



Consumer Federation of America

Testimony of

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Hearing on the Consumer Product Safety Enhancement Act

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Chairman Rush, Representative Whitfield and members of the Subcommittee on Commerce, Trade and Consumer Protection. I am Rachel Weintraub, Director of Product Safety and Senior Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 300 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education. I offer this testimony on behalf of Consumer Federation of America as well as Consumers Union, Kids in Danger, National Research Center for Women & Families, Public Citizen, and the U.S. Public Interest Research Group.

As organizations dedicated to working to protect consumers from unsafe products, I offer testimony today to articulate our views about the Consumer Product Safety Improvement Act of 2008 (CPSIA) and the Consumer Product Safety Enhancement Act (CPSEA).

The bi-partisan Consumer Product Safety Improvement Act passed overwhelmingly by the House on July 30, 2008 by a vote of 424-1, by the Senate on July 31, 2008 by a vote of 89-3 and was signed into law by President Bush on August 14, 2008. Before this law passed, Congress undertook a year-long deliberative process to consider the implications of this Act: there were numerous hearings: approximately 15 hearings and markups in the House and Senate covering issues and products related to the CPSIA, and a conference in regular order between both Houses of Congress. This much-needed law institutes the most significant improvements to the Consumer Product Safety Commission (CPSC) since the agency was established in the 1970's.

CPSIA's significance, new requirements and implementation

The CPSIA's passage followed a period of a record number of recalls of hazardous products from the market that injured and killed vulnerable consumers, and a weakened federal oversight agency that failed in its meager efforts to protect the public's health and safety.

It has been almost two years since the CPSIA was passed. The relatively new law will make consumer products safer by requiring that toys and infant products be tested before they are sold, and by banning lead and phthalates in toys (although implementation of the testing requirement has been twice delayed by the CPSC). The law also authorizes the first comprehensive publicly accessible consumer complaint database due to be launched in March 2011; gives the CPSC the resources it needs to protect the public, such as enabling it to hire additional staff; increases civil penalties that the CPSC can assess against violators of consumer product safety laws; and protects whistleblowers who report product safety defects.

Consumers believe that the products they buy for their children should be safe. Many consumers believed that products were tested before they were sold -- that some entity issued stamps of approval for products before they were sold in the store. However, that was never true. Before passage of the CPSIA, the CPSC only had authority over products after they were sold. If a problem was identified as posing a risk of harm to consumers, the CPSC could recall the product, but that was only *after* the harm was already in consumers' homes and in their children's hands. The CPSIA significantly changes the reactive nature of the CPSC by requiring that children's products subject to mandatory standards be tested for safety before they are sold.

Since passage of the CPSIA, there have been many challenges to implementation: a CPSC that moved slowly and gave out confusing information; an economic downturn that has affected businesses; the realization that lead is more pervasive in consumer products than had been expected; and concerns about the law's implementation consistently raised by manufacturers, small businesses, crafters and thrift stores.

Proposed revisions

The Consumer Product Safety Enhancement Act of 2010 (CPSEA) was drafted in response to requests for flexibility and exceptions from some CPSIA provisions raised by various manufacturer and retailer entities, including small businesses, thrift stores and the ATV industry. The CPSC itself has requested additional discretion to implement certain CPSIA provisions, particularly regarding the lead requirements.

The consumer community, which has strongly supported the CPSIA and its capacity to boost product safety, believes that any changes made to the CPSIA must not weaken product safety standards and must not weaken public health protections. The current draft of the CPSEA grants CPSC more flexibility in decision-making and provides additional assistance to manufacturers. However, overall, it does not appear that the public health will be harmed from the proposal. We do not oppose the current text of the CPSEA.

The legislation will: alter lead-testing provisions to allow manufacturers to seek exemptions under "functional purpose" criteria; loosen requirements for used products; create an exception to third party testing for small batch manufacturers; and authorize an office to assist small businesses with their compliance of consumer product safety laws.

The functional purpose exemption, in section 2, contains a three--part test for manufacturers to seek exemptions from lead requirements: (1) that the product, material or component requires the lead because it is not practicable or not technologically feasible to manufacture the product, material or component in compliance with the lead provisions; (2) the product, material or component is not likely to be mouthed or ingested, taking into account normal and foreseeable use and abuse; and (3) the exemption will have no measurable adverse effect on public health or safety. We do not oppose the circulated report language explaining "practicable" and "measurable adverse impact" and we agree that the Commission must take into account excessive or unreasonable costs when considering whether compliance is impracticable, without weighing additional, unrelated factors, such as any potential benefits of the product. These criteria should not be weakened in any way.

Section 3 of the bill includes exceptions for thrift stores and other retailers. While this goes quite far in exempting used products from the lead limits of the CPSIA, the provision includes necessary limitations that do not allow exceptions for certain high-risk products, including: children's metal jewelry, painted children's toys, children's products composed primarily of accessible vinyl, any product that the donating party or seller knows is in violation of the lead limits, and any other children's product designated by the Commission. We could not support any weakening of this provision.

Special provisions for small businesses includes allowing certain businesses to be exempt from third party testing when the Commission finds that reasonable testing methods assure compliance with relevant consumer product safety standards. We believe, however, that the term “small batch manufacturer” is defined too broadly. We commend the fact that the language does not allow small batch manufacturers to obtain exceptions for durable infant or toddler products or lead paint, cribs, pacifiers, small parts, children’s metal jewelry, baby bouncers, walkers and jumpers. Because of the fatal nature of the defects in many of these types of products, as demonstrated by recalls in the past, all manufacturers should be required to meet the same safety and testing requirements. We could not accept a broadening of either the definition of small batch manufacturer or a limitation of those products not covered by this provision.

The Consumer Product Safety Enhancement Act balances upholding the protections provided in the CPSIA to protect public health with the requested flexibility under certain circumstances. This balance can easily be lost if public health protections in the bill are removed. Our organizations would oppose any weakening of the CPSEA.

Despite the delicate balance that the CPSEA achieves, however, there have been two proposals offered by others that, if implemented, would serve to considerably weaken public health. They would open a series of gaping loopholes in the CPSIA that would allow more lead into a host of toys and other products meant for children. Those proposals are not included in this bill and we would **oppose** any inclusion of them in any legislation.

Protections must remain for children 12 and younger

First, some have argued that the CPSIA should not apply to children’s products for children 12 years and younger but rather should cover only those products for children 6 and younger. This approach was rejected by Congress when it passed the CPSIA. Congress embraced the belief that there is a “shared toy box” in many families’ homes. We agree as it reflects the reality of what we know to be true in many homes across the United States. Children of younger ages play with toys of their older siblings. Younger children mouth their older siblings’ toys with frequency. Further, the voluntary standard for toys – ASTM F 963 – includes an even broader scope to cover toys intended for children 14 and younger. This means that many companies are already complying with voluntary safety standards that encompass toys intended for children 14 and younger. Thus, the reality that children’s toys and products are often shared by children within a family, plus the fact that many within the industry are already complying with a higher age standard, requires the scope of the CPSIA to remain as it is.

No known safe level of lead

Second, some have proposed that a risk analysis be applied for regulating lead in products. Requiring the CPSC to conduct risk analysis for lead is not acceptable. Risk analysis would reverse the presumption for the safety of products and allow all products to be sold and be exempt from testing for lead unless the CPSC finds otherwise. This would mean a return to the state of the law before the CPSIA was passed. As we witnessed in the years before the CPSIA, the record number of lead-laden products that were recalled from the market proves that this approach results in an unreasonable risk of injury to consumers. It will amount to a waste of Commission resources, has been rejected by Congress previously as not being sufficiently

protective of public health, and far exceeds the flexibility that the CPSC requested to regulate lead.

The American public demands that children's products not pose risks for the children who will play with or sleep in those products. Lead is a well-documented neurotoxin that has a wide range of effects on a child's development including delayed growth and permanent brain damage. There is no known safe level of exposure. Exposure to lead is cumulative over time and there are many pervasive roots of lead exposure. As a society, we have spent years trying to reduce lead levels in our air, soil and homes. We must continue to work to reduce lead in other products where it is not necessary. While ideally Congress would seek to remove lead from all household products, Congress in the CPSIA focused on the products most likely to be in contact with children. Nearly all toys and infant durable products do not require lead, should not contain lead and can be made effectively without lead. In the rare instance that children's products require lead, the CPSEA provides for a targeted exemption for functional purpose. This exemption is drafted tightly to ensure that children remain protected from harms of lead exposure. We would have grave concerns if any of the limiting factors were removed.

Consumers were outraged when it became clear that lead was present in children toys, clothes, lunch boxes, and other products. Even though CPSC had some existing authority to ban lead, it was not used effectively, and there were too many products that contained lead which posed a hazard to our children. Thus, not only did a bright line limit for lead gain widespread support, but third-party testing to make sure the products complied with the standards was also necessary and became law. Most importantly, the scientific evidence demonstrates abundantly that lead is a poison to children's developing brains and bodies. There is no known safe level of lead and there is no justification for allowing lead in children's products when safe alternatives exist.

Congress must support CPSC's mission

CPSC plays an incredibly crucial role in ensuring that consumer products are safe and is responsible for implementing the CPSIA. This draft legislation gives CPSC more discretion. It is imperative then that the agency be appropriately funded at all times to do its job properly. Congress must also monitor the agency's activities to ensure that the CPSC is exercising its existing and new authority in accordance with Congress' intent, and most importantly, to ensure that the agency is carrying out its primary mission to protect consumers from unreasonable risk of injury caused by hazardous products.

The proposed Consumer Product Safety Enhancement Act appears to carefully balance two distinct goals: to uphold the safety protections provided in the CPSIA while seeking to accommodate the adamant requests by some stakeholders to alter certain provisions. This fine balance can easily be destroyed if the limited public health protections in the bill are removed or narrowed. Our organizations would oppose any alteration of this legislation that would loosen product safety standards and once again leave consumers and their families vulnerable to unsafe products.

We look forward to working with you to protect the public from harms posed by hazardous products