



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE COMMISSION REPORT TO
CONGRESS PURSUANT TO THE STATEMENT OF MANAGERS ACCOMPANYING P.L. 111-117**

January 15, 2010

The CPSIA: A Major Improvement in Consumer Product Safety

The United States Congress took a major step forward in enhancing the safety of American children and consumers through the passage of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). Prior to the passage of this Act, the U.S. Consumer Product Safety Commission (“CPSC”), a small agency with an enormous mission and dedicated staff who work tirelessly to ensure the safety of families, was in serious decline. During the midst of this decline, there was a rapid increase in the number of children’s products imported from overseas. This surge in imports, combined with an agency possessing limited regulatory tools and severe budgetary restraints, led to a string of high profile recalls throughout 2007 and 2008, including recalls of toys laced with lead containing paint, children’s jewelry with high levels of lead, toys with magnets that became dislodged, and cribs with dangerously defective drop sides.

In response to the flood of dangerous imported products, which were involved in tragic fatalities, poisonings and injuries involving children, Congress closely examined the needs of the CPSC and the statutory changes necessary to enhance the regulatory safety net maintained by the agency. Congress spent considerable time reviewing these needs and continually consulted with the agency’s leaders, staff, consumer groups, and the regulated community in order to carefully craft the proper legislation to achieve this end. Seeing a clear need to reauthorize and reinvigorate CPSC with new energy and purpose, Congress passed a sweeping law. Not only did the law create a paradigm change in the way children’s products are manufactured, tested, and distributed around the world, but Congress helped CPSC have a stronger presence in China, greater enforcement tools at U.S. ports, and a stronger presence in the domestic marketplace. Through these changes and other enhancements to our capabilities, the law will continue to allow us to improve the way in which our important agency protects the public from unsafe consumer products.

CPSIA Enforcement Efforts: Consensus Commission Report to Congress

The Conferees to the 2010 Consolidated Appropriations Act directed the Commission to examine agency enforcement efforts and recommend improvements to the statute based on our experiences implementing the new provisions of the law.¹ In the accompanying report, the Commission has fulfilled this request in a

¹ Quoted below is the language from the Statement of Managers accompanying the 2010 Consolidated Appropriations Act:

The CPSIA was signed into law on August 14, 2008, and is considered to be the most significant piece of consumer protection legislation enacted since the CPSC was established in the early 1970s. The legislation received nearly unanimous bipartisan support in Congress. Congress passed this legislation in the wake of a massive number of consumer product recalls in 2007 and 2008—more than 20 million—many of which involved toys manufactured in China. The conferees strongly support this legislation but are aware of concerns surrounding implementation of certain aspects of the law. The conferees believe that there may be parts of some products subject to the strict lead ban under section 101(a) of the CPSIA that likely were not intended to be

consensus, bipartisan manner. Commissioners and their staffs worked tirelessly to fully consider each other's points of view and any concerns raised by our stakeholders. In the end, the Commission was able to find common ground on key issues in a very collegial and cooperative manner. The Commission report identifies significant enforcement issues and suggests potential improvements based on what we have learned from our implementation of the law thus far.

While the report details many of the more significant enforcement issues we have faced and provides major consensus recommendations for improvements, it is not intended to describe every implementation issue we have seen or improvement that might be helpful in the future. Some additional helpful changes might include: an automatic update method for durable infant nursery good standards similar to the automatic revision procedure for successor provisions of the ASTM F963 toy standard provided for in CPSIA, a clarification of FDA and CPSC jurisdiction as it relates to the ASTM F963 toy standard, and service of process requirements for foreign manufacturers so the agency can more easily pursue recalls. Although some changes may be useful as we move forward to minimize implementation issues, I wish to echo the sentiments of the Conferees, who have expressed their continued commitment to and strong support of this legislation as we work together to fine tune effective implementation of certain aspects of the law.

The primary request from the Commission to the Congress is to consider changes that would give our safety agency greater flexibility in granting exclusions from the lead content limits for certain products. From off-road vehicles to bicycles to ordinary children's books, the Commission is seeking potential changes that would enable the agency to reasonably address how the law is applied to these and other products. Additionally, there is a consensus among the Commissioners that the agency needs to ensure that small businesses remain vibrant and competitive, while ensuring that they meet new safety requirements within the law. The Commission has been very mindful of small businesses and the crafter community in its implementation of the Act, and it is my hope that we will continue to do so as we promulgate new rules and regulations.

The Commissioners and CPSC staff strive daily to minimize implementation issues and to fully realize the lofty and extremely laudable safety goals of the CPSIA. Once again, I applaud the United States Congress for expanding and empowering our agency and supporting our steadfast commitment to the overarching goal of improving consumer safety through the passage of and continued support of the CPSIA.

included. This includes parts of youth motorized off-road vehicles and bicycles, and may include parts of some sporting equipment and ordinary books. The conferees urge the CPSC to continue considering exemptions under section 101(b) of the CPSIA for parts of products that, based on the CPSC's determination, present no real risk of lead exposure to children. The conferees are also aware of concerns among small manufacturers and crafters regarding the third-party testing requirements under section 102 of the CPSIA and urge the CPSC to consider those when issuing rules and guidance for third-party testing.

The conferees further encourage the CPSC to continue to work with the off-road vehicle and other industries to reduce the lead content in accessible components of all children's products to the greatest extent possible, where complete compliance is deemed not necessary or not feasible by the CPSC. The conferees note that the CPSC has already instituted a stay of enforcement until May 1, 2011, on the lead standard with regard to youth motorized recreational vehicles (which include all-terrain vehicles, motorcycles, and snowmobiles) with the expectation that the industries would work constructively with the CPSC in reducing lead levels as feasible. The CPSC is directed to assess enforcement efforts of section 101(a), including difficulties encountered, as well as recommendations for improvement of the statute, and report to the House and Senate Appropriations Committees, as well as the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee, no later than January 15, 2010. Public Law 111-117.

Lead: A Toxic Substance

A significant portion of the debate concerning this law has concentrated on the section 101(a) lead content limits and whether there is a “safe level of lead” for children’s products. Indeed, some of the law’s detractors seem convinced that children’s exposure to lead substrate is “safe” or tolerable in many circumstances and, therefore, a large majority of children’s products should not be subject to the section 101(a) lead content provisions. The scientific and pediatric community has thoroughly studied this issue and after careful consideration is nearly unanimous in their opinion that there is “no known safe level of lead.” Low-level lead exposure has been shown to affect brain function, lower intelligence, and cause behavioral problems and poor school performance. The lowest blood lead level concentrations associated with adverse effects on cognitive functioning or academic achievement have not been adequately defined. Many of the scientific studies on lead demonstrate that it has very harmful effects on children right down to the lowest levels that modern technology can currently detect. This should come as no surprise given that the dangers to human health posed by lead are commonly known. The unnecessary presence of lead and any other harmful toxic substance in products intended for children, the most vulnerable of our nation’s consumers, is simply unacceptable.

Greater Flexibility: Functionally Required Lead

I have urged manufacturers of children’s products to “get the lead out” at almost every opportunity since the Senate confirmed me as the new Chairman of the agency. This is not a new message, but rather one that the CPSC has been broadcasting to manufacturers for many years. I firmly believe that children’s products should have to comply with the section 101(a) lead limits established by Congress, especially where the lead is unnecessary and serves no functional purpose. I have learned through our implementation of the law, however, that there are circumstances where the exclusion of lead in certain materials or component parts is extremely problematic. Accordingly, it would be helpful for Congress to create a new exclusion to the section 101(a) lead content limits that would allow some flexibility in cases where lead is required for a functional purpose and the elimination of the lead is impracticable or impossible.

The fundamental tenet underlying a “functional purpose” type exclusion is very simple: where lead serves no purpose and can be practicably removed or made inaccessible in children’s products, the lead *should be* removed or made inaccessible to children. The market seems to have already responded to the CPSIA, which drove home the message for manufacturers to “get the lead out.” While it would be helpful to have some additional flexibility in this area, I would not be comfortable with a much broader exception that could potentially slow or reverse the current movement in removing lead, especially where it is unnecessary, from products touched, mouthed and handled numerous times every day by our nation’s children.

The Road Ahead: Strengthening Consumer Confidence

As Chairman, I am committed to moving forward in 2010 with implementation of new rules and programs that will advance the cause of children’s safety and access by parents and consumers to vital safety information. It is important for the public to be aware that the CPSIA has many additional provisions that have great potential to benefit children, such as requiring that all voluntary standards for juvenile products be adopted as mandatory standards enforceable by the agency. We have already started this effort with baby bath seats and baby bouncers, and will be working hard to approve a new mandatory rule this year on cribs, aimed at creating the safest possible sleep environment for babies and toddlers.

In addition, CPSC staff is making great strides in developing a searchable public database of consumer incident reports that will benefit all consumers. This database, which is mandated by the CPSIA, is being created with significant stakeholder input, as we have given consumer safety advocates, industry, and information management experts opportunities to testify and participate in workshops that we have sponsored. We will continue to pursue public engagement, including educating consumers about how to use the database, as we draw closer to its launch in 2011.

Completing major CPSIA rulemakings on testing and conformance, civil penalty factors, defining what constitutes a children's product and numerous other rules are also major activities that are part of the continued implementation of the CPSIA. These efforts will pay dividends in providing business stakeholders with predictability in how they go about operating their businesses while complying with the new safety rules.

CPSC stands for safety, especially the safety of children. We will demonstrate our commitment to children in 2010 by focusing our efforts and resources on preventing deaths and injuries from juvenile products, toys, pool and spa drownings and entrapments, fire hazards, carbon monoxide poisonings, as well as lead and other toxic substances.