



**Statement of Robert S. Adler, Commissioner  
United States Consumer Product Safety Commission**

**Before the  
Senate Committee on Commerce, Science, and Transportation  
Subcommittee on  
Manufacturing, Trade, and Consumer Protection**

**June 20, 2019**

Good morning Chairman Moran, Ranking Member Blumenthal, and the members of the Subcommittee on Consumer Protection & Commerce. Thank you for the opportunity to testify today along with my fellow CPSC Commissioners. I am pleased to be here to discuss an agency that I have been associated with in some fashion since its opening in 1973 – and where I have been a Commissioner since August 2009.

At the outset, I would point out that CPSC is far and away the smallest of the federal health and safety agencies, with a current funding level for FY 2019 of \$127 million and a staff of 539 FTEs. To put our budget in perspective, I note that for FY 2020, our official budget request is also for \$127 million. By way of comparison, our sister agency, FDA, recently asked for \$6.1 billion dollars for FY 2020, which represents a \$643 million increase over its FY 2019 budget request. In other words, FDA's request for an *increase* is more than 5 times CPSC's *entire* budget.

Notwithstanding CPSC's modest budget, our jurisdictional scope is extremely wide, encompassing roughly 15,000 categories of consumer product found in homes, stores, schools, and recreational settings. Given this broad jurisdiction, the agency has adopted what I believe to be a thoughtful, data-based approach using its technical staff to figure out which products present the greatest risk and which are most susceptible to corrective measures. And, we address them using our regulatory and educational tools in a way designed to minimize market disruption while always making consumer safety our top priority.

Of course, the CPSC does not operate alone on product safety. We have always sought to make CPSC's various stakeholders partners in our quest to reduce or eliminate unreasonable risks. Included in this group are our friends in the consumer and business communities as well as the various standards development bodies that work with the agency.

This October will mark the 47th anniversary of the passage of the landmark Consumer Product Safety Act (CPSA). Looking back, I believe

Congress and the agency should take great pride in what the agency has accomplished, especially considering the immense scope of our mission.

What has the agency accomplished? As a starting point, I would cite the estimated 30 percent reduction in the rate of deaths and injuries associated with consumer products since the agency's inception. Of course, not all of this drop can be directly attributed to agency actions, but a lot of it can. And, I would particularly point to the dramatic drop in death and injuries to children. Let me highlight just a few of the many improvements in safety:

- An over 80% drop in childhood poisonings,
- An over 70% drop in crib deaths,
- An almost 90% reduction in baby walker injuries, and
- An almost complete elimination of childhood suffocations in abandoned refrigerators.

We have also seen dramatic drops in fatal electrocutions, residential fire deaths, and traumatic injuries from lawn mowers. In short, CPSC has produced an excellent return on investment. By our calculation a number of years ago, this drop in deaths and injuries has resulted in well over \$16 billion in reduced societal costs – which is many times the resources the CPSC has been given to do its job. And, as a tiny agency, we have produced these benefits at a very low cost.

One further point: What makes these reduced injuries and fatalities so dramatic to me is that they occurred during a period when the population in the U.S. jumped from 220 million to 330 million – a roughly 50 percent increase. Drops in deaths and injuries this big in the face of a growing population represent a major step forward in safety.

I would also like to mention the tremendous strides the agency has taken to implement the Consumer Product Safety Improvement Act of 2008 (CPSIA) in the ten-plus years since its passage. Among the actions we have taken:

- Enforcing stringent limits on lead and phthalates in children's products,
- Promulgating the strongest safety standard for cribs in the world,
- Implementing rules of the new CPSIA requirement that firms have independent laboratories conduct third party testing of children's products before introducing them into the US market,
- Making mandatory a comprehensive toy standard, ASTM F-963,
- Writing, and continuing to write, a series of standards – I believe the count is now 20 – for durable infant products such as play yards and strollers, and finally,
- Developing new approaches to stopping dangerous imported products before they are sold to US consumers.

While I'm thrilled with our implementation of the CPSIA, I would simultaneously, with some frustration, point out the broad disconnect between the effectiveness of our rulemaking under CPSIA and our rulemaking under the infinitely more cumbersome procedures found in the other acts we enforce.

Let me briefly explain: When the agency was first established in 1972, we promulgated numerous critical safety rules dealing with hazards such as flammable children's sleepwear, dangerously shattering glass panes, and unsafe toys under the traditional rulemaking approaches found in section 553 of the Administrative Procedure Act. By my count, the agency wrote about 24 safety rules in its first 8 years – or about 3 per year. In 1981, however, Congress imposed numerous cumbersome provisions requiring new steps and findings on CPSC rulemaking that had the effect of stalling and lengthening our rulemaking efforts.

In the following 38 years, although we have promulgated a significant number of standards under the streamlined procedures in CPSIA (alas applicable only to a small subset of products we regulate), we have managed to eke out only 10 safety rules under these revised procedures –

or about 1 every 3 1/2 years. What's of greater concern is that we have written only one safety rule using these procedures in the past 10 years.

To be blunt, I have little doubt that lives have been lost and injuries incurred unnecessarily because of these delays in our rulemaking.

I would love to report that these cumbersome provisions of CPSA have resulted in dramatically improved safety rules that justify the extra time and effort in drafting them. Frankly, I cannot do so. For the most part, the quality of safety standards has remained unchanged – only the timeliness has changed. So, nothing would delight me more than to see Congress permit us to return to writing important safety rules under the time-honored, traditional provisions of the Administrative Procedure Act.

While I'm discussing features of the Consumer Product Safety Act that I'd like to see reformed, I must also mention the onerous information disclosure restrictions under which the CPSC alone among all health and safety agencies in the federal government must operate. I refer to the provisions of section 6(b) of the CPSA. Unlike any other health and safety agency, when the CPSC receives a request for information in its files under the Freedom of Information Act (FOIA), if a manufacturer's identity can be ascertained from the information in our files, we cannot simply respond with the information. Instead, we must first send the manufacturer the file for comments on the accuracy and fairness of releasing the information, process any comments the manufacturer submits, and determine whether or not to release this information in light of those comments. All of this done, I might add, with the looming prospect of being sued if the company doesn't like what we're about to disclose.

On this point, I have heard the comment that the threat of litigation is not a serious concern because very few lawsuits to enjoin CPSC information disclosure have actually been filed and that companies prefer to negotiate more agreeable versions of press releases rather than go to court. I have two responses to this argument. First, saying that concerns

about litigation are minor is akin to saying that countries should not worry about nuclear weapons since they are not used. The fact, however, is that the threat is sufficient to alter behavior. Second, I have little doubt that companies prefer to negotiate more agreeable versions of press releases. Therein lies the problem. What is more agreeable to a firm is likely to be a watered down version of a notice to the public of a serious safety hazard. Companies may be happy, but consumers end up at greater risk.

Moreover, what's so frustrating about this process is that it applies to almost anything in our files even if we are simply a repository of the information – like a library. If, for example, we have obtained a simple list of 50 firms that make widgets and someone makes a FOIA request for the list, we must send out 50 different copies of the list with 49 names blanked out to each of the identified manufacturers and process each one's response to the list. No other agency in the government has to follow such time-consuming and costly procedures. Each year, we must spend hundreds of thousands of dollars and delay sometimes for months or longer the release of information because of 6(b).

Let me be clear: I am not endorsing an approach in which the agency is free to disseminate inaccurate or unfair information willy-nilly. Any time CPSC initiates a disclosure of information that identifies a manufacturer, I think we ought to inform them of our intention to do so and permit them to point out any problems with this information disclosure. Other agencies have been doing this effectively for many decades without serious problems. What I object to is having the government play data nanny to information that the public desperately needs in order to protect itself.

As a final point, I would like to share a concern I have about an often vulnerable group of which I am a proud member: senior citizens. Unfortunately, seniors do not necessarily get as much attention as they probably should. I say this because seniors are one of the fastest growing demographics in the country. Specifically –

- Roughly 40 million people in the US are age 65 or older. This number is projected to more than double to 89 million by 2050.
- By 2030, one in 5 people in the US will be 65 or older.
- The US currently contains more people age 65 and older than the entire population of Canada.
- Today, the “oldest old” – those 85 and older – have the highest demographic growth rate in the country. This group now represents 10% of the older population and will more than triple in number by 2050.

On the good news front, I can report that recent studies show that we’re not only living longer, we’re also living healthier. So, if we’re to extend our lives as healthier adults, we also need to spend these years as safer ones. But, here the news is not so good. Although seniors currently make up about 13 percent of the population, we account for roughly 65 percent of consumer product-related deaths.

Far and away the greatest product-related hazard for seniors is falls – comprising roughly 3/4 of the fatalities that we suffer. According to CDC, every 19 minutes a senior dies from a fall. Moreover, roughly one in four seniors in the US reports falling each year. In fact, every year, 3 million people, including many seniors, go to an emergency room for injuries from falls, and 800,000 are hospitalized. And, for reasons that are unclear, CDC reports that fall fatalities have increased dramatically in recent years – up 31% from 2007-2016.

Another serious hazard to seniors is fires. Fires in homes constitute an extremely serious problem for seniors. CPSC staff report that almost 400,000 residential fires occur annually, resulting in roughly 2,400 deaths, 12,500 injuries, and over \$7 billion in property loss. And, the US Fire Administration estimates that adults age 75-84 are nearly four times as

likely to die in a home fire as the general population, while those over age 84 are nearly five times as likely to die.

In addition to these concerns, I should mention that there are a whole host of consumer products that harm all users, but disproportionately injure and kill seniors. Here are some of the products that do so:

- Chairs, sofas, and sofa beds
- Power tools
- Gardening equipment
- Ladders
- Carpets and rugs

With these statistics in mind, I urge you to consider measures that would help with the serious challenges that seniors face in the coming years as American ages.

I look forward to working with my colleagues and the members of this Subcommittee as we focus on our mission to protect citizens from risks of unreasonable injury or death.

Thank you for this opportunity to share my views.