

The Honorable George Radanovich

CONFLICTING STANDARDS

- 1. The Consumer Product Safety Commission's (CPSC) organic statute establishes the purpose of the Commission as to protect against "unreasonable risks of injury" associated with consumer products, not from "any risk of injury." The Consumer Product Safety Improvement Act (CPSIA) takes something like this latter approach and attempts to remove any *theoretical* risk of injury by establishing specific bright line requirements for all children's products. Should the CPSIA standard of risk conform to the underlying statute or does the underlying statute need to be amended to reflect the zero tolerance standard of CPSIA? Additionally, could this new standard affect the Commission's ability to conduct its "unreasonable risk of injury" mission over non-children's products not covered by CPSIA?**

Answer: The findings and purposes section of the Consumer Product Safety Act (codified at 15 U.S.C. 2051) provides that the Commission's overall, general mission is to "protect the public against unreasonable risks of injury associated with consumer products." In the CPSIA, however, Congress decided that certain areas, such as lead and phthalates in children's products, required bright-line standards.

These provisions are not contradictory; rather they express Congressional intent to apply a stricter standard to certain classes of materials and products intended for children. Both the CPSA and the FHSA remain the primary vehicles for addressing non children's products not covered by the CPSIA and allow the Commission to consider unreasonable risks of injury.

- 2. A few weeks ago, the CPSC released its "Back to School Safety Checklist," which included a reminder for parents to make sure all children wear their safety helmets whenever they ride their bikes. Commission staff estimates an average of 80 deaths of children 16 and under each year related to bicycle accidents. Is it consistent to continue to permit bicycles to be distributed in commerce when we know their use will result in scores of deaths each year, yet ban the use of any bicycles with tire valves containing trace amounts as hazardous products?**

Answer: On June 30, 2009, the Commission published a two-year stay of enforcement of the CPSIA Section 101 lead level requirements with regard to certain bicycle parts. (74 FR 31254) During the pendency of this stay, the sale or use of bicycles with tire valves containing trace amounts of lead is not banned. Furthermore, the Commission has committed to work with bicycle manufacturers during the stay to come into compliance with the Section 101 requirements, or identify those areas where compliance is technologically infeasible.

During the course of the stay, the Commission believes it is still prudent to warn children of other risks – such as failing to wear a safety helmet – in order to reduce injuries and deaths to the lowest level possible.

COSTS ASSOCIATED WITH CPSIA

- 3. Testing products for lead and phthalates requires destroying a product sample. In some cases, the independent tester requires multiple samples. How do we effectively address the unique circumstances to preserve cultural benefits of products - such as the Native American clothing - that are one- of a kind and can't be tested unless the product is destroyed?**

Answer: A children's product that is produced as "one-of-a-kind" obviously cannot be subjected to destructive testing. However, the CPSIA requires the manufacturer to certify the product as compliant to all applicable children's product safety standards based on the results of third party testing. Third party testing of components parts may satisfy the testing requirements of the CPSIA without subjecting the final product to destructive testing. Staff is in the process of developing a rule on testing requirements that will address the issue of "one-of-a-kind" products.

- a. In addition, how should similarly situated business that produce few items per batch be addressed when the costs of testing a product are greater than the value that can be recouped by the manufacturer or home based business selling the rest of the batch?**

Answer: The CPSIA requires manufacturers of children's products subject to a children's product safety rule to certify their product complies with all applicable safety rules. This certification must be based on third party testing. Staff is in the process of developing testing requirements for Commission consideration that will attempt to address the need to balance testing costs with the Congressional mandate to ensure compliance to applicable safety standards.

- 4. There have been numerous reports from industry surveys about the lost inventory and testing costs that have forced businesses to simply fold up their shops. In total, these costs are in the billions. Is the Commission tracking the economic impact and costs of the CPSIA? If not, does the Commission plan to produce an estimate in the future?**

Answer: The Commission does not customarily track the economic impact and costs of federal legislation, and is not tracking this data regarding the CPSIA. In the past, Congress has relied on the Congressional Budget Office (CBO) and the Government Accountability Office (GAO) to conduct analyses detailing the economic impact of federal legislation. At this time, the Commission does not plan to produce an estimate due to the resources that would have to be diverted from CPSIA implementation and other deadlines.

- 5. Should the Commission survey the independent testing labs to see what percentage of products tested for CPSIA compliance failed these tests? If not, please explain why.**

Answer: The Commission is not currently surveying independent testing labs for this data. However, there may be some value in using the results of the suggested survey as an indicator of industry's progress, or lack thereof, towards ensuring their manufacturing processes are capable of producing compliant products.

STAYS OF ENFORCEMENT

- 6. Are companies regulated by CPSIA still subject to State Attorneys General (AG) enforcement and penalties regardless of any stays of enforcement issued by the CPSC?**

Answer: Companies regulated by the CPSIA remain subject to state attorney general injunctive actions during the stays of enforcement issued by the Commission. To date, no state attorney general has filed an injunctive action to enforce the CPSIA and several have indicated that they do not plan to do so until implementation issues have been addressed by the Commission. Commission staff recently met with and will continue to meet regularly with several assistant and deputy state attorneys general with responsibility for consumer health and safety to foster constructive dialogue in an attempt to reach a common approach on these issues.

- 7. Would you consider the enforcement stays issued by the Commission relief if companies are subject to State AG enforcement and potential civil liabilities?**

Answer: The CPSIA reflects Congress's intent to allow state attorneys general to pursue an injunction. Although legally the state attorneys general can bring an injunction action, to date they have not done so.

- 8. What happens when the stay on ATV's expires in 2011? Is the Commission ready to implement and enforce the law as written? Will the Commission have the necessary resources to implement and enforce the law as written?**

Answer: During the pendency of the two-year stay of enforcement of the Section 101 lead limits for certain ATV component parts, the Commission will continue to work with manufacturers to identify feasible means to comply with the Section 101 limits. It is premature to predict what might happen when the stay expires in 2011.

The Commission has the resources absolutely necessary to implement and enforce the law. However, we would welcome any additional resources and appropriations Congress can provide not only to implement provisions of CPSIA, but also to help the Commission increase staffing and improve its information technology modernization efforts, both of which will enhance the Commission's ability to identify and address new and emerging product hazards.

9. **Do you believe industry will be able to comply with both the decreased lead limit as well as the testing and certification requirements, or will additional relief be necessary? If so, will the Commission consider issuing another stay of enforcement?**

Answer: The one year stay of enforcement on testing and certification was intended to give industry a year to prepare for the testing and certification requirements. The Commission will fully review this issue again in February of 2010 but I cannot speak for the Commission on how individual Commissioners might vote on this issue.

10. **Do you believe the Commission has the legal authority to issue further stays of enforcement? If not, what actions could the Commission take if it determined an additional stay is necessary?**

Answer: The stays of enforcement issued to date have been based on a policy determination by the Commission that the safety of the product given the functional purpose of the part containing lead in excess of the limit supported a decision to provide the manufacturer with additional time to determine whether and when substitute parts made in accordance with the lead limits would be available. The stays are limited as to the parts covered and the duration of the stay and require interim reporting on the efforts made by the various companies to bring their products into compliance. Furthermore, the stays are tantamount to a refusal to initiate enforcement proceedings, which is ordinarily committed to the agency's discretion. The Commission could issue additional stays if warranted. The clear intent of the law is to remove lead from children's products so any additional enforcement stays should be limited to the narrow circumstances where the strict, immediate compliance with the lead limit could jeopardize the health and safety of children.

PHTHALATES

11. **The CPSIA contained an exemption for lead parts that are inaccessible to children through reasonable and foreseeable use and abuse. In perhaps an example of unforeseeable issues, Congress overlooked that some products may contain inaccessible parts made of phthalates, versus other products such as rubber bathtub toys that typically contain phthalates. How will CPSC address concerns expressed by toy manufacturers about the requirement to test "inaccessible" parts? Does CPSC need additional authority to exempt inaccessible phthalate parts in parity with the lead scheme of the CPSIA?**

Answer: In February 2009, the Commission requested public comments on draft guidance regarding which children's products are subject to CPSIA requirements for phthalates. (74 FR 8058) Commission staff is currently reviewing those comments, and the Commission plans to issue guidance on the matter shortly. In addition, on August 6, 2009, the Commission voted to issue a *Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety*

Improvement Act, and requested public comments. The policy statement describes the Commission's position regarding component testing, and the Commission has posted a new test method on its Web site.

Through these rulemakings and policy statements, the Commission has attempted to simplify the phthalate component part and testing guidance as much as possible. With regard to phthalate parts that are completely inaccessible and present no risk of leaching (i.e., a moving belt enclosed in a hard plastic case), the Commission is reviewing whether Section 108 of the CPSIA contains flexibility to allow an exemption from the overall prohibition as a part of the ongoing rulemaking.

12. What is the status of the Chronic Hazard Advisor Panel (CHAP), which is tasked with a scientific review of phthalates?

Answer: The CPSC staff is in the final stages of compiling a list of possible candidates for Commission consideration. Staff received names of scientists from the National Academy of Sciences (NAS). The nominees have been contacted by the staff and asked to indicate their interest in serving on the CHAP. Responses have been received from most, but not all, of the nominees. Once the information provided by the interested nominees has been reviewed by the CPSC Office of General Counsel's ethics officials for conflicts of interest and cleared, staff will forward to the Commission a proposed list of candidates for the CHAP. The staff hopes to transmit its recommendations to the Commission in November. The Commission will then vote on the information provided to them.

Do you plan to make the participants of the CHAP public?

Answer: Yes, we will make the participants of the CHAP public.

AGENCY SUPREMACY

13. Since the effective dates of the CPSIA have gone into effect, the Commission has issued more than one stay of enforcement. Additionally, you stated in your August 18, 2009 signing statement an intention to focus the Commission's enforcement priorities to a smaller world of products than that laid out in CPSIA. However, the law grants State Attorneys General enforcement of CPSIA. Do you believe the Federal agency should have the primary authority in interpreting a Federal law? How can Federal agency supremacy be reconciled with State Attorneys General potential enforcement in areas in which the Commission has yet to pursue enforcement and will not pursue enforcement due to the issued Federal stays of enforcement?

Answer: As discussed above in response to question 7, while we should have the primary responsibility and authority for interpreting federal law, legally the state attorneys general can pursue their own injunctive proceedings. The law allows the Commission to intervene in a case filed by a state that should allow us to protect the

Commission's interests in interpreting the federal law. We are working to coordinate federal and state enforcement activities with the state attorneys general to avoid the situation where the states take enforcement positions different from those of the Commission. We have recently met with several assistant and deputy state attorneys general with responsibility for consumer health and safety and plan to continue quarterly meetings with them to discuss and coordinate our enforcement activities.

- 14. One of the purposes behind the CPSIA was the establishment of bright-line, uniform legal safety standards. How does the Commission intend to maintain the bright-line rules established by the CPSIA if Commission interpretation is preempted by State Attorneys General enforcement due to the Federal stays of enforcement?**

Answer: To date this has not proven to be a concern as no state has filed such an action. As discussed in response to question 13 above, we have recently met with and will continue to meet with assistant and deputy state attorneys general with responsibility for consumer health and safety and plan to continue quarterly meetings with them to ensure that they understand our interpretation and enforcement policies with regard to the CPSIA. The FHSA has always contained a provision allowing for state attorneys general to file actions seeking injunctive relief for many years, and the issue of preemption and federal agency supremacy has not presented a problem.

- 15. Please detail the Commission's efforts in working with State Attorneys General to create a uniform enforcement scheme that assures consumers and businesses will be treated consistently in every state.**

Answer: As noted in the answer to question 13, the Commission recently met with assistant and deputy state attorneys general with responsibility for consumer health and safety and will continue to meet with them on a quarterly basis to discuss and coordinate federal and state enforcement efforts. At our most recent meeting we discussed the importance of cooperation and uniformity in enforcement. Through these meetings, and other efforts, the Commission strives to coordinate enforcement activities with the States to the maximum extent possible.

EXEMPTIONS FROM LEAD LIMITS

- 16. In your July 17 statement accompanying the Commission's denial of the request to exclude crystal and glass beads from the CPSIA lead provisions, you stated:**

“In making a determination, I was mindful that the statute does not use the term ‘harmful’ amount... which would allow staff to utilize a risk based approach... Thus, while Commission staff recognized that most crystal and glass beads do not appear to pose a serious health risk to children... the request for an exclusion must be denied.”

- a. **Do you support banning products from the marketplace that have been scientifically proven to present no unreasonable risk of harm?**

Answer: With regard to crystal beads, data provided to staff indicated that there may be some absorption of lead from ingestion depending on the type and amount of beads swallowed. In the CPSIA, certain other children's products containing lead and phthalates were banned by limits set on their content. When the CHAP finishes its work on the three phthalates that have been banned on an interim basis, the Commission will revisit those limits. Otherwise, the CPSA and FHSA provisions on when a product can be banned remain unchanged and require consideration of risk.

- b. **Do you support statutory exclusions for products and materials that can be scientifically proven to present no reasonable risk of harm?**

Answer: Section 101(b)(1) grants the Commission some authority to exclude certain products or materials where "the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product will not result in the absorption of any lead into the human body nor have any adverse impact on public health or safety."

In the interest of making effective use of Commission resources, however, it would be helpful to have a narrow exception to the overall Section 101 lead prohibition in cases where a component with lead is required for a functional purpose, contact with the lead is infrequent, and the elimination of such component part is impracticable or impossible based on available scientific and technical information. This exception would provide the Commission with greater flexibility.

17. In your July 17 statement accompanying the Commission's denial of the request to exclude crystal and glass beads from the CPSIA lead provisions, you stated, "the agency will take a common sense approach to enforcement," and that the Commission "will focus [its] enforcement activities on crystal and glass bead products designed and intended primarily for children six years of age and younger[.]"

- a. **Please explain the basis for the determination that the CPSC should limit its enforcement activities in this way.**
- b. **Are there other areas in which you foresee the CPSC using enforcement discretion to focus on products manufactured for an age range of less than 12 years?**
- c. **Does this enforcement decision mean that companies do not have to report such products under 15(b) of the Consumer Product Safety Act (CPSA) and will not face civil penalties for sales of such products?**

- d. Does this enforcement guidance provide relief from State Attorneys General enforcement? Does the CPSC have or intend to enter agreements with the State Attorneys General in which the State will honor the Commission's decision to focus enforcement on products for children 6 and under?**

Answer: Enforcement decisions are generally matters that are left to agency discretion. In this case, my July 17, 2009, statement indicated that the focus of enforcement actions would be on products designed and intended primarily for children 6 and under. This reflects a Commission enforcement policy determination, and does not impact the underlying statutory provisions.

As noted in the answers to questions 7 and 13, we have already met with and plan to have quarterly meetings with the states to discuss enforcement efforts. We are working to coordinate federal and state enforcement activities with the state attorneys general to avoid the situation where the states take enforcement positions earlier than or different from those of the Commission. Furthermore, the law allows the Commission to intervene in a case filed by a state which should allow us to protect the Commission's interests in interpreting the federal law.

- 18. In your August 18 signing statement accompanying the Commission's decision on printed materials, you stated, "older children's books did not use the modern CMYK printing process and some have been able to contain lead, [therefore] the Commission was unable to make a determination that older books...do not exceed the CPSIA's lead limits." In the same paragraph, however, you state the Commission intends to issue a separate statement of policy on such books that may still be lent out by libraries or other institutions for use by children. You said, "It is my hope that this guidance will offer common sense solutions that alleviate undue burdens on those who lend older children's books." Please explain from where you will derive the authority for a solution permitting the continued lending and use of these books if they exceed the 600ppm or 300ppm standard and can result in the absorption of some lead, such that they are not eligible for an exemption under CPSIA.**

Answer: The Commission is continuing to look at the lead levels in children's books manufactured prior to 1985, and is continuing to test those books in order to make additional determinations.

With regard to the policy guidance, that document will integrate the results of the ongoing testing. Furthermore, the Commission has determined that many older books are not used by children (due to the fact that they wear out quickly), and still others may be used by adults as older "collector's items." In that context, they may not be subject to the Section 101 lead limits.

19. How does the Commission intend to address an environment potentially made more dangerous for children by the CPSIA standards because they use replacement products not primarily intended for use by children? Does the Commission have the flexibility and authority to exempt certain children's products, even though they may not meet the CPSIA exemption standard, in order to protect their safety? For instance, children's use of adult-sized all terrain vehicles (ATV) is far more dangerous to their safety and lives than the possibility of lead exposure from ATV parts on a child-fitted ATV.

Answer: CPSIA section 101(a) explicitly limits the exceptions to the general rule that children's products exceeding the lead limits must be treated as banned hazardous substances. In the case of youth ATVs and certain other motorized vehicles intended for children, the Commission recognized that strict enforcement of the new lead limits could increase the risk of injury to children rather than reduce it as intended. Nevertheless, the Commission did not exempt such vehicles from the lead limits entirely; rather, the Commission adopted a temporary stay of enforcement of the lead limits for certain component parts of such vehicles. To date there have only been a few products where strict enforcement of the new lead limits could potentially increase the risk of injury to children.

20. Is it possible that certain products that are compliant with the total lead limit could have more accessible lead available to be absorbed than products excluded from the market, such as crystal, that have less accessible lead? Would a solubility standard encompassing risk be more protective or less protective of children?

Answer: It is possible, *on a case-by-case basis*, that a lead-content compliant product could have more accessible lead than a product that is not compliant with the lead content requirement. Limited data (provided by industry; letter from Sheila Millar, representing the Fashion Jewelry Trade Association, *et al.*, dated February 2, 2009) on leaching of lead into a mild acid solution from crystal beads showed that some bead samples had very little accessible lead, but other beads leached higher amounts of lead. From CPSC staff analysis of lead accessibility from compliant metal jewelry items, in some cases, the accessibility of lead from a crystal bead would be less than from a metal item, but in other cases, the accessibility from a crystal bead would be greater.

A lead content limit that is more than zero could result in some lead exposure in children, depending on the characteristics of the product and the expected interactions between a child and the product. Further, given a particular lead content standard, it is not possible to generalize expected or potential lead exposure for children's products because of the inherent variability among products and children's behaviors. A solubility standard would require that a test method be designated and a soluble lead limit be chosen. The choice of an "acceptable" lead exposure level is not straightforward, because there is no known level of exposure to lead that is safe for children.

- 21. If child-sized ATVs cannot be made to meet the 600ppm, 300ppm, or 100ppm lead limits, how do you intend to deal with these products when the ATV exemption expires? Is a legislative fix needed to provide such authority?**

Answer: During the pendency of the stay of enforcement, the Commission is continuing to work with the ATV manufacturers to bring them into compliance with the lead limits contained in Section 101. In the interest of making effective use of Commission resources, however, it would be helpful to have a narrow exception to the overall Section 101 lead prohibition in cases where a component lead is required for a functional purpose, contact with the lead is infrequent, and the elimination of such component part is impracticable or impossible based on available scientific and technical information. This exception would provide the Commission with greater flexibility.

- 22. At the Subcommittee hearing, you stated rubber grips could be used to prevent youth ATV operator exposure to lead in the metal handlebars. However, under the Commission's August 2009 final interpretative rule on inaccessible component parts in children's products containing lead, hundreds of other parts of these vehicles, such as engines, suspensions, carburetors and frames, with which child operators do not normally or routinely interact are also deemed accessible and thus subject to the lead content limits. Because of this fact -- and despite the stay of enforcement, many companies have ceased selling youth ATVs for children under 12, which may unfortunately lead these children to ride larger, faster adult-size ATVs on which CPSC studies show they are at much greater risk of serious injury or death. Should this interpretative rule be revised to specify that with respect to youth ATVs and other youth motorized recreational vehicles, only those components, such as hand grips, brake and clutch levers, throttle controls, ignition keys and seats, with which child operators routinely interact during normal and reasonably foreseeable operation of the vehicle will be considered accessible and thus subject to the lead content limits?**

Answer: As noted in the answer to question 21, the Commission is continuing to work with youth ATV manufacturers during the pendency of the stay of enforcement to address specific issues of accessibility and inaccessibility.

- 23. Art supply manufacturers have been required since 1988 to test and certify under the Labeling of Hazardous Art Material Act (LHAMA), including testing and certification for lead content. Does the Commission have the authority those products or materials already subject to Federal testing requirements to avoid duplicative and unnecessary testing?**

Answer: CPSIA section 102(f)(2)(C) provides a special rule allowing organizations who are qualified, under CPSC regulations, to certify art materials, to qualify as third party conformity assessment bodies "with respect to the certification of art material and art products" without meeting any additional requirements. CPSC staff does not

interpret this privilege as exempting anyone from testing art materials for purposes of establishing compliance with section 101 lead limits.

TRACKING LABELS

- 24. There is an exception to the tracking label requirement if placing such labels on consumer products or packaging would be "impracticable." What does "practicable" entail in your opinion? Should the word "practicable" encompass the economic practicality of these tracking labels, in addition to the technological feasibility of placing them on consumer products?**

Answer: The CPSIA provides an exception to the tracking label requirement when placing such labels on products or packaging would be impracticable. On July 20, 2009, the Commission issued a statement of policy on interpretation of the tracking labels provision that recognized that the statutory provision does not require a uniform one-size-fits-all system. The Commission announced that it "is not imposing any such uniform requirements, but expects that manufacturers will use their best judgment to develop markings that best suit their business and products." I look forward to working with industry on these tracking labels as they clearly will aid in determining the origin of the product in the event of a recall. Different products have differing levels of risk and cost which are both factors in determining what kind of tracking labels should be used on a product. There are exciting new technologies that are and will become available in the future for consumer use in tracking products. Finding the right tracking solution for the right types of products and harmonizing those requirements with systems being developed in Europe and elsewhere will be something the Commission works diligently to pursue in the coming years.

GENERAL

- 25. Please provide statistics regarding the impact of CPSIA on the relative safety of children's products.**

Answer: It is too early to estimate the impact of the CPSIA on the safety of children's products.

- 26. One of the chief criticisms of early CPSIA implementation was the Commission's slowness in responding to industry concerns or the issuance of guidance.**

- a. Specifically, the Commission reportedly received approximately 9,000 questions regarding how interested parties may comply with the new law. How many of those questions have been answered? Does the Commission intend to answer each of these questions? What impact does answering these questions have on Commission resources? What do you expect the continued impact on resources will be? Generally,**

what is the current state of Commission outreach to various affected industries?

Answer: When the CPSIA was enacted the Commission very quickly received thousands of questions from individual parties. Many of those questions were received before the Commission had a chance to thoroughly study the new requirements in the Act and before there was time to educate the Commission staff about those requirements. We took the approach of reviewing the questions for major themes and then posting Frequently Asked Questions (FAQs) and responses on our newly created CPSIA web site. Soon after the volume of questions rose dramatically, we provided an automatic response to those individuals who submitted their questions through email indicating that their question was important to us and that while we would not be able to respond to each question individually, we would be developing responses to FAQs. The response also noted that individuals could sign up to receive email notification when new information was added to the CPSIA web site. Responding to the questions has a significant impact on Commission resources and takes time away from important activities such as rulemaking and work on emerging hazards. We recognize, however, the need to provide responses to our stakeholders and are looking for ways to provide those responses more efficiently.

For example, beginning in FY 2010 we have contracted for a new provider for our hotline services. The new provider has the ability to take CPSC-approved FAQs and turn them into automated email responses based on key word searching through the use of a “knowledge-based” email management database. This new database will allow hotline staff to accurately respond to questions posed through email using agency-approved FAQs and scripts. In addition, this software has the ability to search individual emails for keywords and phrases and provide automated form responses, thus preventing email backlogs like we saw when CPSIA was implemented. The system will also track new trends in email and telephone inquiries and identify when new scripts need to be developed.

We have done and are continuing to do extensive outreach to affected industries. We have published enforcement guidance and policies to enhance compliance with the new law, held numerous public briefings to help stakeholders understand their obligations under the law, created a special web site devoted to posting information and answering questions about CPSIA, and responded to thousands of inquiries from affected manufacturers, retailers, resellers, and consumers.

CPSC RESOURCES

27. In her March 20th response to Mr. Dingell, then-Acting Chairman Nord suggested a lack of resources impacted not only CPSIA implementation, but also the Commission’s other non-CPSIA safety mission activities. Specifically, she stated that CPSIA implementation, requests for CPSIA exclusions, Virginia Graeme Baker Pool and Spa Safety Act, the Children’s Gasoline Burn Prevention Act, and the rest of the CPSC’s ongoing safety mission “severely

overstretched the agency staff and has begun resulting in delays in implementation that will continue until we are able to fully hire and otherwise maximize the resources that have just been provided to the agency for the second half of fiscal year 2009.” Similarly, in your August 18 signing statement excluding certain materials from testing and certification you stated “The Commission has limited resources to make these types of determinations while also vigorously attempting to implement other provisions of the CPSIA and carry on the day to day business of the agency.”

a. Where do the Commission resources now stand?

Answer: CPSC’s appropriated funds in 2009 were \$105.4 million to fund 483 staff. For 2010, the President’s request pending before Congress for CPSC is \$107 million to fund 530 staff. The House has approved a \$118 million level for 2010 while the Senate Appropriations Committee has reported out a level of \$115 million.

b. How will the delay in additional resources affect continued implementation of CPSIA – either mandated actions or CPSIA-related actions such as exemptions?

Answer: The full 2009 appropriation was not enacted until the sixth month of fiscal year 2009. This resulted in delays in staffing up to the desired 483 employee level; we are only now approaching the desired 2009 staffing level.

c. How many exemption requests has the Commission received? How many requests has the Commission responded?

Answer: The Commission has procedures for requesting a determination that a certain material or product does not and would not exceed the lead content limits. The Commission has received approximately 270 requests for lead determinations. These requests were all addressed in the determinations rule, which is codified under the Commission’s regulations at 16 C.F.R. § 1500.91. The Commission also has procedures for requesting an exclusion from the lead content limits for a material or product that exceeds the lead limits. Five requests have been received to date (youth motorized recreational vehicles, bicycles and related products, pens, crystal and glass beads, and brass and mechanical components in toys). Four of these requests have been addressed by the Commission. The brass and mechanical components in toys request is currently pending before the Commission.

- d. Are the Commission's other safety tasks negatively impacted by the resources demanded by the CPSIA and its mandated timelines?**

Answer: One of our highest priorities has been the implementation of CPSIA. As a result, we have had to defer several hazard reduction projects that promise long-term decreases in consumer product-related injuries and deaths. These deferred hazard reduction efforts include activities for products such as cigarette lighters (mechanical malfunction), lighter amendments, bedclothes, range extinguishing systems, sensor technology, carbon monoxide alarms, high energy battery packs, bicycle integrity and illumination, sensitizers, and electric toys. We have, however, maintained our pressing consumer product safety activities such as product recalls and safety information campaigns.

- 28. In her March 20th response to Mr. Dingell, then Acting Chairman Nord suggested that due to the Commission's limited resources and its ongoing safety mission in non-CPSIA areas combined with the significant new responsibilities imposed under CPSIA, *"The deadlines have proven to be impracticable for our staff to meet and are presenting significant problems for the agency to solve. The Commission staff must have some relief from the deadlines imposed."* Do you believe this is still the state of resources versus burden at the Commission?**

Answer: Six months have passed since this letter was sent and after much hard work by the Commission, I believe we have turned a corner. We have much hard work ahead of us, including completion of scheduled rules, perhaps refining earlier rules, and beginning the enforcement of the new rules. Each day, however, we are hiring more staff and Congress has signaled increased resources for 2010. Thus, I believe the case for relief from statutory deadlines is now substantively diminished.

- 29. Due to the timing of the passage of this Act and the House appropriations bills, we did not specify an authorization level for FY 2009. However, we recognized the massive burdens we placed on the Commission and authorized the CPSC at \$118 million for FY 2010.**

- a. At what level were the Commission's appropriations for the current fiscal year, FY 2009, and when did those funds make it to the Commission?**

Answer: The 2009 appropriation of \$105.4 million was enacted March 11, 2009. The Office of Management and Budget (OMB) approved our apportionment request for use of the funds on April 15 with one exception. OMB placed apportionment restrictions on the use of funds allocated for the creation of the public database and information technology modernization. These restrictions required certain processes and documents be completed and approved by OMB before funds were

available for CPSC use later in the fiscal year. The majority of these funds were made available by mid-September.

b. How many rulemakings or other agency actions were mandated to be completed by the CPSIA in FY 2009?

Answer: The CPSIA required a total of 16 rules or other documents in fiscal year 2009. The CPSC began and, in most cases, completed 15 required rules and other documents and completed the majority on time despite tight statutory deadlines. (In one case, the CPSIA required the Commission to issue a final rule by a particular date; the Commission issued the proposed rule, but, due in part to a need to comply with other rulemaking requirements, was unable to issue the final rule by the date. In another case, the CPSIA required the Commission to consult interested parties on the toy standard, and the Commission fulfilled this requirement by issuing a notice in the *Federal Register* inviting public comment.)

The number of completed assignments required by the CPSIA, however, is only a partial accounting of the Commission's actual workload. For example, in some cases, a statutory requirement under the CPSIA triggered a need for the Commission to issue a proposed rule before it could issue the final rule required by the CPSIA or to issue an interpretative rule, a statement of policy, or some guidance so that interested parties could understand the Commission's interpretation of a particular requirement or could learn how to request an exemption or to pursue some other administrative action. When one considers these other rules and documents that help implement, but are not required by, the CPSIA, an *additional* 20 rules and other documents were completed during fiscal year 2009.

The only item required by the CPSIA which the Commission did not begin during the fiscal year was a "notice of requirements" relating to baby walkers, walker jumpers, and bouncers. The Commission did not begin the assigned task because the regulation specified by the CPSIA pertaining to baby walkers, walker jumpers, and bouncers was obsolete, and the Commission proposed instead to withdraw the cited regulation. Thus, it would have been inefficient and a waste of resources for the Commission to issue a notice of requirements pertaining to an obsolete rule.

c. Did the delay in appropriations have any impact on the implementation of this law?

Answer: Yes. Commission staff had to undertake CPSIA work beginning immediately upon enactment of CPSIA (August 14, 2008). Without an increase in staff, several product hazard projects were deferred in order to free up staff time for CPSIA work. These deferred hazard reduction

efforts include activities for products such as cigarette lighters (mechanical malfunction), lighter amendments, bedclothes, range extinguishing systems, sensor technology, carbon monoxide alarms, high energy battery packs, bicycle integrity and illumination, sensitizers, and electric toys.

- d. Given that the budget request for FY 2010 is \$107 million, \$11 million less than the authorization, what impact do you foresee on implementation of this law, along with pursuit of the rest of your mission?**

Answer: As we work with CPSIA, we have learned more about the requirements. As issues are addressed, we have encountered a need for greater resources. Thus, I am grateful that the House and Senate appropriations committees have reported out resource levels greater than the original request. If these funds are appropriated we will put them to good use in continuing to implement CPSIA and addressing other critical safety issues.

- 30. The March 20th response CPSC staff memo indicated that the timelines for rulemaking and certification of testing labs were one example where there is a mismatch in the law. Specifically, the baby bouncer standard is out of date and the Commission doesn't rely on it as it will have a new standard by February of 2010. Accrediting labs to test to a standard the Commission does not rely on was properly viewed by Commission staff as incongruous. Ultimately the Commission has wisely proposed to revoke that standard and continue relying on the industry standard. Are there similar problems caused by the mandated rulemakings and certifications that could be fixed with more time for the Commission? Would you agree it is better to have more time as a safety net rather than find out too late that the Commission does not have sufficient time to effectively implement CPSIA mandates?**

Answer: In the approximately three months since I assumed the Chair, the Commission has released 12 substantive rules and policy guidance documents implementing various provisions of the CPSIA. I am also committed to meeting the remaining deadlines in the CPSIA. It is true, however, that the Commission still requires additional funding and staff resources to effectively implement the CPSIA, and the other emerging hazards that the Commission investigates.

- 31. Various laws administered by the CPSC use terms such as "technological feasibility," "practicable" and other similar phrases. What specific considerations do you think are important in looking at technological feasibility or practicability? In particular, should costs or economic impact be factored into these assessments? Why or why not?**

Answer: Cost and economic impact are relevant to interpreting terms such as "technological feasibility" and "practicable." These terms are used in very specific

and limited places in the CPSIA and where they are used we have already embraced them in our interpretations.

RISK ASSESSMENT

32. CPSC follows a risk-based decision-making process in setting priorities and in rulemaking. Do you agree with this regulatory philosophy used at the CPSC? Does the current adoption of the CPSIA contradict or prevent this long standing policy?

Answer: The findings and purposes section of the Consumer Product Safety Act (codified at 15 U.S.C. 2051) provides that the Commission's overall, general mission is to "protect the public against unreasonable risks on injury associated with consumer products." In the CPSIA, however, Congress decided that certain areas, such as lead and phthalates in children's products, required bright-line standards.

These provisions are not contradictory; rather they express Congressional intent to apply a stricter standard to certain classes of materials and products intended for children. To this end, the Commission generally prioritizes its rulemaking based on degree of risk, except in those areas (such as lead and phthalates) where Congress has deemed certain materials as inherently risky, and has established bright-line tests for those materials.

33. Do you believe safety would be compromised if human factor studies that monitor what small children touch and play with were included as part of an evaluation to determine whether there is even a risk of exposure associated with certain products that don't meet the lead standards – such as the tire valves on a bicycle that are rarely touched and generally unavailable to small children?

Answer: Prior to the CPSIA implementation, CPSC Human Factors and Health Sciences staff routinely considered both the exposure to a chemical such as lead (*i.e.*, through children's mouthing, hand-to-mouth behaviors, or ingestion) and the toxicity of the chemical to determine an exposure level at which the chemical might be considered a hazardous substance under the Federal Hazardous Substances Act. Because the CPSIA provides specific lead content limits, rather than exposure limits, this type of assessment is not called for at present.

However, human factors analysis is part of an evaluation as to whether certain products could be excluded from the CPSIA lead content requirements. CPSC Human Factors staff have assessed children's interactions with products and components, such as the tire valve on a bicycle. Staff concluded that compared to children's interactions with components such as handle bars and levers, children will have less frequent contact with tire valves, but that older children are likely to have such contact when inflating or deflating a bicycle tire. This conclusion, in conjunction with the industry-supplied data (letter from Erica Z. Jones, representing the Bicycle Product Suppliers Association, dated January 28, 2009), that showed that some

exposure to lead could occur when a child handles components such as tire valves resulted in the Commission's decision to not exclude such products from the lead content requirements of the Act.

If the Commission were to evaluate products based on exposure and risk, as discussed above, questions remain as to the appropriate test methods, the limit for lead solubility or lead exposure that should be designated, and, if the lead content requirement still applies to children's products, the specific product types that would be subject to an exposure assessment rather than the lead content requirements.

34. Most regulatory and enforcement authorities use a risk-based system to target violations, including the CPSC's joint operations with the Custom and Border Protection.

a. How do you see this principle being applied in CPSIA-related rulemakings and in CPSIA-related enforcement?

Answer: CPSC's Office of Compliance is responsible for enforcing CPSIA requirements as well as other standards and regulations. The Office of Compliance uses a variety of approaches, including risk factors, to establish priorities for enforcement each year. In some settings, we use screening criteria to zero in on violations that pose a relatively greater risk. Risk assessment also plays a major role in deciding the appropriate remedy for violations. For example, if a violation is considered to present a low risk to consumers, CPSC staff may ask the responsible party to stop sale of the item but not seek a consumer-level recall. On the other hand, if a violation is considered to present a high risk, the staff would always seek a recall and may take other action.

35. Is the agency ready to patrol safety using its discretion and new enforcement tools? Would the agency have an easier time (be more effective) if the rules permitted it to revert to risk assessment, rather than patrolling compliance with a one-size-fits-all standard?

Answer: A bright-line standard may be easier to enforce, in some cases, than an approach that is based on risk alone. Where enforcement resources are scarce, however, as is certainly true in the case of CPSC enforcement staff, it is important not to lose sight of risk in deciding where to focus enforcement. Vigorous pursuit of minor violations is not in the public interest if it means that other, higher risks go unaddressed. As explained in the response to question 34, CPSC's Office of Compliance tends to use risk assessment at several decision points in enforcement, such as deciding what products to target and what remedies are most appropriate for a particular violation.

36. Does the lead content standard present a contradiction in what presents an unreasonable risk of harm by permitting certain products to be legally entered into commerce because they are below the total lead limit, but which may have

more soluble lead than non-compliant products that exceed the total lead limits but have less soluble lead available to the child? Do you think that materials should be excluded from total lead limits if they are demonstrated to result in exposure to lead in amounts no greater than the exposure of products that comply with the total lead limits?

- a. Regarding lead content and items that do not meet the total lead content limits but may only leach trace amounts of lead, during the hearing you indicated that the Commission isn't looking at the potential effect of just one item's risk of exposure if swallowed, but rather the risk of the aggregate effect if many of the like items were swallowed. How is this different than the risk that potentially exists for legally compliant products if multiple items were swallowed?**

Answer: The Commission is enforcing the statutory lead limits in Section 101 as provided by Congress, which apply to a children's product or a component part thereof. Enforcing an "aggregate impact" or "cumulative effect" standard for lead in multiple children's products would require congressional action.

- b. Is the Commission proposing to treat children's products, which are legally compliant under CPSIA's lead limits, as banned hazardous products if the aggregate potential exposure to lead resulting from swallowing multiple items presents an unreasonable risk of injury? If so, please indicate at what level the Commission would consider necessary to trigger such a determination.**

Answer: No, the Commission has not taken this position.

37. Please provide any information the Commission has to support your testimony that swallowing 50 beads presents a health risk to children regarding lead ingestion.

- a. Please provide any supporting data regarding the amount of lead that is leached and the resulting effect on blood lead level.**

Answer: It is important to note that my decision to deny the Fashion Jewelry Trade Association's request to exclude crystal and glass beads contained in children's jewelry and other products from the lead content limits was based on the statutory language of the CPSIA. The amount of lead contained in the crystal bead that were tested ranged from 900 ppm to 23,000 ppm—in excess of the statutory limit set by Section 101(1) of the CPSIA, which was 600 ppm at the time and the data submitted by the FJTA indicated that some lead could be absorbed into the body.

Information about crystal beads and data on the potential exposures to lead from crystal beads was provided by the industry in their request for an exclusion from the CPSIA-

mandated lead limits (letter from Sheila Millar, representing the Fashion Jewelry Trade Association, *et al.*, dated February 2, 2009). The letter stated that a children's jewelry item would typically include 4-18 beads or stones, depending on the size of the stones.

The data for 18 types of crystal beads of varying sizes showed that extraction of lead from the beads using a mild acid solution (to evaluate possible exposure to lead if the beads were swallowed) ranged from 0.01 microgram per bead to 2.8 micrograms per bead. The former value might be considered to be so small as to be insignificant to a child's health and overall lead exposure, but ingestion of the latter sample could be considered to be an important source of a child's lead exposure that should be avoided. An abundance of research has demonstrated that there is no safe level of lead exposure. Any exposure to lead by a child that results in absorption of some lead into the body will add to a child's overall lead exposure and will have an impact on the child's blood lead level, regardless of whether a change in the blood lead level could be detected. The language of the CPSIA specifically addresses the concern about lead exposure and provides that the Commission may exclude a product from the lead limits only if it determines that the lead in the product will not result in the absorption of any lead into the human body, considering normal and reasonably foreseeable use and abuse of the product by a child, including swallowing, mouthing, breaking, or other children's activities.

The industry provided the CPSC data stating that the amount of lead exposure for the largest bead was 2.8 micrograms per bead. That number multiplied by 50 results in 140 micrograms of lead as the possible exposure.

An exposure at this level would likely result in the blood lead level increasing by several micrograms of lead per deciliter of blood. The CPSC staff had previously estimated that an acute exposure to lead by a small child could change the blood level in micrograms per deciliter by a factor equal roughly 1/20 of the ingested amount. In this case, the increase in blood lead level would be about 7 micrograms per deciliter. This would be in addition to the other sources of exposure the child already experiences. For some children, this additional lead exposure would result in the blood lead level exceeding 10 micrograms per deciliter. Once the source of exposure is removed from a child's environment, the blood lead level will slowly decrease, returning to the previous level over many months.

In 1991, the U.S. Centers for Disease Control and Prevention (CDC) set its "blood lead level of concern" that could cause adverse health effects at 10 micrograms per deciliter. The CPSC adopted the CDC's recommendation of 10 micrograms per deciliter as the threshold lead amount in determining whether to list a product as banned under the Federal Hazardous Substances Act. Research conducted since 1991 has strengthened the evidence that children's physical and mental development can be affected by blood level limits at less than 10 micrograms per deciliter.

**b. Would a child swallowing 50 beads be a "foreseeable use and abuse"?
If so, please provide supporting data.**

With regard to foreseeable use and abuse, I will summarize data provided to the Commission on child ingestions.

The National Electronic Injury Surveillance System (NEISS) is a probability sample of approximately 100 U.S. hospitals having 24-hour emergency rooms (ERs) and more than six beds. NEISS collects injury data from these hospitals. Coders in each hospital code the data from the ER record and the data is then transmitted electronically to CPSC. Because NEISS is a probability sample, each case collected represents a number of cases (the case's *weight*) of the total estimate of injuries in the U.S. Different hospitals carry different weights, based on stratification by their annual number of emergency room visits (Schroeder and Ault, 2001).

Hazard Analysis staff searched NEISS for all cases with diagnosis code 41 (Ingested Foreign Object) and patients 18 years of age or younger. Staff then used SAS[®] version 9 to categorize the data by product code and age categories by quartile, and to compute estimates and the associated coefficients of variation for the number of injuries as well as the estimated number of injuries with particular characteristics such as age and associated product. A coefficient of variation (C.V.) is the ratio of the standard error of the estimate (i.e., variability) to the estimate itself. This is generally expressed as a percent. A C.V. of 10% means the standard error of the estimate equals 0.1 times the estimate. Large C.V.'s alert the reader that the estimate has considerable variability. This is often due to a small sample size.¹ Estimates and confidence intervals are not reported here unless the number of cases is 20 or more, the estimate is greater than 1,200, and the C.V. is less than 33%.

From 2000 to 2006 staff found 14,421 NEISS cases involving ingestion of a foreign object and a child aged 18 years or younger. Based on these 14,421 cases there were an estimated 365,108 emergency-room treated injuries from 2000 to 2006 involving a child 18 years old or younger ingesting a foreign object. The 95% confidence interval about the number of emergency-room treated injuries from 2000 to 2006 for children 18 years of age or younger is 307,562 to 422,653. A breakdown of the incidents by age group is given in Table 1. The age groups in Table 1 were chosen based on quartiles of age using estimated injuries.

¹ For a more detailed discussion of measures of variation associated with NEISS estimates, see Schroeder and Ault, 2001.

**Table 1: Emergency-Room Treated
Ingestions by Age Group, 2000-2006**

Age Range	Estimate	Percent of Total	Sample Size	C.V.	95% Confidence Interval
0 – 20 months	89,588	24.5%	3,760	9.61%	72,706 – 106,470
21 months – 3 years	116,407	31.9%	4,602	8.52%	96,960 – 135,853
4 – 6 years	85,895	23.5%	3,436	7.89%	72,613 – 99,178
7 – 18 years	73,218	20.1%	2,623	7.83%	61,976 – 84,460
Total	365,108	100.0%	14,421	8.04%	307,562 – 422,653

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

The cases were also categorized by the product associated with the ingestion injury. The ten product categories with the highest estimates are shown in Table 2 on the next page. Note that NEISS allows for the coding of one or two products for each incident. An incident with two associated products would be counted twice in the breakdown by product category, once for each product. Of the 14,421 incidents analyzed, 683 incidents had two associated products. There are several situations where two products may be coded for an ingestion. Both products may have been swallowed. If a part of a product is swallowed, such as a battery from a toy, both the part (the battery) and the whole (the toy) may be coded. One product may also be associated with the incident but not swallowed, such as a toddler swallowing a coin found on the floor, with both the coin and the floor being coded.

**Table 2: Top Ten Swallowed Products by Individuals
18 Years Old and Younger, 2000-2006**

Based on Number of Estimated Emergency-Room Treated Injuries

Product Code	Product Code Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	177,523	48.6%	7,340	8.73%
1616	Jewelry	24,366	6.7%	971	9.65%
5004	Toys, not elsewhere classified ²	23,240	6.4%	896	9.31%
1819	Nails, screws, tacks, or bolts	20,540	5.6%	720	8.04%
0884	Batteries	15,366	4.2%	682	11.78%
1354	Marbles	11,992	3.3%	441	12.67%
1650	Desk supplies	7,251	2.0%	254	10.92%
1682	Hair curlers, curling irons, clips, and hair pins	6,073	1.7%	276	12.42%
1729	Christmas decorations (nonelectric)	5,350	1.5%	213	13.20%
1685	Pens and pencils	5,318	1.5%	185	15.57%

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 3,760 NEISS cases involving ingestion of foreign objects and children aged 20 months or younger. Based on these 3,760 cases there were an estimated 89,588 emergency-room treated injuries from 2000 to 2006 involving children under the age of 20 months and the ingestion of foreign objects. The cases were categorized by the product associated with the ingestion injury. The ten product categories with the highest estimates are shown in Table 3 on the next page. Of the 3,760 cases analyzed, 250 cases had two associated products.

² Toys, not elsewhere classified is a broad category including all toys that do not have their own NEISS product code, and any case where the type of toy involved was not clearly specified. Most cases involved an unspecified toy or part of a toy, but other common toys swallowed from this category include game pieces, puzzle pieces, doll accessories, small balls, and pieces from building sets.

**Table 3: Top Ten Swallowed Products by Children
20 Months Old and Younger, 2000-2006**

Based on Number of Estimated Emergency-Room Treated Injuries

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	35,637	39.8%	1,616	12.15%
1819	Nails, screws, tacks, or bolts	6,489	7.2%	219	10.43%
1616	Jewelry	5,817	6.5%	279	13.71%
5004	Toys, not elsewhere classified	5,178	5.8%	196	16.71%
1729	Christmas decorations (nonelectric)	3,851	4.3%	151	15.31%
0884	Batteries	3,681	4.1%	177	12.99%
1682	Hair curlers, curling irons, clips, and hair pins	3,127	3.5%	145	15.09%
1137	Paper products	2,606	2.9%	89	17.83%
1807	Floors or flooring materials ³	2,555	2.9%	90	19.89%
1650	Desk supplies	2,055	2.3%	79	18.17%

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 4,602 NEISS cases involving ingestion of foreign objects and children aged 21 months through three years old. Based on these 4,602 cases there were an estimated 116,407 emergency-room treated injuries from 2000 to 2006 involving a child between the ages of 21 months and three years and the ingestion of a foreign object. The cases were categorized by the product associated with the ingestion injury. The eight product categories with the highest estimates are shown in Table 4. Only eight product categories are shown in Table 4 due to low, and therefore unreportable, estimates for all other product categories. Note that of the 4,602 cases analyzed, 167 cases had two associated products.

³ Note that in the case of product code 1807 (floors and flooring materials), the children are not actually swallowing parts of floors, but rather objects that were found on the floor.

**Table 4: Top Eight Swallowed Products by Children
21 Months through Three Years Old, 2000-2006**

Based on Number of Estimated Emergency-Room Treated Injuries

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	70,237	60.3%	2,826	8.66%
5004	Toys, not elsewhere classified	8,101	7.0%	303	12.32%
1819	Nails, screws, tacks, or bolts	5,975	5.1%	206	12.25%
1616	Jewelry	5,250	4.5%	212	11.12%
0884	Batteries	4,942	4.2%	218	13.08%
1354	Marbles	3,432	2.9%	134	20.11%
1682	Hair curlers, curling irons, clips, and hair pins	1,444	1.2%	69	21.01%
1729	Christmas decorations (nonelectric)	1,355	1.2%	52	20.65%

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 3,436 NEISS cases involving ingestion of foreign objects and children aged four through six years old. Based on these 3,436 cases there were an estimated 85,895 emergency-room treated injuries from 2000 to 2006 involving a child between the ages of four and six years and the ingestion of a foreign object. The cases were categorized by the product associated with the ingestion injury. The seven product categories with the highest estimates are shown in Table 5. Only seven product categories are shown in Table 5 due to low, and therefore unreportable, estimates for all other product categories. Note that of the 3,436 cases analyzed, 92 cases had two associated products.

**Table 5: Top Seven Swallowed Products by Children
Four through Six Years Old, 2000-2006**

Based on Number of Estimated Emergency-Room Treated Injuries

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	49,974	58.2%	2,028	8.24%
5004	Toys, not elsewhere classified	6,522	7.6%	265	10.78%
1354	Marbles	5,497	6.4%	185	15.74%
1616	Jewelry	4,584	5.3%	187	11.22%
1819	Nails, screws, tacks, or bolts	3,391	3.9%	139	14.29%
0884	Batteries	3,148	3.7%	154	18.87%
0428	Kitchen gadgets, not elsewhere classified	1,271	1.5%	49	22.22%

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 2,623 NEISS cases involving ingestion of foreign objects and individuals aged seven through 18 years old. Based on these 2,623 cases there were an estimated 73,218 emergency-room treated injuries from 2000 to 2006 involving a child between the ages of seven and 18 years and the ingestion of a foreign object. The cases were categorized by the product associated with the ingestion injury. The ten product categories with the highest estimates are shown in Table 6. Note that of the 2,623 cases analyzed, 174 cases had two associated products.

**Table 6: Top Ten Swallowed Products by Individuals
Seven through 18 Years Old, 2000-2006**

Based on Number of Estimated Emergency-Room Treated Injuries

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	21,674	29.6%	870	9.69%
1616	Jewelry	8,716	11.9%	293	11.78%
1819	Nails, screws, tacks, or bolts	4,685	6.4%	156	11.73%
0884	Batteries	3,595	4.9%	133	16.98%
1685	Pens and pencils	3,578	4.9%	116	20.53%
5004	Toys, not elsewhere classified	3,439	4.7%	132	13.61%
1650	Desk supplies	3,212	4.4%	94	18.23%
1103	Self-contained openers ⁴	3,000	4.1%	104	15.99%
1669	Pins and needles	2,381	3.3%	88	17.02%
1354	Marbles	2,334	3.2%	88	16.94%

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

Coins are by far the most common consumer product ingested, accounting for almost half of the estimated injuries (Table 2) when viewed across age. With respect to age quartiles, the highest percentage of injuries due to ingestion of coins is in the 21 month- through three year-old age group (60.3%) and lowest in the seven through 18 year-old age group (29.6%). The next three most commonly ingested product categories are jewelry; toys, not elsewhere classified; and nails, screws, tacks or bolts. These three are always in the top five regardless of age category, except for the seven through 18 year old age category, where toys rank sixth. The only other product categories to make it into the top five in any age category are batteries, marbles, nonelectric Christmas decorations, and pens and pencils.

⁴ Note that product code 1103 (self-contained openers) refers to pop-top openers from soda cans.

**Table 7: Emergency-Room Treated Jewelry
Ingestions by Age Group, 2000-2006**

Age Range	Estimate⁵	Percent of Total	Sample Size	C.V.	95% Confidence Interval
0 – 20 months	5,817	23.9%	279	13.71%	4,254 – 7,380
21 months – 3 years	5,250	21.5%	212	11.12%	4,106 – 6,394
4 – 6 years	4,584	18.8%	187	11.22%	3,575 – 5,592
7 – 18 years	8,716	35.8%	293	11.78%	6,703 – 10,729
Total	24,366	100.0%	971	9.65%	19,756 – 28,976

*Source: National Electronic Injury Surveillance System
U.S. Consumer Product Safety Commission, April 2007*

⁵ Columns may not sum to totals due to rounding.