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HEARING ON CHILD PRODUCT SAFETY STANDARDS
SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER PROTECTION
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Thank you, Mr. Chairman, and good morning. I am pleased to be with you this morning for this important hearing on child product safety. While the U.S. Consumer Product Safety Commission (CPSC) is concerned about the safety of products for all consumers, we have a special concern about those products that are used by our most vulnerable populations, and those include our nation's children. As the Chairman of the Commission, and as the father of two young daughters ages nine and five, I appreciate the Committee's focus on children's products today.

By way of background, the Consumer Product Safety Commission is a small bipartisan, independent agency charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. We work to achieve that mandate with approximately 470 employees who are located at our headquarters office and laboratory in nearby Maryland and at our field locations across the country. Our annual budget is approximately \$59 million.

Since its inception, the CPSC has delivered critical safety benefits to America's families and has made a significant contribution to the decline in the rate of deaths and

injuries related to hazardous consumer products. We are a small agency with a big mission, and we are proud of the work we do to build a safer America.

As noted earlier, children's products are of special concern to the agency and to its mission. Hazards to children are associated with a wide range of consumer products. Examples include strangulation deaths from window blind cords and clothing drawstrings; swimming pool and other at-home drownings; lethal falls from playground equipment; fatal choking incidents related to some children's toys; and various hazards with infant products, such as highchairs, cribs, infant cushions and strollers.

Head injuries in particular are a leading cause of death and disability to children in the United States. Studies have shown that children have a higher risk of head injury than adults and that children's head injuries are often more severe than many other injuries and can have life-altering consequences.

The types of consumer products under the Commission's jurisdiction that are most often associated with head injuries to children include bicycles and playground equipment. Participation in sports is also associated with a high number of children's head injuries.

The Commission is taking aggressive action across the board on these and other identified hazards, with a special emphasis on those that cause death and lasting injuries. One example of the agency's attention to these hazards is our work on crib safety. The

Commission has worked on crib safety for more than 30 years on both mandatory and voluntary standards.

CPSC's mandatory standards include requirements for side height, slat spacing, mattress fit, hazardous cut-outs and other aspects of crib performance and construction. The voluntary standards address hazards of entanglement on corner posts, slat performance and structural and mechanical failures.

As a result of these efforts, infant deaths associated with cribs have declined significantly. In 1973 it was estimated that as many as 200 infants died annually from injuries associated with cribs. Our most recent data indicates that the number of deaths has declined to about 20 annually. However, that is still 20 deaths too many, and we continue to work on measures that would reduce this number.

Since most infant deaths now occur in older, previously used cribs that do not meet current safety standards, the CPSC has been active through the media and grassroots organizations in alerting the public to the dangers of used or old cribs. For example, unsafe cribs are highlighted in our annual Recall Roundup Campaign which focused this year on resale outlets such as thrift stores. CPSC joined forces with the National Association of Resale and Thrift Shops and the Danny Foundation to stop resale, consignment and thrift stores from selling previously recalled or banned products and products that do not meet safety standards. Additionally, safety seminars were conducted

across the country to educate store employees about CPSC and how to check their stores for hazardous products.

The CPSC also continues to work jointly with eBay to ensure that dangerous products, such as older cribs and recalled products, are not sold on its public auction website. eBay worked with CPSC to develop a “children’s product prompt” which is triggered when a seller attempts to register a children’s product for auction. The prompt urges the seller to review the CPSC’s website to make sure their product has never been recalled. With baby cribs, eBay requires each seller to review a CPSC-developed electronic crib safety information sheet prior to listing their crib for auction. eBay also denies access to its website to persons attempting to sell any product that has been banned by the CPSC. These public outreach and educational efforts will continue as long as there are unsafe children’s products being used or sold.

Because of the Committee’s interest in our safety standards, I would like to take a moment to discuss the procedures, structure and governing statutes that guide us when we are investigating a product hazard like crib safety, taking enforcement action or educating the public on the subject.

The Consumer Product Safety Act (CPSA) is CPSC's umbrella statute. It established the agency in 1973, defines its basic authority, and provides that the CPSC can develop a standard to reduce or eliminate any unreasonable risk of injury associated with a consumer product. The CPSA also provides the authority to ban a product if there

is no feasible standard, and it gives CPSC authority to pursue recalls for products that present a substantial product hazard or violate a safety standard regulation.

The Federal Hazardous Substances Act (FHSA) requires that certain hazardous household products bear cautionary labeling to alert consumers to potential hazards and to inform them of the measures they need to take to protect themselves from those hazards. This Act gives the Commission authority to ban by regulation a hazardous substance if it determines that the cautionary labeling is inadequate to protect the public.

Any toy or other article that is intended for use by children and that contains a hazardous substance is also banned under the FHSA if a child can gain access to the substance. In addition, the Act gives the Commission authority to ban by regulation any toy, or other article intended for use by children which presents a mechanical, electrical or thermal hazard and risk of serious injury.

The CPSC's actions with regard to promulgating, enforcing and publicizing safety standards for children's products and other products are directed by these governing statutes, as well as the Flammable Fabrics Act and the Poison Prevention Packaging Act.

The CPSC's Office of Hazard Identification and Reduction (HIR) collects the information needed to assess product hazards and develop injury reduction strategies. The staff collects data on consumer product related injuries and deaths, as well as hazard exposure information, for those products under our jurisdiction. Along with CPSC's Field Operations Directorate, HIR also investigates specific injury cases to gain

additional knowledge about injuries or hazards and how the reported product was involved.

In addition to news reports and consumer complaints, staff collects information about product related injuries treated in hospital emergency rooms through our National Electronic Injury Surveillance System (NEISS). This unique system provides statistically valid national estimates of product-related injuries from a probability sample of hospital emergency rooms across the country and is the foundation for many Commission activities.

CPSC also collects mortality data with the purchase and review of death certificates covering product-related deaths from all 50 states. Our Medical Examiner and Coroner Alert Project collects and reviews additional death reports from participants throughout the country.

We are continuing to strengthen our data collection and analysis process. Recent improvements include the implementation of our National Burn Center Reporting System which focuses on children's clothing and the development of new statistical systems for collecting information on consumer product related fire deaths and injuries. Staff also conducts several types of studies each year, including special investigations and emerging hazard evaluations.

These activities lay the groundwork for our standard setting activities. Under our governing statutes, CPSC must defer to voluntary safety standards rather than issue mandatory standards whenever compliance with a voluntary standard eliminates or

adequately reduces the risk of injury addressed and whenever it is likely that there will be substantial compliance with that voluntary standard.

Our governing statutes dictate a unique multi-stage rulemaking process that is initiated with work on studies and findings to prepare an Advance Notice of Proposed Rulemaking or ANPR. Using toys and children's products as an example under the Federal Hazardous Substances Act, a proceeding to adopt a mandatory safety standard must be commenced by publication in the Federal Register of an ANPR that (1) describes the product to be regulated; (2) summarizes other regulatory alternatives being considered by the Commission; (3) notes any existing voluntary standard and why it appears to be inadequate; (4) invites comment on the information published; (5) invites submission of an existing standard as an alternative; and (6) invites commitment to develop a new voluntary standard.

Following the required public comment period, the Commission may determine that a voluntary standard submitted to CPSC in response to the ANPR would adequately reduce risk, and the Commission may proceed to publish it as a proposed standard. If the Commission determines that the voluntary standard would adequately reduce the risk and it is likely that there would be substantial compliance, the Commission must then terminate the formal rulemaking and notify the public of its decision to rely on the voluntary standard. Before relying on the voluntary standard in this manner, the Commission must provide a reasonable opportunity for public comment.

If the Commission instead decides it must proceed with a mandatory rule, the next step in the process is the issuance of a Notice of Proposed Rulemaking or NPR, which

must contain the text of the proposed rule. In addition, the Commission must issue a preliminary regulatory analysis which must contain (1) a preliminary description of the potential benefits and costs of the proposed rule; (2) an explanation why any standard submitted to the Commission was rejected; (3) an explanation why any proposal to develop a voluntary standard was not adequate; and (4) a description of any reasonable alternatives to the proposed rule, their potential costs and benefits, and why they would not be proposed.

To then proceed to a Final Rule following the second public comment period, the Commission must publish a final regulatory analysis containing (1) a description of the potential benefits and costs of the regulation; (2) a description of any alternatives that were considered by the Commission and reasons why they were rejected; and (3) a summary of any significant issues raised in the public comments and the Commission's assessment of them.

The final rule must also include specific findings: (1) that the toy (or other article intended for use by children) is a "hazardous substance," that is, it poses an unreasonable risk of injury or illness due to a thermal or mechanical hazard, or otherwise; (2) that any voluntary standard is not likely to adequately reduce the risk or that substantial compliance is unlikely; (3) that the benefits expected from the standard bear a reasonable relationship to its costs; and (4) that the standard imposes the least burdensome requirement which prevents or adequately reduces the risk.

This three-step rulemaking process meets the requirements of our governing statutes.

When a ban or a safety standard is established, it is CPSC's Office of Compliance, working closely with the agency's field staff, that enforces the law. There are two primary types of investigations that the staff conducts. One focuses on identifying products that violate specific safety standards already issued by the Commission. The other type of investigation is designed to identify defective products that may present a substantial risk of injury to the public but are not subject to specific CPSC standards.

The CPSC may start an investigation on its own initiative or an investigation may result from statutorily required reports from firms. Under Section 15 of the Consumer Product Safety Act, manufacturers, retailers and distributors must report to the Commission when they obtain information that one of their products is defective, fails to comply with a safety standard, or creates an unreasonable risk of serious injury or death. The purpose of the reporting requirements is to provide the Commission with sufficient information to determine whether a product presents a hazard that requires remedial action under one of the statutes that the Commission administers.

The compliance staff may start an investigation based on any of the following types of information: (1) hotline complaints, web communications, newspaper reports or written correspondence from consumers or Freedom of Information Act requesters; (2) reports or inquiries from state and local governments, federal agencies, or Congress; (3) coroner, medical examiner, fire marshal, or police reports; (4) reports from fire investigators and forensic testing laboratories; (5) data from the National Electronic

Injury Information System; (6) incident reports in the Commission's data bases; or (7) trade complaints, news clippings and reports from insurers.

In addition, CPSC conducts programs to monitor compliance with mandatory and voluntary standards by conducting field inspections of manufacturing facilities and distribution centers and making purchases at retail establishments or via catalogs or the internet. Numerous sample collections have been conducted over the last several years at a variety of mass merchandise, general department and dollar type stores to monitor compliance with CPSC requirements. Additionally, there have been a number of voluntary recalls involving dollar type stores. CPSC staff has worked with owners of these stores on an individual basis to ensure future compliance with our requirements.

Staff also conducts surveillance and sampling of imported products at ports of entry. The CPSC has conducted 255 seizures and detentions of over 6.7 million units in 2004. This is an increase from 181 seizures and 1.6 million units in the previous year. Some of CPSC's most effective efforts at identifying violative unsafe products have been through working with the U.S. Customs Service identifying these products before their distribution in the United States. With Customs' increased attention on homeland security, the CPSC has adapted to new enforcement tools including internet surveillance and working with Customs' data base systems to identify incoming shipments and collect samples on their arrival at U.S. ports.

Both the Consumer Product Safety Act and the Federal Hazardous Substances Act permit the Commission to seek public notice and corrective action for defective products that create a substantial risk of injury to consumers.

The CPSC uses the generic term “recall” to refer to corrective action plans that are announced to the public; however, by law “recalls” may involve (at the election of the product’s manufacturer, distributor or retailer) the repair *or* replacement of the defective product, *or* the refund of its purchase price less a reasonable allowance for use.

The Office of Compliance staff seeks voluntary remedial action, whenever possible. The recent recall of 150 million units of toy jewelry, some of it containing accessible lead, was achieved voluntarily. However, if staff is unable to reach such a resolution, litigation may be necessary.

The Commission may institute an administrative proceeding to require a manufacturer, distributor, or retailer to recall a banned product or a defective product that presents a substantial product hazard. If after a formal hearing before an administrative law judge and any appeal to the Commission, the Commission determines that a product presents a substantial hazard warranting a recall, it can order the firm to give public notice of the hazard and order the firm to repair or replace the product or refund the purchase price of the product less a reasonable allowance for use at the election of the firm.

CPSC recalls have increased significantly this year. In 2004 the agency has conducted 356 recalls which is a 27% increase from the previous year. These recalls cover more than 200 million consumer products as compared to 41 million the previous year.

The CPSC's Office of General Counsel is responsible for working with the Department of Justice in bringing actions in federal court. Once a case is referred to the Department of Justice, the Compliance staff works with the Department and the Office of General Counsel on the case.

The CPSC has the authority to assess civil penalties. In the fiscal year that just ended, CPSC assessed \$4.2 million in civil penalties from companies that violated federal safety standards. That figure represents an increase over the previous year's figure of \$2 million. CPSC's statutes also authorize criminal penalties in appropriate cases. Only last week, a grand jury in California handed down an indictment against an individual who was caught reselling unsafe toys after a CPSC recall.

One key element of any recall is targeted public notice to inform owners of a recalled product of the hazard and remedies available. Among the tools CPSC's Office of Information and Public Affairs uses to disseminate information about recalls are: joint press releases; video news releases; point of purchase posters; direct mail; paid advertisements; web site notification; and notification to outside organizations, such as pediatricians or day care providers, who in turn provide information to consumers.

Additionally, CPSC continues to be pro-active in improving recall effectiveness. I earlier mentioned our initiative with thrift stores and web-based sales. Recently, we launched the Neighborhood Safety Network. Through this initiative CPSC is partnering with other government agencies and private sector organizations to communicate important safety messages to vulnerable and hard-to-reach populations.

Our goal is to build a network of community leaders and organizations that are in regular contact with people who may not get their news from traditional media outlets or may not have access to computers or may not trust the federal government as the messenger. We are working with the American Academy of Pediatrics, Boys and Girls Clubs of America, Indian Health Services and many others to distribute CPSC's safety messages. Meetings with groups such as the National Safety Council, National Safe Kids Coalition, HHS and others have generated a great deal of support for the project.

Another initiative that I am particularly proud of is Recalls.gov. In conjunction with five other federal agencies, CPSC introduced this new website that will benefit your constituents and provide streamlined, one-stop service in alerting consumers to unsafe, hazardous or defective products. Consumers can now go to one single resource to get information on all government recalls. They no longer have to try to figure out which government agency has jurisdiction for the particular product about which they are concerned.

Additionally, your constituents can register at this site to receive instant e-mail alerts on all product safety recalls, and consumers can use the site to report a problem with a consumer product, motor vehicle, boat, food or environmental product. CPSC has developed a sample press release for Congressional offices to consider using in their home districts.

Before closing, I would like to address one other subject of special concern to me regarding the safety of children's products, and that is importation. As a government regulator, I recognize that given the vast expansion of international trade and increasing safety concerns of consumers about the goods they purchase, such as toys for their children, the need for closer cooperation and coordination between international government authorities is more important now than ever before.

China is now the number one toy producing country in the world, and the United States is the number one toy consuming country in the world. Developing a strong understanding regarding consumer product safety with China is essential. I am proud to be the first Chairman of the Consumer Product Safety Commission to go to China. As a result of this outreach, in April of this year, I signed a formal Memorandum of Understanding with Chinese Minister Li of the General Administration of Quality Supervision, Inspection and Quarantine, to establish a formal liaison between our two agencies on product safety.

I returned to China in June to be the first commissioner to ever address the International Organization for Standardization on toy safety. With homeland security concerns taking precedence at our nation's ports of entry, it is more important than ever to get to the source of these safety problems before they are ever loaded onto a ship bound for America. I can assure the Committee that I will go wherever I have to go to achieve that goal.

In closing, I would be remiss to come before the Committee and not commend to you the outstanding professional staff at the CPSC. Since starting as Chairman two years ago, I have had the opportunity to meet and work with some of the most competent and talented civil servants and professionals that you can imagine. These people have the kind of technical and scientific skills that the private sector would reward handsomely, but they have chosen instead a career of public service and they dedicate themselves to improving product safety for America's families.

Mr. Chairman, thank you again for the opportunity to discuss this important subject, and I am pleased to answer your questions.