in China's capacity and willingness to perform compliance and enforcement activities regarding product safety?

What outreach has been conducted as a result of the U.S.-China agreement?

Do you expect any such agreements with other countries?

*Answer.* The work plans that the CPSC agreed to at the U.S.-Sino Consumer Product Safety Summit held in September 2007 were outcomes of our Memorandum of Understanding (MOU) with the Peoples' Republic of China (PRC) which established the framework for cooperation and outreach. The work plans called for cooperative work in four product categories: toys, lighters, electrical products, and fireworks. Technical experts are now working on exchanges of standards information, training for product testing, and sharing information on best practices in those four product categories.

Since September, CPSC staff has met eight times, either in person or via video conference, with staff of China's General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) to review recalls and safety issues.

The CPSC has begun a Chinese language service on our web site, where Chinese suppliers and government officials can get updated compliance information in Chinese. We are translating many product safety requirements and posting them on the web site, as well as providing summary descriptions in Chinese that link to full texts in English.

Regarding Chinese cooperation, first it should be stressed that the CPSC does not rely on the Chinese government to enforce U.S. requirements. The CPSC enforces our requirements with American importers. That said, the PRC offered to use its export quality control system to target Chinese-made products that would be recalled if they entered the United States. The CPSC singled out lead paint on toys as a problem and the Chinese agreed to take that on.

- The PRC says it has inspected thousands of factories and revoked hundreds of export licenses for lead paint violations. As we send them case reports, they now send us the results of their investigations, and their reports frequently cite specific remedial action that they have required the Chinese factory to take.
- The Chinese government has stated that no export permit is granted for a painted toy unless the paint on the toy came from an approved lead-free suppliers list.
- The PRC has sponsored numerous high-profile standards and compliance seminars aimed at getting the product safety message to Chinese manufacturers. The CPSC participated in one of these in November.
- CPSC staff has noticed that the Chinese government shows an increased interest in promoting industry best practices for compliance assurance, compared to simply increasing its factory inspections.

Nothing the Chinese government promises and no amount of export control inspection can take the place of major systemic changes in Chinese manufacturing. CPSC staff is working with Chinese suppliers to hasten that change, but it is the U.S. importer that must ensure its product complies with U.S. laws.

At CPSC's invitation, product safety officials from the European Union will join us in China during September for a joint outreach program directed to consumer product exporters. The Chinese government has enthusiastically endorsed this project and has agreed to facilitate access to the appropriate audiences for the compliance outreach seminars.

Because we have found the formal work plan to be an effective mechanism for articulating priorities and specific outcomes, CPSC staff will focus on revising the work plan to capture new priorities rather than creating new formal agreements. New work plan priorities will be the subject of discussions with the Chinese over the coming months. These will be formalized during the U.S.-Sino Safety Summit now being planned for 2009.

With regard to other nations, CPSC staff is negotiating a work plan under a new 2008 MOU with Vietnam which is designed to maximize success in priority product areas, with textiles as a strong candidate for a product area. The CPSC will do a training outreach in Vietnam this year, as well as a joint training outreach in China with the European Union.

#### NEW IMPROVEMENTS IN IT

*Question.* You plan to spend a significant amount of the fiscal year 2008 funding we provided (\$4.3 million) on information technology enhancements.

What are the improvements you are making and what practical results will be achieved?

How will these upgrades improve the quality of injury and hazard data received by CPSC and the targeting of inspection and compliance activities?

*Answer.* With the additional funding provided in fiscal year 2008, the CPSC has established both a long-sought permanent capital fund to be used to replace aging and outdated equipment on a systematic basis as well as a second fund to support development of more advanced electronic applications. Additionally, a one-time expenditure of \$2.3 million is allowing the agency to replace its resource management information system which is so outdated that vendor support is being withdrawn.

These IT improvements are essential to the agency's new Import Safety Initiative and Early Warning System Initiative (EWS). These improvements lay the foundation for improved electronic data exchanges with Customs and Border Patrol's databases and enhance our capabilities to identify, track and stop hazardous products from entering the United States. Development and implementation of our EWS will enhance our current hazard identification systems. The goal of the EWS is to systematically identify and respond to hazards, quickly and effectively. Through an enhanced identification system, the agency will be better able to quickly detect and initiate action on emerging product-associated hazards.

#### STATUS OF CPSC LABORATORY

*Question.* I was pleased to have been helpful in discussions with the General Services Administration about securing a proper laboratory for testing, investigations, and other staffing purposes. I'm glad with the funding we provided, that CPSC will be able to move staff to the laboratory a year earlier than expected.

What is the latest on the laboratory move and expected timetable?

What are the most significant improvements in performance you'll be able to demonstrate as a result of moving to the new laboratory?

*Answer.* The General Services Administration (GSA) is currently working with those who made offers in the Best and Final Offer stage of the process. GSA has

estimated a July/August completion of this stage of the project. We expect a lease award to be made in early fiscal year 2009, with the occupancy date dependent on build-out requirements.

The new facility will improve the efficiency of CPSC's technical and testing operations by allowing the CPSC to consolidate technical staff currently located at our headquarters in Bethesda and at our laboratory in Gaithersburg, Maryland, in one location and to expand testing and evaluation capacity in support of our Import Surveillance Initiative. The new laboratory will allow for a more efficient use of space through the proper integration of offices and laboratories and is expected to reduce the time currently required to set-up and conduct various tests. The new laboratory will be designed to be more flexible and will permit CPSC staff to adapt the layout to future changes in operational requirements.

Plans also include the design and construction of a Human Factors laboratory within the new facility. This laboratory will provide the CPSC with the capability to perform studies of children's and adults' interaction with various consumer products such as toys.

#### WHAT ELSE WILL CPSC STUDY THIS YEAR?

*Question.* Yesterday, I cosponsored legislation to ban bisphenol A (BPA), a chemical found in plastics, from all products made for infants and children up to age 7. I understand that in 2002, the CPSC studied rattles, teething rings, and pacifiers and found BPA in 5 of 13 plastic samples.

Given the growing evidence from new studies that have linked the chemical to cancer, diabetes, behavioral disorders and productive problems, do you now plan to study BPA further, particularly with regard to toys and other items children may put into their mouths?

With the increased resources that you now have, what other issues do you expect to begin to focus on and study?

Nanotechnology?

*Answer.* Bisphenol A (BPA) is a chemical used in the manufacture of polycarbonate plastics and epoxy resins. The greatest potential for human exposure to BPA is from food contact items. The recent in-depth peer review conducted by the National Toxicology Program (NTP) Center for the Evaluation of Risk to Human Reproduction (CERHR) stated that diet accounts for the vast majority, 99 percent, of human exposure. If BPA migrates out of a food contact surface into food, it is considered an unintentional food additive and would be under the jurisdiction and expertise of the Food and Drug Administration (FDA).

Polycarbonate is used in consumer products where there is a need for a very hard, clear, unbreakable and sturdy plastic. Polycarbonate is used in helmets, pacifier shields, protective gear such as goggles and shin guards, as well as other products, that fall under the jurisdiction of the CPSC.

Polycarbonate is used in some pacifier shields (that prevent the nipple from being swallowed) so that when a child falls, the shield does not shatter, breaking into small parts and exposing the child to a possible choking or laceration injury. Any potential exposure from this product would result from mouthing the shield. In 2000 and 2001, CPSC staff conducted a behavioral observation study on mouthing related to the agency's investigation of exposure to diisononyl phthalates; the results of this study are instructive with regard to BPA. In the behavioral observation study, trained observers monitored the behavior of 169 children between the ages of 3 and 36 months. The study found that the daily mouthing times of children's toys and related products were much lower than expected. Based on these findings, the potential exposure from the pacifier shield would be negligible. As with adults, the preponderant exposure route for children would be through food.

There would be no exposure to BPA expected from compact disks, electronics, helmets, goggles, other protective gear, and related consumer products. It should be noted that polycarbonate plays a very important role in its use in helmets and other protective gear, preventing children from receiving serious head injuries, eye injuries or other bodily injuries while engaging in sports and play.

With respect to nanotechnology, CPSC staff is actively participating in a number of interagency initiatives or initiatives by other groups addressing the production, use, and potential health effects and safety of nanomaterials. These groups include: Nanoscale Science, Engineering and Technology (NSET) subcommittee of the National Science and Technology Council (NSTC) and its working groups such as the Nanotechnology Environmental and Health Implications (NEHI); American National Standards Institute (ANSI); International Life Sciences Institute (ILSI); National Toxicology Program (NTP); ASTM International (ASTM); and International Council on Nanotechnology (ICON).

Participation in these groups and activities fosters communication between CPSC staff and the staff of various federal agencies and other groups. CPSC staff learns about health effects data and the best available practices for the regulation of nanomaterials. These interactions also promote responsible research and development of nanomaterials that can be used in consumer products.

A contractor for the CPSC has completed a literature review of nanomaterials that may be used as flame-retardant (FR) chemicals. The report focuses on the physico-chemical properties of the FR chemicals and also reviews potential exposure and health effects of these compounds.

CPSC staff has met with staff at NIST, EPA, FDA, and NIOSH to identify areas of mutual interest and collaboration. For example, CPSC staff has signed a memorandum of understanding (MOU) with NIST to review nano-flame retardants in various products. CPSC staff is also developing an interagency agreement (IAG) with the National Institute for Occupational Safety and Health (NIOSH) to conduct laboratory investigations of emissions of nanomaterials from selected consumer products.

The increased resources for the CPSC are primarily devoted to three purposes in fiscal year 2008: new laboratory facilities, information technology modernization and additional field staff. However, CPSC staff will continue chemical-related activities focusing on lead in consumer products; nanotechnology; strong sensitizers; ozone-generating air cleaners; the use of flame retardant chemicals in upholstered furniture and mattresses; implementation of the Globally Harmonized System (GHS) for Classification and Labeling; and participation in interagency and international workgroups and committees. Additionally, the staff has begun to investigate phthalate substitutes.

In 2009 all of these current activities are expected to continue. In addition, the staff plans to begin new projects looking at potential health effects on issues that may include the use of aerosol products (such as leather waterproofing sprays) and the presence of stabilizers in plastics.

*Question.* Is CPSC Collecting Data on Fire-Related Injuries and Deaths?

Your fiscal year 2008 budget justification indicates that you began an evaluation of a new system for collecting data on fire-related injuries and deaths but that additional data collection and investigation for this new system was being suspended pending a review, resulting in temporary cost savings.

Where does this effort stand today? Have you resumed collection and analysis of fire death data and will you continue to collect and evaluate fire injury data?

Answer. Two preliminary studies, one on fire fatalities and the other on fire injuries, have been completed. The preliminary study results are currently undergoing agency review, evaluation and clearance procedures; further work is pending completion of those procedures. The CPSC continues to utilize data provided by the U.S. Fire Administration's National Fire Incident Reporting System and the National Fire Protection Association's Survey of Fire Departments to generate fire loss estimates (fires, death, injuries, and property loss damage) for products within CPSC's jurisdiction.

#### DATA ANALYSIS—NEW EARLY WARNING SYSTEM PILOT PROGRAM

*Question.* I understand that with the additional funds provided last year, you will implement a pilot program; an early warning system that will facilitate rapid identification of and action on emerging product-associated hazards.

How will this program work and what products will you focus on?

Answer. The goal of the Early Warning System (EWS) is to enhance CPSC's current hazard identification systems by decreasing the time required to identify and initiate action on emerging product-associated hazards, and increasing accountability for decisions.

In November 2007, CPSC staff initiated an EWS pilot program that targets products found in the sleeping environments of children—cribs, bassinets, and play yards (play pens). The agency's current focus is on mechanical and structural hazards that have the potential to entrap or otherwise fatally injure a child.

A multidisciplinary team of subject matter experts meets weekly to evaluate and characterize the hazard scenarios and failure modes of product-associated incidents received during the previous week. An electronic database has been developed to capture these hazard scenarios, failure modes, and the investigative status.

The automated system that is being developed will include the ability to: consolidate incident information from CPSC's many databases into one incident record, associate records that have like incident scenarios, identify hazard patterns and trends, apply a set of decision rules based on specific hazard characteristics and frequency of occurrence, and assign decision rule-based outcomes.

The next stage in the development of our EWS, currently underway, is proof of concept. Concepts that are developed to automate the program requirements identified in the pilot program will be tested to ensure that system outputs meet the needs of system users and satisfy the project objective.

#### WHY ARE CPSC GOALS FOR CUSTOMER SATISFACTION DECREASING?

*Question.* Your fiscal year 2009 budget justification lists annual goals for customer satisfaction. Categories include, but are not limited to: responding to voicemail messages by the next business day; processing incident reports within 8 working hours; and mailing incident information for verification to consumers within 2 business days. In almost every category listed, your goals for 2008 and 2009 are lower than your actual rates for years 2004 through 2007.

Why is that?

*Answer.* The staff of the National Injury Information Clearinghouse (NIIC) was reduced over the last several years from six full time technical information specialists to the current staff level of three full time technical information specialists. As the agency continues to hire more staff as a result of increased appropriations, the number of staff resources devoted to the NIIC will increase, and pending the restoration of a quorum, the Commission will be reassessing these performance goals when developing the agency's fiscal year 2009 operating plan.

#### ALL-TERRAIN VEHICLES

*Question.* I understand that you've collected reports on fatal crashes.

Have you recorded that information in your database so it can be studied?

Have you performed any tests on ATVs to see whether the companies are abiding by agreements on lateral (side) stability?

ATVs used to be mostly three-wheeled vehicles. Moving to more stable, four-wheel models was an improvement, but a side effect was to shift the safety debate to rider behavior and away from ATV design.

Have you challenged manufacturers on the design of four-wheel ATVs or done any meaningful stability testing of four-wheel ATVs in the past decade?

Are most of these ATVs coming from China?

Now that you are hiring more staff, will this be an area of focus?

*Answer.* CPSC staff collects information on fatalities associated with the use of all-terrain vehicles (ATVs) and records that information in a CPSC ATV database (ATVD) so that the information can be retrieved, reviewed, and analyzed. The ATVD is available to the public on request. The fatality data are gathered from a variety of sources, including news clips; reports submitted to CPSC staff from medical examiners and coroners; consumer reports received via telephone or the Internet; and death certificates received from state and city vital registries.

ATV fatalities generally are assigned for in-depth investigation by CPSC Field Operations staff, who attempt to gather any available information about the:

- incident (date, location, number of deceased persons, a description of the circumstances surrounding the incident and how the incident occurred, number of riders on the ATV when the incident occurred);
- decedent (date of death, age, gender, helmet use, cause of death);
- driver (age, gender, height, weight, alcohol use at time of incident, drug use at time of incident, how the driver learned to operate an ATV);
- ATV (type, manufacturer, brand, model, and engine size);
- environment (type of terrain being traveled at the time of the incident, type of road being traveled at the time of the incident); and
- hazard pattern (e.g., did the ATV overturn? Did the ATV land on the victim?).

CPSC staff uses these fatality data in preparing its annual report of ATV-related deaths and injuries, in special studies requested by the Commission, in support of education initiatives by CPSC's Office of Public Affairs, and in support of voluntary standard and rulemaking activities.

In August and September 2007, Office of Compliance staff requested lateral stability values for all current ATV models from all of the firms with Letters of Understanding (LOUs) with the CPSC. All reported lateral stability values met the requirements that were agreed to when the consent decrees were in effect.

Currently, CPSC Engineering Sciences (ES) staff is examining the current generation of ATVs to become familiar with the static and dynamic testing of ATVs using the latest available technologies. As a part of this effort, ES staff recently tested nine youth ATVs at the U.S. Army Automotive Test Center in Aberdeen, Maryland. This testing consisted of gathering baseline measurements of the vehicles' static stability and preliminary measurements of the vehicles' dynamic performance. In addition, CPSC staff has been developing the capability to perform dynamic testing of

ATVs, has been consulting with vehicle dynamic experts at Aberdeen, plans to test adult ATVs in fiscal years 2008 and 2009, and has been developing a robotic steering system to test ATV stability under a variety of operational conditions, some of which would be too dangerous to perform with a test operator.

In the time since the consent decrees, vehicle technology has evolved in terms of brake systems, suspension systems, and engine horsepower. CPSC staff believes that the exploration of a lateral stability requirement for ATVs, while potentially very useful, is an exceedingly complex task. This is because ATVs are rider-interactive vehicles used in many types of off-road terrains. The effort to address lateral stability issues requires extensive test and evaluation with the cooperation of CPSC staff, industry and other private sector entities.

With regard to ATVs imported from China, a recently-released trade press report indicates that for 2007 about 42 percent of the ATVs sold in the United States were from "nontraditional" companies. Nearly all of these units were from Chinese companies. A report, with a chart showing Chinese ATVs as a proportion of the "non-traditional" ATVs sold in the United States for the years 1997 through 2007, can be found at: <http://www.dealernews.com/dealernews/article/articleDetail.jsp?id=512838&searchString=nontraditi>.

CPSC staff intends to continue its ATV rulemaking and other activities in 2008 and 2009, as directed by the Commission. Other activities include continued testing of ATVs with the goal of better understanding vehicle stability; information and education activities (see [ATVsafety.gov](http://ATVsafety.gov)); completion of the next annual report of ATV-related deaths and injuries; and conducting focus groups to address the issue of maximum speed for youth ATVs.

#### NEW POOL AND SPA SAFETY ACT

*Question.* Your budget justification indicates that this year, you will begin an education program associated with the Pool and Spa Safety Act, enacted last year.

What specific activities will you undertake?

*Answer.* On May 21, 2008, the CPSC launched its 2008 media and education campaign on pool safety and drowning prevention by hosting a pre-Memorial Day Weekend news conference. CPSC's news conference and news release focused on new death and injury data, building layers of protection in and around the pool and spa, the importance of constant supervision, and the requirements for public pool and spa owners/operators under the new federal law.

The news conference, the issuance of a video news release, and proactive communication with the media, resulted in: a segment on "The Today Show", a news reader on "Good Morning America", citation of our data on "CBS Evening News" reader, an ABCNews.com story on a CPSC employee who lost her son in a pool drowning, and stories on "CBS Radio", "CNN Radio", "Telemundo", Washingtonpost.com, the Associated Press wire, and in Parenting Magazine. Current data collected by the CPSC shows more than 25 million TV viewers and radio listeners were reached.

In addition, the CPSC is working with two respected companies in the Washington, DC area to disseminate nationally and locally, our TV and Radio Public Service Announcement (PSA) on pool safety, which is entitled "Quickly and Quietly."

The CPSC, in partnership with Safe Kids USA and the American Red Cross, also produced a safety poster on drowning prevention that was specifically designed for our 5,300 Neighborhood Safety Network members, who provide safety information to disadvantaged families.

The agency continues to provide consumers, pool owners, pool operators and others with free copies of our "Guidelines for Entrapment Hazards: Making Pools and Spas Safer" and "Safety Barrier Guidelines for Home Pools" publications.

During the summertime, the CPSC will work closely with Safe Kids USA to respond to news reports of child drownings and will provide critically important safety information and PSAs to media in the affected community.

The CPSC is working hard to educate families on pool and spa safety this year and, pending the availability of appropriations, is preparing to carry out a significantly expanded information and education campaign in fiscal year 2009. This effort, combined with our commitment to effectively implement the new Pool and Spa Safety Act, is aimed at reducing the tragic number of child drownings which occur each year.

#### YO-YO WATER BALL

*Question.* In 2003, CPSC announced the results of an investigation into the "Yo-Yo Water Ball", a plastic toy with a stretchy cord, for which CPSC had received 186 reports of incidents in which the toy's cord wrapped around a child's neck. CPSC determined that there was a low but potential risk of strangulation and that the

toy did not meet the standards for a recall. I understand that as of mid-December 2007, CPSC has received more than 400 injury reports related to this toy. And the State of New Jersey has now banned the sale of Yo-Yo Water Balls.

Is CPSC considering taking any action with regard to this dangerous product?

Answer. The CPSC has not received 400 injury reports related to this toy. Incident reports provided to the CPSC do not necessarily involve an injury. For example, many of the incident reports regarding yo-yo water balls were concerns about odors, leaking or possible flammability. The majority of these reports were received before the CPSC issued a public advisory on the product on September 24, 2003. Since that time, incident reports have dropped precipitously. In calendar year 2006 the CPSC received 10 incident reports, four of which were complaints about the product's odor.

When CPSC's professional staff investigated this product in 2003, they decided not to recommend that the Commission ban yo-yo water balls. Staff did not believe that the product met the banning requirements under section 15 of the Federal Hazardous Substances Act. Subsequently, the CPSC worked with ASTM International in their development of a voluntary safety standard for yo-yo water balls. That standard was published in the March 2007 version of ASTM F963.

CPSC QUORUM

*Question.* CPSC's quorum expired in early February. The CPSC Reauthorization, in conference negotiations right now, and which may be completed in May, would temporarily permit two members of the Commission, if they are not affiliated with the same political party, to constitute a quorum for the transaction of business.

What rulemakings and other items requiring a vote of the Commission do you foresee this year?

What items are pending right now and ready for a vote?

Answer. The Commission's official Regulatory Agenda sets forth the status of all CPSC rulemakings currently underway. A copy of the current Regulatory Agenda is attached. If a CPSC reauthorization bill is enacted into law that reflects the language currently being considered by the Senate/House conference committee, the Regulatory Agenda will have to be very substantially revised to reflect redeployment of Commission personnel resources to address new statutory mandates. In that case, during the remainder of calendar year 2008, the Commission may take official action on project changes to the fiscal year 2008 and 2009 Operating Plans and the CPSC fiscal year 2009 budget submission.

AGENCY RULE LIST—SPRING 2008—CONSUMER PRODUCT SAFETY COMMISSION

Agency	Agenda Stage of Rule-making	Title	RIN
CPSC	Proposed Rule Stage	Flammability Standard for Upholstered Furniture	3041-AB35
CPSC	Proposed Rule Stage	Possible Revocation or Amendment of Standard for the Flammability of Mattresses and Mattress Pads (Cigarette Ignition).	3041-AC27
CPSC	Proposed Rule Stage	All-Terrain Vehicles	3041-AC28
CPSC	Long-Term Actions	Amendment of Safety Regulations for Cribs	3041-AB67
CPSC	Long-Term Actions	Portable Bed Rails	3041-AB91
CPSC	Long-Term Actions	Safety Standard for Baby Bath Seats	3041-AC03
CPSC	Long-Term Actions	Petition CP 03-1/HP 03-1 Requesting a Standard for Bunk Bed Corner Posts.	3041-AC10
CPSC	Long-Term Actions	Petition CP 04-1/HP 04-1 Requesting Mandatory Fire Safety Standards for Candles and Candle Accessories.	3041-AC22
CPSC	Long-Term Actions	Mandatory Safety Standard for Cigarette Lighters	3041-AC25
CPSC	Long-Term Actions	Proposed Standard To Address Open-Flame Ignition of Bedclothes	3041-AC26
CPSC	Long-Term Actions	Regulatory Options for Infant Pillows	3041-AC30
CPSC	Long-Term Actions	Regulatory Options for Table Saws	3041-AC31
CPSC	Long-Term Actions	Fireworks Devices	3041-AC35
CPSC	Long-Term Actions	Portable Generators	3041-AC36
CPSC	Long-Term Actions	Civil Penalty Factors	3041-AC40
CPSC	Long-Term Actions	Regulatory Options for Lead Toy Jewelry	3041-AC41
CPSC	Completed Actions	Amendment of the Standard for the Flammability of Clothing Textiles.	3041-AB68

VIEW RULE

CPSC RIN: 3041-AB35 Publication ID: Spring 2008  
 Title: Flammability Standard for Upholstered Furniture

Abstract: On October 23, 2003, the Commission issued an ANPRM to expand the scope of the ongoing upholstered furniture flammability proceeding to include both cigarette and small open flame-ignited fires. The staff developed a draft standard addressing both cigarette and small open flame ignition, and held public meetings in 2004 and 2005 to present and discuss the draft. In January, 2006, the staff sent a briefing package containing a revised draft standard and describing regulatory options to the Commission and provided follow-up status reports on various technical research efforts in November 2006 and December 2006. The staff forwarded another options package to the Commission in November 2007. The Commission voted to propose a rule based on the 2007 draft standard. The Commission's proposed standard would not require FR chemicals in fabrics or fillings.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Economically Significant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Proposed Rule Stage  
 Major: Yes  
 Unfunded Mandates: No  
 CFR Citation: 16 CFR 1640 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1193, Flammable Fabrics Act; 5 USC 801  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
ANPRM .....	06/15/1994 ..	59 FR 30735
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame Retardant Chemicals.	03/17/1998 ..	63 FR 13017
Meeting Notice .....	03/20/2002 ..	67 FR 12916
Notice of September 24 Public Meeting .....	08/27/2003 ..	68 FR 51564
ANPRM .....	10/23/2003 ..	68 FR 60629
ANPRM Comment Period End .....	12/22/2003 ..	
Staff Held Public Meeting .....	10/28/2004 ..	
Staff Held Public Meeting .....	05/18/2005 ..	
Staff Sends Status Report to Commission .....	01/31/2006 ..	
Staff Sends Status Report to Commission .....	11/03/2006 ..	
Staff Sends Status Report to Commission .....	12/28/2006 ..	
Staff Sends Options Package to Commission .....	12/22/2007 ..	
Commission Votes to Direct Staff to Prepare Draft NPRM .....	12/27/2007 ..	
Staff Sends Draft NPRM to Commission .....	01/22/2008 ..	
Commission Decision to Publish NPRM .....	02/01/2008 ..	
NPRM .....	03/04/2008 ..	73 FR 11702
NPRM Comment Period Ends .....	05/19/2008 ..	

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: Yes  
 RIN Data Printed in the FR: No  
 Agency Contact: Dale R. Ray, Project Manager, Consumer Product Safety Commission, Directorate for Economic Analysis, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7704. Email: dray@cpsc.gov.

## VIEW RULE

CPSC RIN: 3041-AC27 Publication ID: Spring 2008  
 Title: Possible Revocation or Amendment of Standard for the Flammability of Mattresses and Mattress Pads (Cigarette Ignition)

Abstract: The Commission published an advance notice of proposed rulemaking (ANPRM) in the Federal Register on June 23, 2005, requesting comments on a rulemaking proceeding that could result in revoking or amending its existing flammability standard that includes a test for cigarette ignition of mattresses and mattress pads (16 CFR part 1632). On January 13, 2005, the Commission issued a proposed flammability standard for mattresses and mattress and foundation sets that prescribes an open flame ignition test. Some commenters to that rulemaking stated that they believe that once the new mattress standard is in effect the cigarette ignition test currently required in 16 CFR 1632 will not be necessary and conducting

both tests will be burdensome for industry. The Commission issued this ANPRM to begin consideration of whether the existing mattress standard should be revoked or amended. The staff is analyzing the public comments. A research project examining the criteria for self-sustained smoldering began in late 2006.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Proposed Rule Stage  
 Major: Undetermined  
 Unfunded Mandates: Undetermined  
 CFR Citation: 16 CFR 1632 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1193, Flammable Fabrics Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
ANPRM .....	06/23/2005 ..	70 FR 36357
ANPRM Comment Period End .....	08/22/2005 ..	
Research Project Begins .....	09/30/2006 ..	
Research Project Completed .....	09/00/2008 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup>To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Patricia K. Adair, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7536. Email: padair@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC28 Publication ID: Spring 2008  
 Title: All-Terrain Vehicles

Abstract: On October 14, 2005, the Commission published an advance notice of proposed rulemaking (ANPRM) concerning all terrain vehicles (ATVs). Issuance of the ANPRM initiated a rulemaking proceeding under the Consumer Product Safety Act (CPSA) and the Federal Hazardous Substances Act (FHSA). After reviewing the regulatory alternatives and the comments submitted in response to the ANPRM, the staff developed a May 31, 2006, briefing package recommending that the Commission issue a notice of proposed rulemaking (NPRM) that would formally ban three-wheeled ATVs and mandate performance, training, labeling, and information requirements for four-wheeled ATVs. Other non-regulatory activities also were recommended, including the launch of an ATV safety Web site and a two-phase information and education effort. A Commission briefing was held on June 15, 2006. On July 12, 2006, the Commission voted 3-0 to approve publication of the draft NPRM with changes in the Federal Register. The NPRM was published on August 10, 2006, with a comment closing date of October 24, 2006. Seven ATV manufacturers and distributors requested a 60-day extension of the comment period. The Commission granted their request, and the comment closing date was extended to December 26, 2006. Staff is conducting research as directed by the Commission in its vote on July 12, 2006. On February 13, 2008, staff sent a report to the Commissioners summarizing the status of the staff's research activities.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Proposed Rule Stage  
 Major: Undetermined  
 Unfunded Mandates: Undetermined  
 CFR Citation: 16 CFR 1307; 16 CFR 1410; 16 CFR 1500; 16 CFR 1515 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: Consumer Product Safety Act; 15 USC 1261; Federal Hazardous Substances Act  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
Staff sends draft ANPRM to Commission .....	09/15/2005 ..	
Commission Decision .....	10/05/2005 ..	
ANPRM .....	10/14/2005 ..	70 FR 60031
ANPRM Comment Period Closes .....	12/13/2005 ..	
Staff Sends Briefing Package to Commission .....	05/31/2006 ..	
Commission Decision .....	07/12/2006 ..	
NPRM .....	08/10/2006 ..	71 FR 45903
NPRM Comment Period Extended .....	10/20/2006 ..	71 FR 61923
NPRM Comment Period Closes .....	10/24/2006 ..	
NPRM Comment Period Closes .....	12/26/2006 ..	
Staff Sends Status Report to Commissioners .....	02/13/2008 ..	
Staff Send Second Status Report to Commission .....	06/00/2008 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Elizabeth W. Leland, Project Manager, Consumer Product Safety Commission, Directorate for Economic Analysis, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7706. Email: eleland@cpsc.gov.

## VIEW RULE

CPSC RIN: 3041-AB67 Publication ID: Spring 2008

Title: Amendment of Safety Regulations for Cribs

Abstract: On December 16, 1996, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding that could result in amendment of the safety regulations for full-size and non-full-size cribs, 16 CFR parts 1508 and 1509. Among the regulatory alternatives under consideration is amendment of the regulations to add tests to assure that slats will not disengage from the side panels of cribs. The Commission began this proceeding after considering information about incidents in which crib slats disengaged from the side panels of cribs, creating a risk that children may become entrapped between the remaining slats or fall out of the crib. At the urging of CPSC staff, in April 1999, the voluntary standard for cribs designated, "Specification for Full Size Baby Cribs (ASTM F1169-99)," and published by ASTM International was revised to include performance requirements for crib slats. CPSC staff is currently assessing the adequacy of and conformance with the voluntary standard. Following this assessment, the staff will prepare a briefing package for Commission consideration as to whether to continue the rulemaking.

Agency: Consumer Product Safety Commission (CPSC)

Priority: Substantive, Nonsignificant

RIN Status: Previously published in the Unified Agenda

Agenda Stage of Rulemaking: Long-Term Actions

Major: Undetermined

Unfunded Mandates: No

CFR Citation: 16 CFR 1508 to 1509 (To search for a specific CFR, visit the Code of Federal Regulations.)

Legal Authority: 5 USC 553, Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
Staff Recommended Revisions to Voluntary Standard .....	09/30/1996 ..	
ANPRM .....	12/16/1996 ..	61 FR 65996
ANPRM Comment Period End .....	02/14/1997 ..	
Revisions to Voluntary Standard Approved .....	04/10/1999 ..	
Voluntary Certification Program Begins .....	03/01/2000 ..	
Staff Began Monitoring Adequacy of and Conformance with Revised Voluntary Standard ....	03/27/2001 ..	

## TIMETABLE—Continued

Action	Date	FR Cite
Staff Completes Monitoring Adequacy and Conformance .....	( <sup>1</sup> ) .....	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7577. Email: phackett@cpsc.gov.

## VIEW RULE

CPSC RIN: 3041-AB91 Publication ID: Spring 2008  
 Title: Portable Bed Rails  
 Abstract: The Commission is considering whether certain portable bed rails present an unreasonable risk of injury that should be regulated. A portable bed rail is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. Such bed rails may be constructed in a manner that allows children to become entrapped between the portable bed rail and the bed. This entrapment can result in serious injury or death. In October 2000, the Commission issued an advance notice of proposed rulemaking (ANPRM) addressing this issue. The ASTM International standard for bed rails has since been revised and staff is evaluating the adequacy of, and conformance to, the revised standard. Following this evaluation, the Commission staff will prepare a briefing package for Commission consideration as to whether to continue the rulemaking.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1261, Federal Hazardous Substances Act  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
Staff Sent Briefing Package to Commission .....	06/28/2000 ..	
Commission Decision .....	09/21/2000 ..	
ANPRM .....	10/03/2000 ..	65 FR 58968
ANPRM Comment Period End .....	12/04/2000 ..	
Staff Sent Briefing Package to Commission .....	10/01/2001 ..	
Commission Decision .....	10/30/2001 ..	
Staff Begins Evaluating Conformance to Voluntary Standard .....	10/01/2005 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7577. Email: phackett@cpsc.gov.

## VIEW RULE

CPSC RIN: 3041-AC03 Publication ID: Spring 2008  
 Title: Safety Standard for Baby Bath Seats

Abstract: An advance notice of proposed rulemaking (ANPRM), published in the Federal Register on August 1, 2001, requested comments on a rulemaking proceeding that could result in a mandatory rule addressing baby bath seats. These are consumer products used to hold an infant in a bathtub while the child is being bathed. The staff briefed the Commission on July 28, 2003, and the Commission received oral comments from the public on the same date. The staff evaluated the comments received at the hearing and sent a briefing package to the Commission. In October of 2003, the Commission voted to direct the staff to prepare a notice of proposed rulemaking (NPRM) for the Commission's consideration. On December 29, 2003, the NPRM was published in the Federal Register. The comment period closed on March 15, 2004. Since the NPRM, staff worked with ASTM International to revise the voluntary standard for bath seats (ASTM F1967). The standard was revised in 2004 and again in 2007. Staff is currently evaluating the adequacy of the revised standard. Following this evaluation, staff will prepare a briefing package for Commission consideration as to whether to continue the rulemaking.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: Undetermined  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1261, Federal Hazardous Substances Act  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
ANPRM .....	08/01/2001 ..	66 FR 39692
ANPRM Comment Period End .....	10/01/2001 ..	
Staff Sends Briefing Package to Commission .....	05/08/2003 ..	
Staff Briefed Commission .....	07/28/2003 ..	
Hearing .....	07/28/2003 ..	
Commission Decision .....	10/16/2003 ..	68 FR 74878
NPRM .....	12/29/2003 ..	
NPRM Comment Period End .....	03/15/2004 ..	
Staff Begins Monitoring Progress of Voluntary Standard .....	10/01/2005 ..	
Staff Completes Monitoring Progress of Voluntary Standard .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: None  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Related RINs: Related to 3041-AB93  
 Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7577. Email: phackett@cpsc.gov.

## VIEW RULE

CPSC RIN: 3041-AC10 Publication ID: Spring 2008  
 Title: Petition CP 03-1/HP 03-1 Requesting a Standard for Bunk Bed Corner Posts

Abstract: A petition from the Danny Foundation requests that the Commission establish a standard to address an alleged hazard of strangulation posed by bunk bed corner posts. The petitioner asserts that due to the height of bunk beds, corner posts on bunk beds pose a substantial risk to children when the children's clothing, bedding, or other items become caught on the corner posts. On November 8, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on January 7, 2003. On April 13, 2004, the staff sent a briefing package to the Commission on this issue.

On July 30, 2004, the Commission voted to defer action on the petition while the staff continues to work with the ASTM International bunk bed subcommittee on this issue. A revised voluntary standard for bunk beds was published in October 2004 that incorporates warning language about hangings associated with bunk beds and attaching items to the bed. CPSC staff worked with the subcommittee to develop requirements to address strangulation hazards with vertical protrusions. A revised standard was approved on July 15, 2007. Staff is currently evaluating the adequacy of the revised standard.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1262(j), Federal Hazardous Substances Act; 15 USC 2058(i), Consumer Product Safety Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Petition Docketed .....	10/23/2002 ..	
Notice .....	11/08/2002 ..	67 FR 68107
Comment Period End .....	01/07/2003 ..	
Staff Sends Briefing Package to Commission .....	04/13/2004 ..	
Commission Votes To Defer Action .....	07/30/2004 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	
Staff Begins Evaluating Conformance to Voluntary Standard .....	( <sup>1</sup> ) .....	

<sup>1</sup>To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: None  
 Federalism: No  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Susan Bathalon, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7566. Email: sbathalon@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC22 Publication ID: Spring 2008  
 Title: Petition CP 04-1/HP 04-1 Requesting Mandatory Fire Safety Standards for Candles and Candle Accessories

Abstract: The National Association of State Fire Marshals requests that the Commission issue mandatory safety standards for candles and candle accessories such as candleholders. The request was docketed as a petition for rulemaking on March 10, 2004. A notice requesting comment on the petition was published in the Federal Register on April 6, 2004. The comment period closed on June 7, 2004. On July 10, 2006, CPSC staff sent a briefing package to the Commission for consideration and recommended that the Commission defer action on the petition. On July 19, 2006, the Commission voted 3-0 to defer the petition and directed the staff to provide updates on the progress of voluntary standards activities. Staff provided a status report to the Commissioners on June 6, 2007.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: Undetermined  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2051, Consumer Product Safety Act; 15 USC 1261, Federal Hazardous Substances Act  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
Petition Docketed .....	03/10/2004 ..	
Notice .....	04/06/2004 ..	69 FR 18059
Comment Period End .....	06/07/2004 ..	
Staff Sends Briefing Package to Commission .....	07/10/2006 ..	
Commission Votes to Defer Action .....	07/19/2006 ..	
Staff Sends Update on Progress of Voluntary Standards Activities to Commissioners .....	06/06/2007 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: None  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Allyson Tenney, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7567. Email: atenney@cpsc.gov.

## VIEW RULE

CPSC RIN: 3041-AC25 Publication ID: Spring 2008

Title: Mandatory Safety Standard for Cigarette Lighters  
 Abstract: In November 2001, a petition from the Lighter Association, Inc. requested that the Commission issue a rule to adopt an ASTM International voluntary safety standard for cigarette lighters. In November 2004, the Commission voted to grant the petition and initiate a rulemaking proceeding. An advance notice of proposed rulemaking (ANPRM) was published in April 2005 and the comment period closed on June 10, 2005. Staff completed monitoring conformance of lighters with the voluntary standard, and sent a status report to the Commission for consideration in October 2006. On January 23, 2008, staff provided a review of applicable law, decision factors, and pertinent information to assist the Commission in considering whether to formally rely upon the voluntary standard for cigarette lighters. The Commission did not agree on this approach.

Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 5 USC 553(e); Administrative Procedure Act; 15 USC 2051; Consumer Product Safety Act  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
Staff Sent Draft ANPRM to Commission .....	03/25/2005 ..	
Commission Decision .....	03/31/2005 ..	
ANPRM .....	04/11/2005 ..	70 FR 18339
ANPRM Comment Period End .....	06/10/2005 ..	
Staff Begins Monitoring of Conformance with Voluntary Standard .....	10/01/2005 ..	
Staff Completes Monitoring of Conformance with Voluntary Standard .....	05/15/2006 ..	
Staff Sent Status Report to Commission .....	10/10/2006 ..	
Staff Sent Briefing Package to Commission .....	01/23/2008 ..	
Commission Decision .....	02/01/2008 ..	
Next Action Undetermined .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No

RIN Data Printed in the FR: No  
 Agency Contact: Rohit Khanna, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7546. Email: rkhanna@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC26 Publication ID: Spring 2008  
 Title: Proposed Standard To Address Open-Flame Ignition of Bedclothes  
 Abstract: On January 13, 2005, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding for development of a flammability standard to address risks of death, injury, and property damage from fires associated with open-flame ignition of bedclothes. Bedclothes are a major contributor to mattress ignition. Commission staff reviewed research indicating that mattresses and bedclothes operate together as a system in fires involving mattresses. Research has suggested that improved flammability performance of some bedclothes can reduce the fire hazard. The Commission staff will review public comments received on the ANPRM and consider how information derived from implementation of the new open flame mattress standard impacts bedclothes flammability. Staff will prepare a decision package for Commission consideration.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Economically Significant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: 16 CFR 1634 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1193; Flammable Fabrics Act; 5 USC 801  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
ANPRM .....	01/13/2005 ..	70 FR 2514
ANPRM Comment Period End .....	03/14/2005 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup>To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Allyson Tenney, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7567. Email: atenney@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC30 Publication ID: Spring 2008  
 Title: Regulatory Options for Infant Pillows  
 Abstract: On July 13, 2006, the Commission voted 3-0 to grant a petition requesting that the Commission amend the ban on infant pillows under 16 CFR 1500.18(a)(16)(i). The staff prepared a draft advance notice of proposed rulemaking (ANPRM) concerning infant pillows to initiate a rulemaking proceeding under the Federal Hazardous Substances Act (FHSA) to identify the product and the risk of injury associated with infant pillows, summarize regulatory alternatives, and invite comments from the public. On September 27, 2006, the Commission issued the ANPRM. Staff reviewed public comments and prepared an options briefing package for Commission consideration. On February 1, 2008, the Commission voted 2-0 to exempt certain nursing pillows from the ban on infant pillows and to terminate rulemaking.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined

Unfunded Mandates: No  
 CFR Citation: 16 CFR 1500.18(a)(16)(i)  
 Legal Authority: 5 USC 553, Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Staff sends Draft ANPRM to Commission .....	09/07/2006 ..	
Commission Decision .....	09/14/2006 ..	
ANPRM .....	09/27/2006 ..	71 FR 56418
ANPRM Comment Period Ends .....	11/27/2006 ..	
Staff Sends Briefing Package to Commission .....	01/24/2008 ..	
Commission Decision .....	02/01/2008 ..	
Staff Drafts FR Notice .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Suad Wanna-Nakamura, Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7252. Email: swannanakamura@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC31 Publication ID: Spring 2008  
 Title: Regulatory Options for Table Saws  
 Abstract: On July 11, 2006, the Commission voted 2-1 to grant a petition requesting that the Commission issue a rule prescribing performance standards for a system to reduce or prevent injuries from contacting the blade of a table saw. The Commission also directed the staff to prepare an advance notice of proposed rulemaking (ANPRM) initiating a rulemaking proceeding under the Consumer Product Safety Act (CPSA) to identify the product and the risk of injury associated with table saw blade contact injuries, summarize regulatory alternatives, and invite comments from the public. A draft advance notice of proposed rulemaking will be prepared for Commission consideration.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2051, Consumer Product Safety Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Staff Sends ANPRM to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Caroleene Paul, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7540. Email: cpaul@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC35 Publication ID: Spring 2008  
 Title: Fireworks Devices  
 Abstract: The staff prepared a draft advance notice of proposed rulemaking (ANPRM) concerning fireworks devices requesting comments on whether there is a need for the agency to update and strengthen its regulation of fireworks devices and sent it to the Commission for consideration on June 26, 2006. On June 30, 2006, the Commission voted 3-0 to issue an advance notice of proposed rulemaking. The ANPRM was issued on July 12, 2006. The comment period on the ANPRM closed on September 11, 2006. Commission staff is evaluating comments received.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: Undetermined  
 CFR Citation: 16 CFR 1500; 16 CFR 1507 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1261, Federal Hazardous Substances Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Staff sends draft ANPRM to Commission .....	06/26/2006 ..	
Commission Decision .....	06/30/2006 ..	
ANPRM .....	07/12/2006 ..	71 FR 39249
Comment Period Closes .....	09/11/2006 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup>To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: James Joholske, Compliance Officer, Office of Compliance, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814. Phone: 301 504-7527. Email: jjoholske@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC36 Publication ID: Spring 2008  
 Title: Portable Generators  
 Abstract: On December 5, 2006, the Commission voted 2-0 to issue an advance notice of proposed rulemaking (ANPRM) under the Consumer Product Safety Act (CPSA) concerning portable generators. The ANPRM discusses regulatory options that could reduce portable generator-related deaths and injuries, particularly those related to carbon monoxide poisoning. The ANPRM was published in the Federal Register on December 12, 2006. Staff reviewed public comments and is conducting technical activities. Staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust and entered into an interagency agreement (IAG) with the National Institute of Standards and Technology (NIST) to model the buildup and concentration of CO in various locations. NIST will also verify the efficacy of the prototype generator in reducing CO. In addition, staff conducted a proof-of-concept demonstration of a remote CO sensing automatic shutoff device for a portable generator, as well as an interlock concept in which a CO sensor was located on the generator.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: Undetermined  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 2051, Consumer Product Safety Act

Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Staff Sends ANPRM to Commission .....	06/29/2006 ..	
Staff Sends Supplemental Material to Commission .....	10/12/2006 ..	
Commission Decision .....	10/26/2006 ..	
Staff Briefs Commission .....	10/26/2006 ..	
Staff Sends Draft ANPRM to Commission .....	11/21/2006 ..	
ANPRM Published .....	12/12/2006 ..	71 FR 74472
Comment Period Ends .....	02/12/2007 ..	
Staff Sends NPRM Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: Janet L. Buyer, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814. Phone: 301 504-0508. Email: jbuyer@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC40 Publication ID: Spring 2008  
 Title: Civil Penalty Factors  
 Abstract: Section 20(b) and (c) of the Consumer Product Safety Act, 15 USC 2069(b) and (c), require certain factors to be considered in assessing and compromising civil penalties. The Commission proposed a new interpretive rule that identifies and explains related factors that may be considered by the Commission and staff in evaluating the appropriateness and amount of a civil penalty. On July 12, 2006, the Commission solicited comments on a proposed new interpretive rule. The comment period closed on August 11, 2006. CPSC staff will prepare a briefing package for Commission consideration concerning the content of a possible final interpretive rule.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: 16 CFR 1119 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 2069(b) and (c), Consumer Product Safety Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Notice of Proposed Interpretive Rule .....	07/12/2006 ..	71 FR 39248
Comment Period End .....	08/12/2006 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: Undetermined  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact: John Gibson Mullan, Assistant Executive Director, Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814. Phone: 301 504-7626. Email: jmullan@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AC41 Publication ID: Spring 2008  
 Title: Regulatory Options for Lead Toy Jewelry  
 Abstract: On December 11, 2006, the Commission voted 2-0 to grant a petition requesting a ban on toy jewelry containing more than 0.06 percent lead by weight. On December 27, 2006, the Commission approved an advance notice of proposed rulemaking (ANPRM), which was published in the Federal Register on January 9, 2007. The public comment period ended March 12, 2007. CPSC staff is reviewing public comments and will prepare a briefing package for Commission consideration as to whether to continue with rulemaking.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant  
 RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Long-Term Actions  
 Major: Undetermined  
 Unfunded Mandates: No  
 CFR Citation: Not Yet Determined (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 5 USC 553, Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act  
 Legal Deadline: None

TIMETABLE

Action	Date	FR Cite
Commission Decision on Draft ANPRM FR Notice .....	12/27/2006 ..	
ANPRM Published .....	01/09/2007 ..	72 FR 920
Comment Period Ends .....	03/12/2007 ..	
Staff Sends Briefing Package to Commission .....	( <sup>1</sup> ) .....	

<sup>1</sup> To Be Determined.

Regulatory Flexibility Analysis Required: Undetermined  
 Government Levels Affected: None  
 Federalism: Undetermined  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact:, Kristina Hatlelid, Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7254. Email: khatlelid@cpsc.gov.

VIEW RULE

CPSC RIN: 3041-AB68 Publication ID: Spring 2008  
 Title: Amendment of the Standard for the Flammability of Clothing Textiles  
 Abstract: The Standard for the Flammability of Clothing Textiles prohibits the manufacture, importation, or sale of clothing and fabrics and related materials intended for use in clothing, which are dangerously flammable because of rapid and intense burning. The standard prescribes the apparatus, procedure, and criteria to be used for testing to determine compliance with that standard. The standard was made mandatory by the Flammable Fabrics Act of 1953 (Pub. L. 83-88, 67 Stat. 111; June 30, 1953). Some of the equipment and procedures specified by the standard, particularly those for laundering and cleaning of test specimens, have become obsolete, unavailable, or unrepresentative of current practices. The staff prepared a briefing package describing modifications of the standard that may be needed to assure that the test in the standard is conducted with equipment and procedures representative of conditions to which garments currently are exposed. After consideration of the briefing package, the Commission decided to begin a proceeding for amendment of the standard. An advance notice of proposed rulemaking (ANPRM) was published in the Federal Register on September 12, 2002. The staff reviewed public comments and proposed amendments for Commission consideration. On January 12, 2007, the Commission voted to publish a notice of proposed rulemaking (NPRM) in the Federal Register. The comment period closed on May 14, 2007. The staff evaluated the comments and prepared a final rule briefing package for Commission consideration. On February 1, 2008, the Commission voted to approve the final rule amending the standard for the Flammability of Clothing Textiles.  
 Agency: Consumer Product Safety Commission (CPSC)  
 Priority: Substantive, Nonsignificant

RIN Status: Previously published in the Unified Agenda  
 Agenda Stage of Rulemaking: Completed Actions  
 Major: No  
 Unfunded Mandates: No  
 CFR Citation: 16 CFR 1610 (To search for a specific CFR, visit the Code of Federal Regulations.)  
 Legal Authority: 15 USC 1191, Flammable Fabrics Act  
 Legal Deadline: None

## TIMETABLE

Action	Date	FR Cite
Staff Sent Briefing Package to Commission .....	06/11/2002 ..	
Commission Decision .....	08/28/2002 ..	
ANPRM .....	09/12/2002 ..	67 FR 57770
ANPRM Comment Period End .....	11/12/2002 ..	
Staff Sends Briefing Package to Commission .....	11/30/2006 ..	
Commission Decision .....	12/08/2006 ..	
Draft NPRM to Commission .....	01/10/2007 ..	
Commission Decision on Draft NPRM .....	01/12/2007 ..	
NPRM .....	02/27/2007 ..	72 FR 8843
NPRM Comment Period End .....	05/14/2007 ..	
Staff Sends Briefing Package to Commission .....	12/27/2007 ..	
Staff Sends Draft FR Notice with Draft Final Rule to Commission .....	01/22/2008 ..	
Commission Decision .....	02/01/2008 ..	
Final Action .....	03/25/2008 ..	73 FR 15636

Regulatory Flexibility Analysis Required: No  
 Government Levels Affected: None  
 Federalism: No  
 Included in the Regulatory Plan: No  
 RIN Data Printed in the FR: No  
 Agency Contact:, Patricia K. Adair, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East-West Highway, Bethesda, MD 20814-4408. Phone: 301 504-7536. Email: padair@cpsc.gov.

## WHY DOES IT TAKE SO LONG FOR CPSC TO PUBLISH A FINAL RULE?

*Question.* For seven regulations that CPSC has worked on for the past 4 years—some of which date back to the 1990s—the average length of time from initiation of a regulation to a final rule has been almost 6 years, which is a long time to wait when the public has the potential of being injured or killed by a product. Your own statute states that, with certain exceptions, a rule shall be issued within one year of publication of an advance notice of proposed rulemaking.

How can the length of time between initiation of a rule and finalization of it be accelerated?

*Answer.* Under its statutes, to issue a final rule, the Commission must prepare thorough responses to substantive public comments (which can lead to the need to conduct complex research and testing) and develop a record to support its findings concerning “unreasonable risk,” costs and benefits, the basis for why the rule is the “least burdensome alternative,” and the inadequacy of any voluntary standards addressing the risk. The findings must be sufficiently robust to withstand judicial challenge, generally against a “substantial evidence” review standard.

Additionally, in rulemakings under the Consumer Product Safety Act or the Federal Hazardous Substances Act that address chronic risks of cancer, birth defects or genetic mutations, the Commission is required to appoint a panel of scientific experts from a list of nominees provided by the National Academy of Sciences, allow the panel to deliberate, and receive the panel’s expert opinion concerning the potential harm to human health that could result from exposure to the substance, before the rulemaking may commence with an Advance Notice of Proposed Rulemaking (ANPR). Also, of course, loss of quorum can materially impact rulemaking schedules.

In addition to the requirements of the Commission’s statutes noted above, there are numerous other federal government-wide statutory requirements and treaty obligations that impose constraints on the rulemaking process and the rate at which it can be accomplished, including the Regulatory Flexibility Act, the Paperwork Reduction Act, the Small Business Regulatory Enforcement Fairness Act, the National

Environmental Policy Act, and public comment period duration requirements under the North American Free Trade Agreement, among others.

All of these statutorily mandated complexities and checks and balances on the Commission's rulemaking authorities and procedures of necessity constrain the rate at which the deliberative process leading to a final rule can be accomplished.

Last year, I submitted a proposal to Congress to make optional the statutory requirement to commence all standard or ban rulemakings with an ANPR, and I am hopeful that this reform will be included in CPSC's reauthorization when it is passed.

A March 2008 report by Public Citizen criticized the CPSC for not completing work on the seven rules that are referred to in your question. The report is grossly misleading, and information on a few of the examples cited by the Public Citizen report follow:

The upholstered furniture rulemaking activity has been exceptionally complex, with many diverse stake holders providing input into the process. Upholstered furniture components include such varied materials as cover fabrics, loose fillings, barriers, wood, plastic and resilient foams. Each reacts differently to open flame and smoldering ignitions. The components interact with each other during a fire depending on the materials involved and the construction and geometry of the product. In some cases, potential solutions that would mitigate open flame ignitions may not address, or could even reduce, the effectiveness of measures addressing smoldering ignitions and vice-versa. Solving these complex fire science problems has been critical to developing an effective standard that complies with the agency's governing statutes. Nonetheless, the CPSC has proposed a new flammability standard for residential upholstered furniture and published it in the Federal Register on March 4, 2008, for public comment. Finalization of this very important rulemaking is one of my, and the Commission's, highest priorities.

The rulemaking on bedclothes (e.g., quilts, blankets, bedspreads) flammability is closely related to the Commission's recently issued rule on open flame ignition of mattresses, a rule that when fully effective is estimated to prevent over 200 deaths each year. As we enforce the new rule that became effective on July 1, 2007, we gain important information that is relevant to bedclothes flammability. Before proceeding with the development of testing methodology and performance requirements related to bedclothes, CPSC staff will need to evaluate this critical data. It should also be noted that, like upholstered furniture, the fabrics and contents of bedclothes vary enormously in the market, and so development of a single flammability standard would be a very difficult and complex undertaking.

The amendments to the Clothing Textile Standard are technical clarification and work was delayed so that CPSC's flammability experts could concentrate on the important mattress flammability standard (referred to above). This work is now complete and a final rule was published on March 25, 2008.

After the CPSC initiated a rulemaking activity on baby bath seats, the voluntary standard was revised so that it was essentially the same as the mandatory requirements proposed by the CPSC. As noted above, the Commission is prohibited from issuing a mandatory rule if there is a voluntary standard in place that adequately addresses the hazard and there is likely to be substantial compliance with that standard. In that regard, staff is monitoring and evaluating the adequacy of the revised standard and will prepare a formal briefing package for Commission consideration as to whether to continue rulemaking. In the interim, CPSC staff participation in the development of revisions to the voluntary standard has been ongoing and significant.

#### ILLINOIS—LEAD IN KEYCHAINS

*Question.* It has come to my attention that Illinois Attorney General Lisa Madigan has contacted you about the sale of some keychains in the State of Illinois that far exceeded lead standards through independent testing. One of these keychains resulted in the injury of a 9-month old baby from Decatur, Illinois. Part of the Attorney General's letter raised concerns about CPSC's response to this report of independent testing.

Will you provide me with your response to this injury report?

Have you responded to the Attorney General's letter?

*Answer.* The keychains were first brought to CPSC's attention by a professor of chemistry whose class conducted testing of these keychains along with a number of children's jewelry items. There are no standards for lead content of keychains, and at that time, CPSC staff focused on the jewelry items, which are subject to a specific enforcement policy, and obtained recalls as appropriate. Like the CPSC, the State of Illinois also considered the keychains a product for adults, but it became aware

of lead exposure caused by one of the keychains given to an infant by its mother. As soon as CPSC staff learned of this exposure, a recall quickly ensued.

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QUESTIONS SUBMITTED BY SENATOR SAM BROWNBACK

*Question.* Since our toy safety hearing last September, what specific ways have Chinese manufacturing plants changed their operations to ensure toy safety?

What specifically has the Chinese government done to ensure that toys and other consumer products manufactured for export are meeting safety standards?

How would you characterize your agency's relationship with the Chinese government? Has China been willing to work with you?

*Answer.* During the past year of CPSC outreach to Chinese manufacturers and Chinese government export inspectors, we have detected a shift of attitudes toward adoption of modern, end-to-end best practices to ensure compliance with safety standards. This shift can be seen in toy industry publications, in seminars for manufacturers hosted by the Chinese government, and in recall case reports to the CPSC from the Chinese regulator.

The work plans that were agreed to at the U.S.-Sino Consumer Product Safety Summit held in September 2007 were outcomes of our Memorandum of Understanding (MOU), which established the framework for cooperation. The work plans called for cooperative work in four product categories: toys, lighters, electrical products, and fireworks. Technical experts are now working on exchanges of standards information, training for product testing, and sharing information and best practices in those four product categories.

Since September, CPSC staff has met eight times, either in person or via video conference, with staff of China's General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) to review recalls and safety issues.

The CPSC has begun a Chinese language service on our web site, where Chinese suppliers and government officials can get the latest information in Chinese (we are translating requirements and posting them) and descriptions in Chinese that link to the full texts of English language requirements.

At CPSC's invitation, product safety officials from the European Union will join us in China during September for a joint outreach program to consumer product exporters. The Chinese government has enthusiastically endorsed this project and has agreed to facilitate access to the appropriate audiences for the compliance outreach seminars.

Regarding Chinese compliance cooperation, first it should be stressed that the CPSC does not rely on the Chinese government to enforce U.S. requirements. The CPSC enforces our requirements with American importers. That said, the Peoples' Republic of China (PRC) offered to use its export quality control system to target Chinese-made products that would be recalled if they entered the United States. We singled out lead paint on toys as a problem and they agreed to take that on.

—The Chinese government investigates recall causes at the factory and mandates specific changes, such as a change of supplier or more frequent testing. It reports those case-specific outcomes to CPSC. The PRC says it has inspected thousands of factories and revoked hundreds of export licenses for product safety violations.

—The PRC has sponsored numerous high-profile standards and compliance seminars aimed at getting the product safety message to Chinese manufacturers. The CPSC participated in one of these in November.

However, nothing the Chinese government promises and no amount of export control inspection can take the place of major systemic changes in Chinese manufacturing. We are working with Chinese suppliers to hasten that change, but it is the U.S. importer that must ensure that its product complies with our laws.

*Question.* We cannot merely trust the Chinese. What specifically is your agency doing to verify that the Chinese are adhering to the MOU that we have entered into with them? Have the Chinese resisted your efforts to verify their agreements with us?

*Answer.* CPSC officials are in China frequently meeting with Chinese industry representatives and government officials to witness their implementation of the policies and practices that we have been encouraging. During the past year, CPSC staff participated in training seminars in China for thousands of Chinese suppliers and we have visited several factories. We also work closely with State Department officials in China, who also visit factories and report on product safety issues. We have not experienced resistance to any of our requests for access or cooperation. Notably, when the CPSC requested an immediate visit to the factory producing the recalled

toy “Aqua Dots,” we were provided access to the property (which was not sanitized for us) within 24 hours, as well as an opportunity to speak to the toy designer.

*Question.* Have the number of consumer product recalls of imported items increased or decreased since September 2007?

Have the number of consumer product recalls of imported items from China increased or decreased since September 2007?

*Answer.* As a result of heightened industry awareness and aggressive enforcement activities by the CPSC, the number of consumer product recalls of imported items has increased since September 2007, relative to earlier years, and specifically, the number of consumer product recalls of imported items from China has increased since that time. It should be noted that the recalled products from China in this time frame were manufactured and exported to the United States before the U.S.-Sino Consumer Product Safety Summit in September 2007.

*Question.* Frankly, I worry that the Chinese are unwilling or unable to implement productive changes in their manufacturing processes. How are we to be assured that safety standards will be met and that inspectors will monitor production facilities?

*Answer.* Regarding Chinese cooperation, it must be stressed that the CPSC does not rely on the Chinese government to enforce U.S. requirements. The CPSC enforces our requirements with American companies that import consumer products. This is the essential purpose of CPSC’s new Import Safety Initiative. We have already seen that recalls by the CPSC provide a significant economic incentive to promote change in China.

As noted at the hearing, I would welcome funding for a CPSC Regional Product Safety Officer, supported by a Foreign Service National (FSN), to be stationed at the U.S. Embassy in Beijing to cover Asia and to help us coordinate with Chinese authorities—as a first step in a CPSC overseas presence. Since we are beginning to work with Vietnam and other countries in the region, there would be extended benefits to such a presence.

*Question.* Ms. Nord, I would like to commend you for your new surveillance initiatives and your plan to hire employees to staff your new Import Surveillance Division. Do you think this increased presence is enough to stem the tide of defective imports flowing into the country? In your estimation what more should be done by the CPSC to help protect American consumers?

*Answer.* The new CPSC presence at U.S. ports-of-entry is an important advance in our efforts to reduce the number of defective products entering the country. However, because of the sheer volume of consumer products imported into the nation annually, port inspection activity alone is not sufficient. That is the reason that the CPSC has implemented a multi-pronged approach to meet this challenge. In addition to increased dialogue and initiatives with China and other nations to encourage systemic change in their manufacturing processes, the CPSC is working with the private sector and reaching out to foreign manufacturers to establish product safety systems as an integral part of their manufacturing process. Additionally, I have requested a number of new enforcement tools, some of which are included in the CPSC Reform Act that is currently awaiting final action by a Senate/House conference committee. For example, I proposed that it be unlawful to fail to furnish a certificate of compliance with a mandatory standard under any statute administered by the CPSC or to issue a false certificate of compliance. As I mentioned at the hearing, this would be an extremely effective enforcement tool for the CPSC, and although this provision was not in the Senate-passed bill, I am hopeful that the final legislation will include it.

*Question.* With the increased surveillance at the nation’s high impact ports, do you expect there to be any “port shopping” of shipping vessels unloading at the docks with a lower federal presence? If so, how do you plan to tackle this problem?

*Answer.* It is probably inevitable that some unscrupulous importers will try to find ways to bypass CPSC’s fulltime presence at certain ports. It is important to recognize, however, that CPSC’s field staff can visit any of the 300 U.S. ports-of-entry and sample products at those locations on an as-needed basis. In addition, the CPSC is now a participating agency in the International Trade Data System (ITDS) Automated Commercial Environment (ACE), which will give us much better information with which to target imports.

*Question.* Commissioner Nord, Wichita and El Dorado happen to be hubs of the largest latex balloon manufacturing operation in America, and I’m very proud that we continue to have this kind of domestic manufacturing presence in Kansas and in the United States.

I understand that the Balloon industry, Pioneer Balloon in particular, voluntarily put cautionary statements on their packaging as early as 1992. They also worked closely and cooperatively with the CPSC to develop standardized cautionary state-

ments for all balloon packages that were implemented in 1994. These efforts have been effective, with fatal incidents associated with balloons dropping dramatically.

As you may know, there is a provision in the CPSC reauthorization legislation that deals with extending the mandate for cautionary statements on a class of products, including balloons, from the labels of those products to advertising, including Internet and Catalog advertising, for these products. These efforts appear to be intended to ensure that consumers who would see the cautionary statement in a brick and mortar store would also be aware of the hazard if they were to buy balloons online.

While the Balloon Industry wants to safeguard consumers as much as they can, they want to make sure they can continue to do business without a huge chilling effect on commerce or on their business-to-business practices. To that end:

By your understanding of the bill, would the provision affect business to business advertising, in catalogues or the Internet? Because balloons are generally sold from manufacturers to distributors and retailers, I want to be sure that this provision would not be misconstrued to affect business-to-business advertising or catalogs that balloon companies send to their distributors that never make it into the hands of consumers?

Answer. As written, section 11 of S. 2663 does not make a distinction between business-to-business advertisements and business-to-consumer advertisements. Rather, it requires an appropriate cautionary statement in any advertisement on the internet or in a catalogue or other distributed material "that provides a direct means of purchase." The provision does not specify who is making the purchase.

*Question.* While conferees still have work to do on a final bill, if the provision were to become law, would the CPSC work cooperatively with the Balloon Industry in a way that befits previous cooperation so that we can be sure that only consumers who buy online or from a catalog are affected, and that business to business practices can continue as they exist today?

Answer. The CPSC works cooperatively with affected industries to assure that they understand their requirements under the law as it is written by Congress.

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#### QUESTIONS SUBMITTED TO THOMAS H. MOORE

##### QUESTIONS SUBMITTED BY SENATOR SAM BROWNBACK

*Question.* Numerous states have either passed or are considering passing their own product safety laws. In some cases, the states would be imposing standards, for lead content for example, which are considerably more restrictive than the contemplated federal standards. How does S. 2663 guard against states creating what would in effect become a patchwork of different material content standards across the country?

Answer. It is unclear the extent to which either S. 2663 or the express preemption provisions of the Federal Hazardous Substances Act would sufficiently address this problem. Regardless of the language used in the final version of the federal statute, in all likelihood these issues will ultimately be resolved in the courts by resort to judicial principles concerning preemption.

*Question.* While S. 2663 defines "children's product" to mean products designed or intended for use by consumers aged seven or younger, certain state statutes have a higher age threshold. How does S. 2663 avoid a situation in which products destined for very young children are subject to the federal standard while products intended for older children face more restrictive material content standards imposed by the states?

Answer. S. 2663 contains no provision which would avoid such a situation.

*Question.* How does S. 2663 guard against states passing their own children's product safety laws which encompass specific products, such as jewelry, or a broader array of materials than does the federal law, thus, effectively creating special restrictions for products or materials which Congress did not feel compelled to regulate?

Answer. S.2663 contains no provision which would avoid such a situation.

*Question.* In the State of Washington, a new product safety law will go into effect in July of 2009. Senate bill 2663 will probably not become effective until after that time; likely the end of 2009. Thus, retailers may face a situation in which they are forced to comply with a very restrictive state standard for several months before the new federal standards take effect. How can S. 2663 be modified to avoid this problem?

Answer. This situation is essentially impossible to prevent in the absence of enactment of a federal law addressing the same scope of products and very clearly stating

Congressional intent to preempt the Washington law prior to the effective date of the Washington law.

SUBCOMMITTEE RECESS

Senator DURBIN. The meeting of the subcommittee will stand recessed.

[Whereupon, at 3:46 p.m., Wednesday, April 30, the subcommittee was recessed, to reconvene subject to the call of the Chair.]