



Consumer Federation of America

Testimony of

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America

Before the
Consumer Protection, Product Safety, and Insurance Subcommittee of
the Commerce, Science and Transportation Committee
U.S. Senate

Hearing on Oversight of the Consumer Product Safety Commission:
Product Safety in the Holiday Season

December 2, 2010

253 Russell Senate Office Building

Chairman Pryor and members of the Subcommittee on Consumer Protection, Product Safety and Insurance, I am Rachel Weintraub, Director of Product Safety and Senior Counsel at Consumer Federation of America (CFA). CFA is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education. I offer this testimony on behalf of Consumer Federation of America as well as Consumers Union, Kids in Danger, and the U.S. Public Interest Research Group. Thank you for inviting me to testify before you today.

Today is the first day of Chanukah, Christmas is just 23 days away, and the holiday buying season officially began last Friday. The holiday season, with our country's tradition of gift giving, provides a useful perspective through which to observe and comment on the Consumer Product Safety Improvement Act of 2008 (CPSIA) in particular and the Consumer Product Safety Commission in general. Whenever we make a purchase for our family and friends, most people assume that the product they are considering is safe. While purchasers think about what the person would like, what they want or need or what they requested, an underlying assumption is that the product we are choosing will not cause harm. While consumers do need to think about how the child interacts with the product, if there are other children in the house who may play with the product, or whether the product has been previously recalled, there are some issues that no amount of thought or planning can detect. It is the realm of hidden hazards that the CPSIA and CPSC have sought to detect and prevent.

The bi-partisan Consumer Product Safety Improvement Act passed overwhelmingly in the House on July 30, 2008 by a vote of 424-1, in 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 approximately 15 hearings and markups in the House and Senate covering issues and products related to the CPSIA, and once each chamber passed its version of the bill, there was a conference in regular order between both Houses of Congress. The leadership of this subcommittee was significant and much needed as this law was moving through Congress. This 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, sickened, or killed vulnerable consumers. The bill's passage was also in response to a weakened federal oversight agency that failed in its meager efforts to protect the public's health and safety.

Before the CPSIA was passed, CPSC's past as well as its future was bleak. In 1972, when CPSC was created, the agency was appropriated \$34.7 million and 786 full time employees (FTEs). Before the CPSIA passed, the agency's budget had not kept up with inflation, had not kept up with its deteriorating infrastructure, had not kept up with increasing data collection needs, had not kept up with the fast-paced changes occurring in consumer product development, and had not kept pace with the vast increase in the number of different types of consumer products on the

market. CPSC's staff had suffered severe and repeated cuts during the last two decades, falling from a high of 978 employees in 1980 to just 401 in 2007-- a loss of almost 60%.

For example, CPSC's 2008 Performance Budget document painted a grim picture of the CPSC's future work. The budget document was full of statements such as, "while the CPSC has thus far been successful at facing these new and evolving challenges with diminishing resources, the 2008 funding level will challenge the Commission's ability to maintain its existing level of standards development, enforcement, public information, and international activities."¹ The 2008 Performance Budget document was replete with staffing cuts, limitations to programmatic goals and the absence of previous goals and projects. CPSC's efforts to reduce product hazards to children and families were hindered by the forced reductions in FTEs.

In response to this dismal picture, Congress infused the CPSC with new authority and more resources. It has been over two years since the CPSIA was passed. This relatively new law will make consumer products safer by requiring that toys and infant products be tested for safety 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 next March; 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.

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 for the most part had authority only 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 hazardous product 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. A proactive safety system should benefit the public as well as manufacturers by avoiding costly recalls.

CPSC and CPSIA Successes

Mandatory Crib Standard

While there have been challenges there have also been successes in implementing the CPSIA. One of the most notable examples is the mandatory crib standard that is required by section 104 of the CPSIA. The CPSC is close to finalizing the final rule for cribs. We applaud the CPSC for prioritizing the safety of infant sleep environments in light of the deaths of many children due to poorly designed cribs, bassinets, and play yards. Pervasive design flaws have led to the recall of more than 7 million cribs over the past two years. It was essential that the CPSC place safe sleep environments at the top of their mandatory standards-setting list as part of that initiative.

¹ U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page vii. On the web at <http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf>.

Recalls and corrective actions for cribs have been issued for non-compliance with safety standards; strangulation hazards; risk of head entrapment when side rails, spindles, and slats in side rails become loose; risk of suffocation; choking hazards; risk of falling; and danger of laceration when fingers become trapped in folding drop gates.²

While the current voluntary crib standards ban the drop-side design in new cribs, only since passage of the CPSIA has there been an effort made to strengthen the voluntary and mandatory standards and require testing and verification of new cribs. The final CPSC crib standard incorporates many provisions that consumer advocates have been supporting for years that replicate the real world use of cribs, such as durability tests, mattress support tests, and tests for the effectiveness of hardware. The resulting proposed CPSC standard is a strong one and is a successful consequence of the CPSIA. In addition, Chairman Tenenbaum and her staff have been successfully reaching out to consumers through the Safe Sleep Campaign and have made it clear to all stakeholders that creating safe cribs and sleep environments is an imperative.

Section 104(c) of the CPSIA seeks to address hazards posed by older model cribs by removing them from the market. This section applies to cribs sold new and used, cribs used in child care facilities, and cribs used in public accommodations such as hotels and motels. The application of this provision means that older cribs that pose significant risks to children will be taken out of the stream of commerce. This provision is based upon laws already in existence in numerous states including Arizona, Arkansas, California, Colorado, Illinois, Louisiana, Michigan, Minnesota, Oregon, Pennsylvania, Vermont and Washington. This provision extends the protections previously offered in just these states to the entire nation to ensure that children sleep in cribs that meet the most recent and most protective crib safety standards.

We support the CPSC's current language in its proposed crib rule³ regarding a six-month effective date as it applies to manufacturers. The customary six months gives manufacturers adequate time to comply with the new crib standards. In addition, we will support an additional six month compliance period for child care facilities, allowing them to phase in replacement of non-compliant cribs over the course of one year following the publication of the final rule.

Database

Another success of the CPSIA is last week's passage of the final rule implementing the consumer product safety information database. CPSC is required by Section 212 of the CPSIA to establish the database. As a result of the CPSC staff's leadership and commitment to the effectiveness of the database, consumers will have access to lifesaving information and the agency will more nimbly be able to identify and act upon safety hazards. CPSC staff worked hard to formulate CPSC's final rule in a manner that is consistent with Congress' intent, responsive to the public interest need for disclosure, and protective of a manufacturer's effort to protect their brand and confidential business information. The database includes more checks on the information and more opportunities for a manufacturer to comment than other similar databases.

² Kids in Danger, <http://www.kidsindanger.org/prodhazards/recalls/cribs.asp>.

³ Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Notice of Proposed Rulemaking; Proposed Rule," Federal Register Vol. 75, No. 141, July 23, 2010.

Consumers have been in the dark about the dangers of products regulated by CPSC. CPSC currently collects incident data from consumers in a manner similar to how it will be collected as part of the new database. However, the difference is that now, when consumers go to CPSC's web site to look for information, it is not available. All that they can usually find relates to a previous recall. If the Commission has been alerted to the dangers of a product but has not conducted a recall, the product's hazard may never be known to the public.

The database will help change that. Public access to information is vital to safety. Simply allowing consumers access to the safety record of products will increase safety and encourage the speedy removal or redesign of unsafe products. Making it simple for consumers to report into a single database the problems they encounter with products will also help the Commission to do its job of protecting the public from unsafe products more efficiently, which can help save Commission resources.

Online Toy Hazard Warnings

When consumers purchase toys for children online this year, because of the CPSIA, the same choking hazard warnings that appear on the toy packaging will also appear online. This is an important consumer protection considering today's shopping trends. For years, consumers who purchased toys online were at a safety disadvantage because they did not receive all the information they would have received, had they made the purchase in a store. This concern has been solved by the CPSIA.

Product Registration

The CPSIA requires that infant durable products, such as cribs, strollers and high chairs, include a product registration card in their packaging and provide an opportunity to register online. This will give manufacturers information necessary to directly contact consumers in the event of a recall or other product safety issue.

The requirements for the product registration cards and an online registration program are contained in Section 104 of the CPSIA, which incorporates the Danny Keysar Child Safety Notification Act. Danny, whose parents founded Kids In Danger, died in 1998 when the portable crib he slept in at a child care center collapsed and strangled him. The crib had been recalled five years earlier, but no one at the child care center, including the mom who donated the crib, had heard of the recall. Too many consumers never hear about a recall of a product that they have in their home. Registering products is an important step that will increase the number of consumers who hear about a recall.

Mandatory Toy Standards

Despite the fact that many conformity assessment bodies have not yet received accreditation to conduct full-scale testing, with the expectation of tighter enforcement down the road, many manufacturers are already adopting robust testing procedures and the safety of toys has been enhanced. The CPSC continues to work on ways to help small manufacturers who have raised concerns about the costs associated with such testing ensure that their toys are just as safe.

Reviewing Past Data

CPSC has also been reviewing old records and taking long-overdue action. Earlier this year, CPSC announced the recall of two million Graco strollers: the Quattro™ and MetroLite™ because of entrapment and strangulation risks. CPSC and Graco had “received four reports of infant strangulations that occurred in these strollers between 2003 and 2005. In addition, CPSC was aware of five reports of infants becoming entrapped, resulting in cuts and bruises, and one report of an infant having difficulty breathing.”⁴ While these strollers should have been recalled years ago, we applaud CPSC for taking the right action now to remove these potentially hazardous products from the market.

CPSC and CPSIA Challenges

Since passage of the CPSIA, there have been many challenges to implementation: a CPSC that initially moved slowly and gave out confusing information; an economic downturn that has affected businesses; the realization that lead and other heavy metals such as cadmium are 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.

The current CPSC has been managing these challenges. The CPSC has held numerous public meetings and hearings about issues such as the consumer product safety information database and product testing. CPSC has sought to provide clear information to various stakeholders through publications such as the Guide to the CPSIA for Small Businesses, Resellers, Crafters and Charities and the Handbook for Resale Stores and Product Resellers. In addition, CPSC is establishing a new Office of Education, Global Outreach, and Small Business Ombudsman to “coordinate and carry out education and outreach activities to domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, foreign governments, and consumers.”⁵

The CPSC also issued an Interim Enforcement Policy related to component testing for lead content and lead in paint last December and is working on finalizing the “component part” rule as part of the Testing and Certification Rule that should be finalized next year. The components part rule would especially benefit small manufacturers by allowing the use of certified component parts. In Chairman Tenenbaum’s statement on the Proposed Rules for Testing and Labeling Pertaining to Product Certification and Component Part Testing, she stated that “the Commission is unanimous in its desire to see this rule provide significant relief from testing requirements for both small and large manufacturers while simultaneously moving safety upstream in the manufacturing process. By allowing testing to be performed by component part suppliers and designating component part certificates as certificates issued under section 14 of the CPSA, the Commission has provided great incentive for manufacturers to start utilizing component part

⁴ U.S. Consumer Product Safety Commission Press Release, “Graco Recalls Quattro™ and MetroLite™ Strollers Due to Risk of Entrapment and Strangulation, *Four Infant Strangulation Deaths Reported*,” October 20, 2010, available on the web at <http://www.cpsc.gov/cpscpub/prerel/prhtml11/11015.html>.

⁵ CPSC Press Release, “CPSC Creates New Office of Education, Global Outreach, and Small Business Ombudsman,” September 23, 2010, available on the web at <http://www.cpsc.gov/CPSC/PUB/PREREL/prhtml10/10352.html>.

testing. At the same time, the Commission has established safeguards such as requiring all component parts to be traceable to their original manufacturers and expressly requiring that manufacturers exercise due care when relying on component part testing certificates.”⁶

The CPSC has been responding to the concerns raised by stakeholders.

Responses to CPSIA Challenges

Some responses to these challenges, however, go much too far and include two proposals 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. We reject these efforts to weaken the CPSIA.

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 with this view, 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 the 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. In this era of criticism over “government waste,” requiring a piecemeal risk analysis for lead, a known toxin, would be a wasteful and inefficient use of taxpayer money and government resources.

Significantly, a 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 –i.e., CPSC wouldn’t act until a child had been harmed by a lead-laden product. 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 resulted 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.

⁶ Statement of Chairman Inez M. Tenenbaum on the Proposed Rules for Testing and Labeling Pertaining to Product Certification and Component Part Testing, May 5, 2010, available on the web at <http://www.cpsc.gov/PR/tenenbaum05052010.pdf>.

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. 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 some might argue that we should 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.

Cadmium

Cadmium has been recently identified in numerous children's products beginning in January 2010. CPSC has issued five recalls and one warning about six products that contained high levels of cadmium.⁷ Five of these recalls/warnings involved children's jewelry while one involved a drinking glass.

According to the Agency for Toxic Substances and Disease Registry, cadmium affects the following organ systems: Cardiovascular (Heart and Blood Vessels), Developmental (effects during periods when organs are developing), Gastrointestinal (Digestive), Neurological (Nervous System), Renal (Urinary System or Kidneys), Reproductive (Producing Children), and Respiratory (From the Nose to the Lungs).⁸

Toxic materials like cadmium should not be present in children's products and children should not be exposed to dangerous heavy metals when they play with toys, drink from a glass or engage in dress up play.

Earlier this year, CPSC issued a guidance report on cadmium and urged ASTM to issue a voluntary standard for cadmium beyond paints and surface coating. By relying on ASTM to develop appropriate standards to address cadmium hazards in toys and children's jewelry, it allows many stakeholders to participate in the standards-development process.

CPSC should be involved in the voluntary standard-setting process and should issue a mandatory standard limiting the cadmium content in children's products if the voluntary standard fails to be adequately protective of children's health. A mandatory standard enables CPSC to use enforcement tools to ensure compliance with the standard. Finally, mandatory standards provide clear rules for industry to follow as they seek to comply with CPSC rules.

⁷ See, CPSC Press Releases announcing recalls of products with excessive levels of cadmium:

<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10162.html>;
<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10297.html>;
<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10287.html>;
<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10227.html>;
<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10257.html>; and
<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10127.html>.

⁸ Agency for Toxic Substances and Disease Registry, toxic substances- cadmium, available on the web at <http://www.atsdr.cdc.gov/substances/toxsubstance.asp?toxid=15>.

The scope of CPSC's efforts to ban the use of cadmium should be focused on children's products as defined in the CPSIA. Initially, as CPSC begins to limit cadmium in consumer products, CPSC should focus on product categories that are known to be of risk to children: children's jewelry, children's dinnerware, and children's toys.

In addition, the ban on cadmium should be based upon a total cadmium level (not solubility), which, similar to the lead regulations, offers clarity and consistency to manufacturers, CPSC, and testing bodies and offers public health protections to consumers.

CPSC should examine efforts in states such as California, Washington, Connecticut, Illinois, and Minnesota that have restricted cadmium in children's jewelry. While these laws tend to focus on solubility standards rather than total cadmium content and also focus on children's jewelry rather than children's products, they serve as a useful guide. Since laws have passed in five states and with bills pending in at least five other states, it is clear that consumers are asking for mandatory rules to limit cadmium in children's products.

Finally, we urge CPSC to utilize the work it is undertaking to ban cadmium to address bans of other toxic heavy metals in children's products. We hope CPSC efforts effectively stem the tide of substituting one heavy metal for another and curb the use of heavy metals in the manufacturing of children's products.

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 critical protections of the CPSIA. It is imperative that the agency be appropriately funded at all times to do its job properly. Diminishing CPSC's budget or its authority at this time would hamper the agency from carrying out its primary mission to protect consumers from unreasonable risk of injury caused by hazardous products.

We thank Chairman Pryor for the important leadership role he has played on product safety issues and we look forward to continuing to work together to protect the public from harms posed by hazardous products.

I wish everyone a happy and safe holiday season.