



**U.S. CONSUMER PRODUCT SAFETY COMMISSION  
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**Statement of  
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**Before the  
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Subcommittee on  
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**“Oversight of the  
Consumer Product Safety Commission”**

Good morning Chairman Bono-Mack, Ranking Member Butterfield, and the members of the Subcommittee on Commerce, Manufacturing, and Trade. Thank you for the opportunity to testify along with my fellow CPSC Commissioners. I am pleased to be here today to discuss an agency that I have been associated with in some fashion since its establishment in 1973 – and I have been a Commissioner at since August 2009.

## **Agency Accomplishments**

In May 1973, the CPSC opened its doors following the recommendations of the 1970 Final Report of a Congressionally established study commission, the National Commission on Product Safety (NCPS). The NCPS recommended the creation of a conspicuously independent federal regulatory agency given extensive authority to issue regulations and mandatory safety standards for a wide variety of consumer products. There was a need for such a body because, at the time, product safety was regulated sparsely and only by a patchwork pattern of laws that extended to a very small portion of consumer products.

This October will mark the 40<sup>th</sup> anniversary of the passage of the act that brought to life the recommendations of the NCPS — the landmark Consumer Product Safety Act (CPSA). Looking back now, I believe Congress and the agency should take great pride in what the agency has accomplished, especially considering the large scope of our mission – to protect the public from any and all unreasonable risks associated with roughly 15,000 categories of consumer products found in stores, homes, schools, and recreational settings. Another way to think about our responsibility is if a product is not food, or a drug, gun, bullet, boat, plane, or a car – we are probably responsible for it.

What exactly has the agency accomplished? As a starting point, I note an estimated 30 percent decline in the rate of deaths and injuries associated with consumer products over the last 30 years. And I would particularly point to the dramatic drop in death and injuries to children. For example, we have seen:

- a 92% drop in childhood poisoning;
- a 92% reduction in crib deaths;
- a 100% reduction in child suffocations from abandoned refrigerators; and
- an 88% reduction in baby walker injuries.

Additionally we have seen improvements such as a 92% reduction in fatal electrocutions and a 46% reduction in residential fire deaths. In short, the CPSC has produced an excellent return on investment. By our calculation, this drop in deaths and injuries has resulted in over \$16 billion in reduced societal costs – or many, many times the resources the CPSC has been given to do its job. And, as a very small agency, we have had to produce these benefits at a very low cost.

Of course, even efficiency has its limits. As of five years ago, the CPSC had shrunk from its 1980 high of 978 employees to a skeleton crew of less than 400 employees and a budget of \$62 million. To Congress' credit, you saw that the agency increasingly suffered from too much to do and too little to do it with. So, in 2008, almost unanimously, you passed the Consumer Product Safety Improvement Act (CPSIA), providing the CPSC with more tools and directing it to do more work - and do it faster.

### **Update on Implementation of the CPSIA**

The CPSIA, which will mark its fourth anniversary in two weeks, has sometimes been referred to as a "toy bill" - but in truth it is a law that is broad in scope and has served to save an agency that was underfunded and undermanned. And, for that, I am sure consumers across the country are grateful for this legislation.

For example, in 2007, despite over \$600 billion per year of consumer products being imported, including more than 70% of the toys sold in the United States, the agency had no employees stationed full-time at our nation's ports. That year, CPSC collected a grand total of 723 samples of imported consumer products and was finding violative products in its collected samples at a rate of less 42%. Today, because of the CPSIA, we have a division at the CPSC devoted solely to import compliance, and we have personnel stationed full-time at 15 of the country's busiest ports of entry. As opposed to the meager numbers of 2007, during the first half of 2012 alone, we screened almost ten times as many samples (6,600) and prevented more than 1 million units of violative or dangerously defective products from entering the United States. And in the tradition of CPSC, we have become significantly more effective at our job, finding violative products in our collected samples at a rate exceeding 60%. Unquestionably, a large part of this success has been because of our partners at U.S. Customs and Border Protection (CBP), but it is also because of increased funds, personnel, and authority provided by the CPSIA.

Among other non-children's product requirements, the CPSIA:

- Made the sale or distribution of a recalled product illegal, which created a tremendous incentive for retailers to become even stronger safety partners with the agency (which they have);
- Raised the maximum civil penalty amount for violations from \$1.825 million to \$15 million;
- Required the promulgation of a mandatory ATV standard which banned three-wheeled ATVs and required all ATV manufacturers or importers to submit an action plan to the Commission prior to distribution;
- Funded the upgrade of our siloed information technology systems, allowing the agency to lay the groundwork for 21<sup>st</sup> century technology solutions to help us more quickly identify hazard

patterns from the wide variety of data the agency receives. The CPSIA also required the creation of a public consumer product hazard database. This database allows consumers to almost simultaneously inform the CPSC, the product's manufacturer, fellow consumers, other manufacturers, retailers, and the media of hazardous (and potentially hazardous) products. The need for such a database was a direct result of the ultra-restrictive "section 6b" of the CPSA. This provision inhibits, to the point of virtual prohibition, the CPSC from releasing to the public in a timely fashion manufacturer specific safety information that almost every other federal health and safety agency releases on a regular basis; and

- Increased CPSC staff to over 500 FTEs and its budget to just over \$100 million.

Of course, there is no question that the CPSIA also changed the landscape for children's products. The law required the promulgation of a number of mandatory federal safety standards, where none existed for toys and other durable nursery products. The CPSIA also set maximum levels for lead paint and lead content in children products at 90 and 100 parts per million, (respectively) and banned the use of certain phthalates in children's toys and child care articles.

Undoubtedly, the biggest change felt by the children's product community was the law's requirement that all children's products be tested by a third-party independent laboratory before they enter the market — and on a continuing basis thereafter. This section of the law, often referred to as the "testing and certification requirement," mandated the agency write regulations to accredit third-party laboratories and establish procedures for manufacturers to comply with the law's testing requirements. Clearly, such a strong safety step forward carried broad implications for the regulated community. And that's why we have worked long days (and sometimes, nights) to implement this mandate in a thoughtful and measured way. And I can report, after much review and many re-drafts, we have finally reached the point where the final rule on continued third-party testing and certification will take full effect on February 8, 2013.

The CPSIA was the first major overhaul of the Commission and its authority and priorities in almost 20 years. Looking at the law as a whole, I see two common themes: the agency needed more resources and other tools to accomplish its safety mission, and it needed to change its approach to vulnerable populations, particularly children. I believe both of these themes remain important considerations not only as we near the completion of the bulk of our CPSIA rulemakings but also as we look to the future.

### **Resources for CPSC Personnel**

When we talk about the tools the agency possesses to accomplish our safety mission we are mainly talking about resources and rulemaking authority. The CPSIA had a major impact on both. Over two-thirds of the CPSC's budget goes to our personnel. Accordingly, when the agency fell below 400 employees in 2007, this translated into fewer compliance officers out in the field conducting investigations and inspections; fewer engineers and toxicologists and

epidemiologists to make hazard determinations and help write performance standards; and it also meant there was no money for staff to be stationed full-time at any of our nation's 300 plus ports.

The increase in our budget over the last few years has translated directly into action because it means technical experts and law enforcement officials can be hired to help us fulfill our mission. We now have a state-of-the-art testing lab, but it must continue to be staffed appropriately to optimize its potential. Our fire engineering staff has made great strides in research regarding fires associated with cooktops and space heaters, and our carbon monoxide team has done some compelling work on portable generators and gas furnaces. Without continued funds for these talented scientists, the projects are likely to stall. Highly skilled technical experts must be hired and retained to allow us to stay on top of existing or emerging hazards, whether the material is a heavy metal (including lead), a chemical like phthalates, or new discoveries like nanotechnology.

After our engineers and other technical experts, the largest part of the CPSC budget goes to our compliance activities. As described above, we now have an import division and have 20 staff members full-time at 15 ports – but we need still more resources. Despite our tremendous progress, we are inspecting less than 1% of the 14 million consumer product shipments that enter the United States every year. We recently submitted a report required by the CPSIA that details a seven-year plan to implement a complete risk management program across the country. It will cost real money, but if we do it right, it will save more money than it costs, and of course it will save many lives.

The same is true for our domestic compliance activities – more resources translate directly to more law enforcement at the retail and consumer level. Our field staff covers the entire country as best they can, but there are still 12 states in which we do not have even one field officer. There is no substitute for having trained investigators on the ground, getting to know their territory every-day instead of just flying or driving in on an emergency basis.

All of this said, I fully recognize that you have many difficult budgetary decisions facing you in the months ahead, and this is a time of limited resources for all Americans and therefore all federal agencies as well. But, I ask that when you consider the CPSC, you keep in mind that the return on investment received for our budget is lives saved, injuries prevented, and unnecessary societal costs reduced – especially for the nation's most precious asset: our children.

### **A Reasonable Rulemaking Process**

The other major tool CPSIA sharpened for us was making a particularly significant modification in how we engage in rulemaking. Given the CPSIA's focus on moving expeditiously on children's safety, the law directed the agency to use section 553 of the APA (Administrative Procedure Act) when promulgating CPSIA rules. This was a significant change because under

normal circumstances, the agency is required to suffer through the broad and extravagant set of cost-benefit requirements added in 1981 to the CPSA (and other acts enforced by the CPSC) when promulgating consumer product safety rules.

While there was no specific mention of the rationale for this decision in the CPSIA, it seems logical to conclude that Congress understood that CPSC's normal-cost benefit provisions make efficient rule promulgation almost impossible. This is because they easily surpass in their stringency and scope the cost-benefit provisions of the various Executive Orders on cost-benefit analysis recommended by the Office of Management and Budget, including Executive Orders 12866, 13563, and 13579. In fact, in the 31 years since the CPSC was saddled with these unique requirements, we have managed to promulgate a total of only 9 consumer product safety rules – or roughly one every 3 1/3 years.

In order to move the rulemaking process with respect to toys and other children's quickly, the CPSIA substituted the much more streamlined and focused cost-benefit procedures of the Regulatory Flexibility Act (RFA). And to drive the point home for us, the law prescribed extraordinarily short deadlines for the promulgation of a toy standard as well as specific children's product safety rules such as cribs, infant walkers, baby bath seats, toddler beds, toddler bed rails, and portable play yards, among other children's products.

Significantly though, by giving the CPSC the authority to promulgate all of these rules under Section 553 of the APA, Congress made sure that the RFA's analysis of the impact to small businesses would be considered. In other words, the agency's cost-benefit analysis would focus on the group that was least likely to have had a voice in the writing of the voluntary standard – small businesses.

Put another way, Congress pointed to a different set of procedures when it wanted us to promulgate rules quickly – procedures that do not include the 1981 added cost-benefit requirements. I believe this approach succeeded. By the most conservative count possible, the CPSC has issued 10 consumer product safety rules in the last 4 years that would have otherwise been subjected to our usual snail-like rulemaking process. This experience has only reinforced my belief that the type of rulemaking contemplated by section 553 of the APA or even under the relevant Executive Orders makes for a more reasonable regulatory process than the one laid out in the CPSC's statutes.

Unfortunately, I do not need to go back into the Commission's ancient history to find examples of non-children's products where rulemaking that is in the interest of protecting consumers has been significantly delayed because of these unique cost-benefit obstacles. In October 2011 the Commission unanimously published an Advance Notice of Proposed Rulemaking (ANPR) on table saws, more than eight years after receiving a petition on the hazard. A final rule, which

would attempt to address a product associated with almost 40,000 annual emergency department treated injuries, including 4,000 amputations, is likely to be several years away, in no small part because of CPSA's onerous section 9 cost-benefit requirements.

### **Vulnerable Consumers - Children**

Congressional desire for the CPSC to change its approach to vulnerable consumers is also evident from the way it described children's products to include "a consumer product designed or intended primarily for children 12 years of age old or younger." This was a wider range than we had previously been using to address children's products. The level of concern regarding this population was also clear from the requirement for pre-market, independent third-party testing of children's products. This process is a sea change in product safety in the United States because it demands for the first time that all children's product manufacturers (not just the extra cautious ones) test and certify their products are safe prior to placing them on store shelves. I believe over time this change will pay dividends in reduced death and injury costs for the public *and* manufacturers.

It has not been surprising that there has been a lot of concern in the regulated community regarding third-party testing because it was such a significant change in the way children's products have been brought to market. It is nearly impossible to contemplate the imposition of third-party testing and not realize that there would be increased costs to producers of children's products. Yet, I have long believed that for most manufacturers the increased costs would be minimal because they were already engaging in many of these safety processes pre-CPSIA, except they were testing their products at an even more sophisticated level than the one required by the CPSIA. But for many manufacturers, particularly the medium and smaller firms, this new requirement caused significant change. This is why I have been so pleased by our staff's efforts to continually walk the extra mile, or two miles, for small and medium sized businesses, both in the rules and in the guidance documents we provide. At every step of the process, I believe we have tried to maintain the necessary, but delicate, balance of new safety requirements with new burdens.

The CPSIA's direction to CPSC regarding extremely strict lead limits was another example of how hazards for vulnerable populations were going to be addressed differently from the past. By now, everyone is aware that children's products may not contain more than 100 parts per million (ppm) of lead. And I hope everyone is aware that lead is a powerful neurotoxin that accumulates over time. Even low levels of lead are widely associated with learning disabilities, decreased growth, hyperactivity, impaired hearing, and brain damage.

There are two observations that I'd like to make on this issue: First, by mandating that we drop the lead level, unless the Commission determined it was not technologically feasible for a product or product category to meet the 100 ppm total lead content limit, Congress took a very

proactive approach to this chronic hazard. The law basically said we will not wait for bodies to pile up 20 years from now only to discover that it was because of slow, but steady, lead accumulation from products, including children's products. I have previously noted that, were it my decision, I might have recommended a slower and less precipitous drop in levels, but all things considered, I believe Congress got it right. Along those lines, I am pleased that we at the CPSC continue to look for easier and less costly ways for all manufacturers to test for lead – and was supportive of P.L. 112-28's changes regarding testing relief for small batch manufacturers.

Second, I hope we have put to rest the notion that lead content level was set arbitrarily or without safety levels in mind. There was clear evidence at the time Congress chose 600, 300, and 100ppm that they were selected for well-considered reasons. I note that this past spring, the Centers for Disease Control and Prevention (CDC) revised their lead guidelines *downward*, so that any child with more than 5 micrograms of lead per deciliter of blood would be considered at risk of lead poisoning. I believe that, as scientific methods increase in sophistication, we are going to see health experts recommending even lower limits over time.

### **Vulnerable Senior Consumers – Looking Ahead**

In addition to mandating that our agency take new approaches to consumer product safety, I also believe that there was another underlying message in the CPSIA: attend to all vulnerable populations, wherever you find them. While this concept has been an important part of the agency's make-up since its founding, the passage of the CPSIA was a clear message to reinvigorate this priority.

Accordingly, of late, I have become increasingly concerned by what I feel has been a lack of focus regarding injuries to an overlooked vulnerable population – older Americans. Our data demonstrates that this critical demographic is the second most vulnerable group after children, particularly those Americans over age 75. The fact that I now fit in this demographic has definitely helped me understand what a serious challenge we face as America ages. In fact, here are some underreported facts about older Americans:

- Despite making up only 13 percent of our population, older Americans suffer 60 percent of the deaths associated with consumer products and Census statistics predict that by 2030, one in five Americans will be 65 or older.
- Today, roughly 40 million people in the U.S. are ages 65 and older. This number is projected to more than double to 89 million by 2050;
- Today, the “oldest old” – those 85 and older – have the highest growth rate in the country: twice that of those 65 and older and almost four times that for the total population. This group now represents 10% of the older population and will more than triple in number by 2050.

And, unfortunately, this explosive population growth brings some unwelcome news on the health and safety front. CPSC's data show that injuries and death from consumer products begin to accelerate dramatically once we hit age 75. In fact, the rate of emergency room-treated injuries for those 75 and older is approximately twice that of 65-74.

I recently called for a National Action Plan to address injuries to seniors modeled on a similar plan put together by CDC regarding injuries to children. Unfortunately, there is no comprehensive plan for this group that often faces similar vulnerabilities. I believe such a plan is needed, for example, to prevent the type of falls that take place every day in and around seniors' homes that lead not just to bumps and bruises, but to hospitalizations and fatalities. The CDC estimates that one out of every three people in the U.S. age 65 or older will suffer a fall this year, resulting in more than 19,000 deaths and a cost to society of more than \$28 billion.

The other leading cause of injuries and deaths to seniors is fire. The CPSC's staff report that almost 400,000 fires occur annually, resulting in roughly 2,500 deaths, 12,600 injuries and \$6.43 billion in property loss. But, the problem is more serious for seniors. The U.S. Fire Administration estimates, for example, that adults age 75-84 are nearly four times as likely to die in a home fire. And, adults over age 84 are nearly five times as likely to die compared to the general population.

In 2007, there were more unintentional fire and burn deaths to older Americans than any other demographic category, and the odds of surviving fires get worse as we get older. Our nation's firefighters and emergency responders are brave, dedicated, and proactive, but they cannot prevent these fire deaths alone.

In short, the hazards to our seniors occupy many fronts. Sometimes products that seem benign to youth may take on a more ominous character when older Americans use them. Other times there's a product like adult bedrails that appear to be associated with an entrapment hazard that looks similar to the hazard that our recent children's bed-rail rule was written to address, but sadly appears to have a much higher death and injury count.

Next year CPSC will be issuing a report on injuries and deaths to older Americans to help us identify which products we should focus our energies on first. The last time we undertook such a project, in 2004, we estimated that the combined injury and death costs to older Americans totaled more than \$100 billion per year. I believe our new data will assist in a larger national effort where all stakeholders work to determine which hazards to our seniors are easily addressable and which hazards require new types of technology and consumer education.

But even with good data and a renewed focus, these societal wide issues cannot be solved by our small agency alone. Addressing injuries to this vulnerable population will take an enormous

effort by a range of experts, every-day citizens, non-governmental organizations, families, foundations, and federal, state, and local governmental actors. I look forward to working with my colleagues and interested members of this Subcommittee as we focus on our continued mission to protect vulnerable citizens of all ages from risks of unreasonable injury or death.

Thank you for the opportunity to testify today and share my thoughts on the Consumer Product Safety Commission. I look forward to your questions.