



Consumer Product Safety Commission

Safety First

By Pamela Gilbert

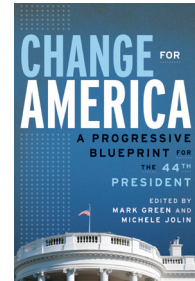
Summary

The Consumer Product Safety Commission over the past eight years was run by political appointees who let the agency languish, promulgating few new regulations, announcing few new programs, and rolling back existing rules. The most important thing that the new president must do to restore confidence in the safety of consumer products is to appoint a chair of the CPSC who has a proven commitment to consumer safety—not industry preferences. He or she should quickly address the shortage of experienced staff and low staff morale, follow through on congressionally mandated improvements to the agency’s authorities and testing laboratory, and establish new partnerships to enable it to do more with its limited resources. CPSC must also address new challenges, including the meteoric rise in imports of unsafe consumer products and any hazards associated with new technologies, such as nanotechnology.

Introduction

The year 2007 was the year of the recall. Headlines repeatedly blared about dangers posed by another well-loved toy that was lurking in children’s playrooms, including Barbie doll accessories and Thomas and Friends trains with unsafe levels of lead, Easy-Bake Ovens that could entrap and burn children, and Polly Pocket dolls with magnets that were dangerous if swallowed or aspirated. The relatively unknown U.S. Consumer Product Safety Commission was all of a sudden front-page news and a topic of conversation at the playground and the water cooler. Americans wanted to know what this federal agency was doing to keep their children safe.

The CPSC is a small agency with a large responsibility—to protect the public against unreasonable risks of injury associated with about 15,000 types of consumer products.¹



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With few grants to hand out and modest facilities, its staff is its most precious and important resource—and with enough skilled and motivated staff and leadership, the agency can be very effective despite its small size. But when staff levels dip too low or morale suffers from neglectful leaders, the agency can become moribund, as has unfortunately happened from 2002 to 2008.

The CPSC was established during the Nixon administration as a five-member independent commission. To maximize its independence, Congress gave the commissioners staggered seven-year terms and included a requirement that no more than three commissioners can be from the same party at any one time. Although commissioners may not be fired except for good cause, the president is entitled to appoint a chair of his choosing.² It is critical for the new president to appoint a CPSC chair and commissioners with a proven commitment to the consumer product safety mission of the agency.

The CPSC has jurisdiction over most products that are used at home, school, and for recreation, with the following statutory exceptions: food, drugs, cosmetics, pesticides, motor vehicles, tobacco, firearms, and fixed-site amusement parks. The commission also does not have jurisdiction over industrial products that are used almost exclusively in the workplace.³ According to the CPSC, products under its jurisdiction are associated with about 28,200 deaths and some 33.6 million injuries each year, costing the nation more than \$800 billion annually.⁴

The agency's core mission is to save lives and prevent injuries. By almost any measure, the CPSC is a very cost-effective agency. The commission estimates that its activities involving just two types of products—baby cribs and baby walkers—save the United States about \$2.4 billion and prevent hundreds of deaths and thousands of injuries annually.⁵ The agency does all this with an annual budget that, prior to 2008, never exceeded \$63 million.⁶

The CPSC suffered serious neglect over the past eight years. President George W. Bush appointed leaders to the agency who favored industry over consumers, promulgated few new regulations, announced few new programs, and rolled back existing rules. Staffing levels dropped 15 percent, which brought the agency down to half the size it was when founded 35 years ago.⁷ Even worse, the CPSC twice offered early retirement “buyouts” to the staff, resulting in a loss of some of the most senior skilled and experienced employees. Morale has plummeted for the staff that remains.

These setbacks come at a time when the marketplace is more global and growing faster than ever before. It should have come as no surprise that this diminished, rudderless agency could barely respond when millions of children's toys and jewelry being sold in the United States were found to contain dangerous levels of lead.

The attention caused by the epidemic of toy recalls over the past several years had a silver lining. The public and Congress became aware of the need for a strong and well-funded agency

to keep hidden hazards out of American homes. Congress added \$17 million to the commission's budget in 2008, enabling it to begin restoring lost staff and improving its out-of-date and rundown testing lab. In August 2008, Congress passed legislation—the Consumer Product Safety Improvement Act—which will make further needed improvements.

Those moves by Congress mean: more increases to the budget and staff; a new, up-to-date lab; updates to permissible lead levels in children's products to comport with today's science; third-party certification that would require children's products comply with all safety rules; and higher civil penalties for violations of CPSC statutes. This legislation puts the next chair and commissioners in a position to make significant strides toward protecting the public from dangerous products in both the short and long term.

Short-Term Goals

The most important thing that the new president must do to revive the commission and restore confidence in the safety of consumer products is to appoint a chair who has a proven commitment to consumer safety. And the first concrete step the new chair should take is to address quickly the shortage of experienced staff—especially scientists, investigators, and compliance officers—and the low staff morale.

A number of forces over the past eight years contributed to an unprecedented shortage of trained and motivated professional staff members at the commission. The Bush administration mandated a cut of about one-sixth of the staff. CPSC also offered \$25,000 buyouts for early retirement in 2005 and 2006; when 50 people walked out the door, they took with them hundreds of years of collective experience and product-safety expertise.⁸ As the agency shrunk and commitment to consumer safety waned, staff morale plummeted. Many employees left to go to other agencies where their work would be more valued and appreciated.

One statistician, who worked at the commission for eight years, but finally left in desperation in 2006, wrote:

*"I'm not a disgruntled employee. I loved working at CPSC, and my job there was the most rewarding I've ever had. I was commended as an outstanding employee and it broke my heart to leave. When I did so at the end of 2006, it was of my own accord. If I'd thought that staying there to crunch numbers could have saved a single person's life, I would have stayed. But I came to realize that, unfortunately, that wouldn't happen unless the agency finds a way to change."*⁹

One change that the Consumer Product Safety Improvement Act will enact is an increase in staffing levels at the commission. The legislation will require the CPSC to add 100 or more employees in the next five years, in part to inspect products that are imported into the United States and to investigate dangerous products and pursue recalls. Bringing on

so many additional employees relatively rapidly will be difficult since hiring in the federal government is generally a slow and cumbersome process, and the CPSC has not been an attractive option for talented individuals.

The immediate task for the new chair is therefore twofold: to recruit bright and talented people to work at the agency, and to increase the morale of the current staff. He or she should work with the public affairs staff to put out a nationwide call for scientists, lawyers, investigators, and energetic college graduates who want to serve the public.

The new chair should call an “all-hands meeting” on the first day on the job to lift staff morale. Field staff should be invited to participate via video-conference. The chair should use this first meeting to announce a new philosophy of commitment to consumer safety above all else; lay out an open door policy, in which input from every employee is welcomed and encouraged; and ask for ideas from the staff about new product safety problems that need to be addressed and modifications that need to be made to existing projects. The chairman should assign a senior staff person to follow up, and make sure that every employee is heard from.

Implement the Consumer Product Safety Improvement Act of 2008

The CPSC at the beginning of the new president’s term will also have to implement quickly and effectively all the requirements in the new reform legislation. The Consumer Product Safety Improvement Act contains dozens of new requirements, including many that will be closely watched by consumers as the holiday buying season approaches. Setting priorities, meeting the deadlines, and passing and implementing effective rules will be essential to show the public that the product safety cop is back on the beat.

To meet this challenge, the new CPSC leadership must rely on the agency’s senior staff to lead the way. They, in turn, must be reassured that science and data, not politics or industry preferences, will determine policy.

Revive Testing Labs

The new chairman will also have to follow through on congressionally mandated improvements to the agency’s research and testing laboratory. The CPSC lab is cramped, antiquated, and unsuitable to meet the needs of the agency. After a few high-profile media stories about the lab and about Bob Hundemer, the toy tester working in a lab that resembles a decrepit college dorm room, Congress responded with needed funds. CPSC received an additional \$8 million in 2008 to lease more modern laboratory facilities and the agency has requested an addition \$6 million for 2009. There was a time in the history of the commission that poor-performing employees were “banished” to the

lab. Those days must end, and work at the lab should once again be valued and supported by the highest levels of the agency.

Create Outside Partnerships

Even with additional funding and staffing as a result of the new legislation, the CPSC will still be too small to oversee a consumer product industry that is estimated to sell \$1.4 trillion of goods every year.¹⁰ The commission has historically formed partnerships with various industry and consumer groups to establish voluntary safety standards and to ensure that the companies comply with those standards. Many of those partnerships have worked quite well, especially when the chair uses the bully pulpit to persuade companies to participate.

The CPSC should form additional partnerships with state, local, and federal agencies to help keep the marketplace safer. The commission during the Bush administration was surprisingly hostile to state or local enforcement of product safety laws even though state and local health departments and law enforcement officials are often the first to learn about deaths or injuries associated with the use of household products. The new CPSC should welcome and encourage the input of local governments by convening a roundtable of officials from health departments and district attorney and attorney general offices to share information and formalize new working relationships.

These partnerships can function as an early warning system for the CPSC, alerting the agency to new or recurring hazards that its own employees have not yet identified. State and local offices can also help spread the word about product recalls and warnings to parents, teachers, and medical personnel across the country.

The agency should also establish better working relationships with other federal agencies, especially those with which it has overlapping jurisdiction. The commission should establish regular and formal procedures for sharing information and working jointly on projects to protect the public. Agencies such as the National Institute of Standards and Technology have large-scale testing facilities that could be useful to the CPSC, for example, and in return, the CPSC will have knowledge and capabilities to share with NIST.

The commission should also work more closely with Congress. During the congressional hearings held in 2007 in response to the toy recalls, many members expressed shock and outrage at the dismal state of the agency's testing lab and its inadequate staffing, resources, and authority. Yet these weaknesses have existed for decades. The agency should conduct regular briefings for members of Congress and their staffs regarding agency projects and emerging consumer product safety hazards. Congressional offices should be invited for tours and demonstrations at the testing lab. Then perhaps its budget and authority will not wither over time again.

Long-Term Goals

The CPSC must address the meteoric rise in imports of consumer products and emerging hazards associated with new technologies, particularly products that incorporate nanotechnology. Over 85 percent of toys, 95 percent of fireworks, and 59 percent of electrical products are now manufactured in other countries, and the trend continues upward.¹¹ It is extremely difficult for an agency the size of the CPSC to adequately police products that are made all over the world, in countries with very different regulatory regimes and capabilities. It will take a long-term commitment by the entire federal government to ensure that imported products do not harm American consumers.

The Consumer Product Safety Improvement Act, in partial response to this problem, establishes a third-party certification program for products intended for use by children. Under this program, American manufacturers and importers will be responsible for ensuring that any toys they sell in the United States meet all relevant safety standards. This requirement will be enforced regardless of where the product itself was manufactured. Although this is a promising first step, much more needs to be done to ensure that imported consumer products are as safe as those that are manufactured here at home.

The CPSC, unlike the Food and Drug Administration, has no authority to put a temporary stop to the importation of potentially hazardous products without first holding a hearing or filing an action in Federal District Court. The new chair should work with the new administration and Congress to pass legislation that would give the agency the authority to temporarily halt importation of certain consumer products without a hearing or court action so the commission can inspect containers coming into the country to determine whether the products inside pose a safety hazard to the American public. A hearing months later is simply too late.

The new administration should also work with Congress to give the CPSC the authority to enter and inspect consumer product manufacturing plants in foreign countries if those establishments are making products for export to the United States. The CPSC already has this authority for U.S. plants, but the agency cannot enter a foreign factory without consent from the owner. Congress should also pass the Protecting Americans from Unsafe Foreign Products Act, which would give our courts jurisdiction over foreign manufacturers who sell consumer products in the United States for issues relating to the safety of those products.

Even with increased resources and statutory authorities, the CPSC acting on its own will never be equipped to prevent unsafe products from being imported into the United States. The commission should join with its sister regulatory agencies, including the Food and Drug Administration and Environmental Protection Agency, to encourage the president to undertake a government-wide response to the problem of hazardous imports. These solutions should include inspections of overseas manufacturing facilities, better enforcement at U.S. ports, and new treaties and memorandums of understanding with foreign nations about product safety.

The commission is similarly ill-equipped to address unknown and emerging hazards posed by new and complex technologies. Unlike prescription drugs, consumer products do not undergo pre-market approval before they can be sold in the United States. CPSC regulation and recall authority kicks in after hazards are known, and usually after people have suffered deaths and injuries. The commission's staff often lacks the scientific expertise and its current testing facilities lack much of the sophisticated equipment to study and assess dangers in new and complex technologies incorporated into consumer products. As a result, the rapidly increasing use of nanotechnology in consumer products poses special problems that will have to be addressed in the next 5-to-10 years.

Nanotechnology is the engineering of functional systems at the molecular scale. It is incorporated into a range of consumer products, from toys and baby products, to clothing, appliances, and computers. Nanotechnology is incorporated into consumer products for a range of purposes, including making clothing waterproof or stain-resistant, helping baby bottles fight bacteria, and making computers faster. Yet very little is known about the potential dangers of wearing nanotechnology clothing, sucking on nanotechnology bottles, or breathing fumes from nanotechnology products that might catch on fire. For those products that fall under its jurisdiction, the CPSC is responsible for protecting the public from these potential hazards. And yet, to date, the commission has devoted very few resources to the study of nanotechnology products.

The CPSC must do much more to help ensure the public is not put at risk from this burgeoning technology in the coming years. The new chair should appoint a task force to examine the deficiencies in CPSC statutes that make it difficult for the agency to oversee the safety of nanotechnology and other new technologies. The task force should be charged with making recommendations for new legislation to meet these new challenges. The CPSC should also work with the nanotechnology industry to share research and knowledge about potential hazards and form partnerships to collectively address the hazards.

About the author

Pam Gilbert, former executive director of the Consumer Product Safety Commission, is a partner at Cuneo, Gilbert & La Duca.

Endnotes

- 1 Consumer Product Safety Commission, *2007 Performance and Accountability Report* (U.S. Consumer Product Safety Commission, 2007), p. 3.
- 2 Consumer Product Safety Act § 4(a), 15 U.S.C. § 2053(a) (2000).
- 3 Consumer Product Safety Act § 3(a)(1), 15 U.S.C. § 2052(a)(1) (2000).
- 4 CPSC, *2007 Performance and Accountability Report*, p. 3.
- 5 Ibid.
- 6 CPSC, *CPSC Appropriation History* (U.S. CPSC, February 6, 2008).
- 7 CPSC, *CPSC Appropriation History*.
- 8 Senior level CPSC employee, conversation with author.
- 9 Robin Ingle, "Which Toys Are Okay? Don't Ask the Safety Police," *The Washington Post*, December 23, 2007, B3.
- 10 Eric Lipton, "Safety Agency Faces Scrutiny Amid Changes," *The New York Times*, September 3, 2007.
- 11 CPSC, *2009 Performance Budget Request* (U.S. CPSC, February 2008), p. vi.