



**Statement of
Inez Tenenbaum
Chairman
U.S. Consumer Product Safety Commission**

**Before the
U.S. House of Representatives
Committee on Energy and Commerce**

**Subcommittee on Commerce, Manufacturing and
Trade**

“A Review of CPSIA and CPSC Resources”

February 17, 2011

Good morning, Chairman Bono Mack, Ranking Member Butterfield, and Members of the Subcommittee on Commerce, Manufacturing and Trade. I am pleased to be here today to provide an update to the Subcommittee on actions the U.S. Consumer Product Safety Commission (CPSC) has taken over the past 18 months and the progress we have made to protect American children and families from both existing and emerging product safety hazards.

Since assuming the Chairmanship of the Commission in July 2009, I have focused on three key objectives. First, I have worked diligently to implement the Consumer Product Safety Improvement Act of 2008 (CPSIA) and use that Act's new authorities in a manner that is both highly protective of consumers and fair to industry stakeholders. Second, I have focused on changing the CPSC's internal processes, so that the agency is more assertive and more capable of addressing safety challenges presented by thousands of types of consumer products imported from all over the world. Third, I have focused on proactive prevention of consumer harms: identifying emerging hazards and keeping those products out of the stream of commerce.

Fair and Effective Implementation of the CPSIA:

Children's Product Safety Provisions: In August 2008, Congress passed the CPSIA by overwhelming bipartisan majorities. Passage of the CPSIA sent a strong message to both the Commission and the consumer product manufacturing community: that the old, reactive regulatory approach was not working, and that the public will not accept another "Summer of Recalls."

In the last two years, Commission staff have worked diligently and successfully to implement almost all of the main provisions of the CPSIA. As part of this process, we have dealt with a few sections that have caused concerns in some segments of the regulated community. The Commission has been responsive to those concerns and provided appropriate relief where necessary. One example of this is the Commission's recent decision to extend the current stay of enforcement implementing third-party testing for lead substrate in children's products until December 31, 2011.

It is critical to note, however, that the vast majority of CPSIA rules and requirements have been adopted unanimously by the Commission – and widely accepted by industry, consumers groups, and families across the country. These rules include:

- New durable infant and toddler product standards, so that we never again have to hear of an infant that drowning in a defective bath seat or a toddler who is paralyzed by a poorly designed baby walker that tumbles down a flight of stairs;
- Product registration cards that now accompany many juvenile products, so parents who register can receive proactive notification of recalls; and

- The inclusion of tracking labels, to the extent practicable, on children's products so that parents can identify who made them – even long after the packaging is thrown away.

The Public Searchable Database: In March 2011, we will unveil our new publicly available database on the safety of consumer products, which was mandated by section 212 of the CPSIA. This database, which is an important element of the Commission's overall effort to upgrade its antiquated Information Technology systems, will provide a powerful source of information for consumers, allowing them to quickly determine whether products they already own, or are considering purchasing, are associated with safety hazards or recalls. It also will allow consumers to play a critical role in safety by empowering them to submit information about potential product hazards for inclusion in the database.

I recognize that the rollout of this database has caused concern among some in the manufacturing community who believe that it will present "unfiltered" information that will be harmful to the business community. I want to assure this Subcommittee that CPSC staff has worked tirelessly to address these concerns and to ensure that the database is fair to all stakeholders while also fulfilling the intentions of Congress.

First, the database will not include reports of harm submitted anonymously. Any reports filed must include contact information for the CPSC's internal use. Second, the CPSC will give the product manufacturer 10 business days to respond to a report of harm, to provide comment on the report, and to let the Commission know if the submission contains confidential or materially inaccurate information. The rule requires the Commission to remove or correct information in the database within seven business days that it has determined to be materially inaccurate. Manufacturers also have the right to comment on the reports and to have those comments posted as part of the publicly accessible record.

At the same time, however, I think it is important to provide a reminder of just how critical a resource this database will be for consumers. Rather than use my words, I would like to repeat the words of Lisa Olney, whose daughter died in a defective portable crib just after her first birthday in 2002. Ms. Olney posted the following on the *Kids in Danger* web blog:

On December 19, 2002, my daughter Elizabeth, just 13 months old, died in a poorly designed play yard. I live my life often looking back through "what ifs" and "should haves," but I've learned to give most of that up in order to save myself from being a horribly miserable individual. Instead, I realize the importance of focusing on efforts to protect our children so that no parent has to suffer what I have, along with too many other victims of unsafe children's products. The CPSC database is going to protect

millions of children, because it provides a place to go when considering the choices parents make when purchasing products, especially those products intended to be beneficial to our children's safety.

This database will prevent injuries and save lives. Congress recognized this when it added section 212 to the CPSIA, and I look forward to seeing this important tool fully implemented this March.

A Reinigorated Commission:

New CPSC Strategic Plan: During my confirmation hearings in the summer of 2009, I noted that one of my key goals for the Commission was to align its priorities with the challenges we face in the global economy. To address this, the CPSC launched a comprehensive strategic planning initiative earlier this year to update the Commission's outdated 2003 Strategic Plan. Out of this effort, we recently released the Commission's new 2011-2016 Strategic Plan, which lays out five key goals and also details programmatic objectives that will allow the CPSC to establish itself as the global leader in consumer product safety.

New Office of Education, Global Outreach and Small Business Ombudsman: As Chairman, I have heard from many small businesses and crafters who have asked for additional outreach and support from the Commission as they work to produce safe products and comply with the requirements of the CPSIA. I take these concerns very seriously and have made providing support and outreach to small business entities and other industry stakeholders a key priority.

On September 22, 2010, the Commission voted to create a new office to coordinate and provide outreach to various domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, and foreign governments. Within this office, we have a full-time Small Business Ombudsman who is dedicated to serving the nation's many smaller businesses in the area of product safety. In particular, special attention will be given to developing "plain English" information tailored to small businesses and small batch manufacturers so that they can understand and comply with new standards.

New CPSC Website: As part of the Commission's overall Information Technology improvement project, the Commission also launched a new updated CPSC.gov home page last December, and currently is in the process of upgrading the entire website. These improvements will allow consumers to more easily search for recalls, report safety incidents and injuries, and view videos on keeping their families safe from product hazards. In addition, the new website will provide industry, and particularly small businesses, with increased access to resources on how to produce safe products that comply with applicable safety standards.

A New Focus on Prevention:

Import Surveillance: Traditionally, the Commission has spent the bulk of its resources investigating harmful products in the marketplace. This will always form a substantial part of the CPSC's activities, but I believe the more effective approach is ensuring that harmful products never even enter the country. To that end, I have taken a number of steps to add additional technological and human resources to the Commission's Import Surveillance Division. This Division works directly with the Department of Homeland Security (DHS) and Customs and Border Protection (CBP) to keep dangerous products out of the United States.

On the technological side, the CPSC recently executed two interagency Memorandums of Understanding (MOUs) with CBP that allow us to access more "real time" importer information and target the most dangerous incoming shipments. The first of these MOUs, signed in April 2010, allows CPSC personnel to work at CBP's Commercial Targeting and Analysis Center (CTAC) in Washington, DC, and access manifest entry data collected by CBP. This, in turn, allows Import Surveillance Division personnel at the ports to target high-risk shipments prior to their entry into the domestic stream of commerce.

The second MOU, signed with CBP in August 2010, gives the CPSC access to information in the Treasury Enforcement Communications System (TECS). This will assist CPSC Import Surveillance staff at the ports by providing them with additional information to improve local targeting and interdiction of dangerous products.

The CPSC is also actively involved in supporting the Importer Self Assessment – Product Safety (ISA-PS) initiative that is currently being piloted by CBP. The ISA-PS is intended as a partnership between CBP, CPSC, and importers to ensure product safety compliance. It is based on a voluntary approach that provides meaningful benefits for importers who demonstrate readiness to assume additional responsibility for managing and monitoring their own product safety compliance.

We have also taken steps to increase CPSC's physical presence at ports of entry. In fiscal year (FY) 2008, the Import Surveillance Division only had five full-time employees (FTEs), and of those only three FTEs were actually stationed at ports of entry. During FY 2010, we expanded staffing in the Division to 18 FTEs, with 14 FTEs actually stationed at ports of entry. I am very pleased to announce that, as of November 11, 2010, the Division now has 25 FTEs, with 19 FTEs collocated at 15 different ports of entry. Subject to appropriations, we hope to put CPSC staff at even more ports of entry in the future.

Putting more “cops on the beat” has already yielded substantial positive results. In FY 2010, we performed 6,953 screenings at ports, collected 1,776 samples for testing, and of those found 987 that violated CPSC standards. At the same time, we have also seen the number of recalls start to drop – from 563 in FY 2008 to 428 in FY 2010. Maintaining those positive trends is a key goal for the upcoming year.

The Safe Sleep Team: The overall safety of cribs and the infant and toddler sleep environment is a critical concern of the CPSC and a personal priority of mine. Parents across the country expect cribs to be a sanctuary for their children, regardless of price or size. Unfortunately, that is not always the case. In the past nine years, there have been at least 32 deaths attributed to drop-side crib failures. That, in and of itself, is a tragic number. However, the majority of crib deaths are still directly linked to the use of soft bedding in the crib.

To address this, I directed Commission staff to embark on a two-prong action strategy. The first prong was to recall old, dangerous drop-side cribs in the marketplace and promulgate new mandatory crib safety rules that will prohibit dangerous drop-side cribs from ever being sold again in the United States. I am pleased to report that the new mandatory crib safety rule was approved by the Commission in a unanimous vote on December 15, 2010.

The second prong of this initiative is education: teaching parents and caregivers how to keep the inside of cribs free from suffocation risks like stuffed animals, comforters, and pillows. In partnership with the American Academy of Pediatrics and a child advocacy group called Keeping Babies Safe, we have a wonderful new Safe Sleep video that we are working to have shown in maternity wards and pediatrician’s offices around the country. This video is currently available on the CPSC’s website, and I urge Members of the Subcommittee to view the video and see its powerful message.

Rapid Response to New Hazards: The Commission has increased its efforts to provide a rapid response to new and emerging hazards. One example of this response is the CPSC’s efforts to stop the use of toxic metals in children’s products. Earlier this year, it came to our attention that some foreign manufacturers might be using cadmium or other toxic metals as an effort to get around the lead limits for children’s products. I sent a strong message to Asian manufacturers and regulators that this was unacceptable and that we would not allow there to be an influx of products with cadmium like we saw a few years ago with lead. The Chinese government sent out a directive a few weeks later on cadmium that used language similar to mine. It appears that we have stayed ahead of this issue.

Despite this early success, however, the Commission will remain vigilant in this area. In response to the possible threat, the CPSC has taken aggressive action to police the market for children’s products that may contain harmful levels of

cadmium. In addition, Commission staff recently released a guidance document providing Acceptable Daily Intake (ADI) limits for cadmium. We also sent this document to several standards setting bodies – including the committee that oversees the ASTM F963 toy safety standard – with instructions to take action on this issue. This year, we will also look at the use of other toxic metals such as barium and antimony, and the CPSC will not hesitate to take further action in this area if voluntary efforts prove insufficient.

Moving Forward:

In the past eighteen months, the CPSC has implemented the bulk of CPSIA and moved towards a more responsive, proactive approach to consumer safety. In particular, I am extremely proud of the Commission's staff – and the work they have done to create a safer consumer product marketplace for all Americans.

The Commission has received increases in appropriations over the past three years. On Monday the President released the Administration's Fiscal Year (FY) 2012 Budget, which continues this commitment to rebuilding the Commission by requesting \$122 million for expenses – a slight increase over the FY 2010 level. I deeply appreciate the continued investment in the Commission and have made every effort to ensure that these funds are spent wisely and judiciously – by putting more personnel in ports, expanding outreach, and responding to emerging hazards like drywall.

These resources are making a difference. They ensure that we can get the message out to families after a hurricane or an ice storm that use of a portable generator in home can result in carbon monoxide poisoning and tragedy. They give us the resources to put out remediation guidance for families with contaminated drywall. They also allow us to do public outreach to new mothers – so they do not place their newborns into an unsafe sleep environment that could result in tragedy.

Some will say that these resources are solely devoted to promulgating rules under CPSIA. That assertion is false. In 1980, the Commission had almost 1000 employees and an inflation-adjusted budget of over \$150 million. By 2007, the Commission had fallen to 385 employees – and was barely able to carry out its core functions. This led to the “Summer of Recalls” and public outcry to reinvigorate and properly fund the CPSC. We simply cannot return to those dark days.

In the coming months I look forward to discussing possible targeted improvements to the CPSIA with the Subcommittee. On January 15, 2010, I supported a unanimous report of the Commission requesting some additional flexibility for certain requirements. Specifically, I supported a “functional purpose” exception to the section 101 lead substrate requirements where lead absolutely has to be in a children's product, prospective application of the 100 parts per million (ppm) lead limit “step down” set to occur on August 14, 2011, and targeted relief to address small manufacturer and crafter concerns with regard to the third-party testing and certification requirements in section 102.

I recognize some want to go further than this, and reopen the entire Act. That would be a mistake. Calls for a return to a completely “risk-based” lead paint and content standard are one example of a proposal that is seriously ill-advised. Lead is a contaminant, and a powerful neurotoxin. It is a particular threat to the developing brain of the fetus, infant, and young child, with documented negative effects on behavior and permanent loss of IQ points.

The scientific community is almost entirely in agreement that there is no “safe” level of lead. This is not a new finding. In May 1936, Consumer Reports published an article entitled “Lead Hazard in Toys,” and noted that:

The hazard is especially great because lead is a poison which accumulates in the body, and can do great damage in amounts almost infinitesimally small. Some medical authorities believe that lead presents one of the gravest risks of childhood, being responsible for many obscure ailments which can be diagnosed only with the greatest difficulty.

During my tenure as Chairman, my message to manufacturers has been simple: get the lead out. If it absolutely has to be in a product, we have sought the authority to address it through a “functional purpose” exception. We should not, in any way, slow or reverse the removal of this toxic contaminant from children’s products wherever possible. We have made substantial progress in this area since passage of the CPSIA, and parents should never have to go back to wondering – and worrying – about whether the model train or toy they purchase for their child is “leaded” or “unleaded.”

* * * * *

Thank you again for inviting me to provide testimony before the Subcommittee today. I now look forward to answering any questions you may have.