



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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COMMISSIONER MARIETTA S. ROBINSON

May 13, 2015

The Honorable Michael Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burgess and Ranking Member Schakowsky:

Thank you for your invitation to appear on May 19, 2015 at the House of Representatives, Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade hearing entitled "Oversight of the Consumer Product Safety Commission" (CPSC). Unfortunately, I have a long-standing commitment to attend the annual meeting of the International Women's Forum in South Africa, and regret that I will not be able to attend the hearing in person. I have attached a statement to this letter that I request be entered into the hearing record in lieu of my testifying in person.

I always enjoy appearing with my colleagues to discuss the CPSC and the incredible work that our dedicated staff performs every day protecting American consumers from the risks of unreasonable injury or death. It is my honor to serve as a Commissioner at this agency and I look forward to speaking with you about the CPSC in person in the future.

Thank you again for your letter and for your continued support of the Commission and its mission to safeguard consumers. Should you or your staff have any questions, please do not hesitate to contact me by telephone at (301) 504-7982, or by e-mail at mrobinson@cpsc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. S. Robinson".

Marietta S. Robinson
Commissioner

Enclosure



Statement for the Record

**Marietta S. Robinson
Commissioner
U.S. Consumer Product Safety Commission**

**To the
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade**

**“Oversight of the Consumer Product Safety Commission
and the FY 2016 Performance Budget Request”**

May 19, 2015

Commissioner Marietta S. Robinson
Executive One-Page Summary - Statement for the Record
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade

Chairman Burgess and Ranking Member Schakowsky, I appreciate the opportunity to submit this Statement for the Record in connection with the subcommittee's general oversight hearing on the Consumer Product Safety Commission. I regret that I could not appear in person as a result of preexisting international travel plans.

I have focused my statement on five key areas which I believe must be funded at the requested and appropriate levels identified in U.S. Consumer Product Safety Commission's ("CPSC") FY2016 Budget Request to Congress in order for the CPSC to carry out its critical public health and safety mission. I believe that the CPSC must be able to:

- Gather and analyze the most appropriate data on consumer product-related injuries and deaths;
- Inform and educate all populations across our diverse country concerning the real and often hidden hazards of certain products or situations;
- Effectively and efficiently monitor our ports for violative consumer products;
- Research and monitor the potential hazards to consumers of new emerging technologies being used in various consumer products; and
- Review current rules and regulations to ensure they are not overly burdensome on industry or inappropriate as a result of technological or other industry advances.

My statement explains these five areas in detail and provides an explanation as to why I believe it is imperative that these key areas be fully funded in the CPSC FY16 Budget. Moreover, the review of these critical areas also highlights the specific work my personal staff and I are doing to further support the CPSC's FY16 Budget and public health mission.

Commissioner Marietta S. Robinson Statement for the Record
To the Commerce, Manufacturing and Trade Subcommittee
May 19, 2015

Commissioner Marietta S. Robinson
Statement for the Record
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade

I want to thank Chairman Burgess, Ranking Member Schakowsky and Members of the Subcommittee on Commerce, Manufacturing and Trade for providing the U.S. Consumer Product Safety Commission (CPSC) with this opportunity to appear at a public hearing and submit testimony.

The hearing now scheduled for May 19, 2015 was originally scheduled for March 5, 2015. At that time I had confirmed my appearance before the Subcommittee. Unexpectedly, the hearing on March 5, 2015 was cancelled due to serious weather conditions here in Washington, D.C. Unfortunately, I will be unable to appear in person at the rescheduled hearing date, because I have a preexisting commitment to travel to Johannesburg, South Africa to attend the International Women's Forum (IWF) Cornerstone Conference. IWF Cornerstone Conferences are held in regions and markets around the world that are critical to our global success and provide access to leaders with insight on topics impacting international progress, business, economics, ecology, enterprise, and the sustainability of human endeavor. I deeply regret being unable to attend the rescheduled hearing and greatly appreciate this opportunity to submit the following statement for the record prior to the hearing date.

* * *

The last time I was before Congress was for my Senate confirmation hearing in May 2012. I was confirmed 13 months later and, since July 2013, I have had the privilege of serving as Commissioner at the U.S. Consumer Product Safety Commission.

I am delighted to have this opportunity to submit this statement for the record concerning the “Oversight of the CPSC and the CPSC Fiscal Year 2016 Performance Budget Request (FY16 budget)” and to give you a brief update on some of my priorities which are very much aligned with our FY16 budget request to Congress.

It is an honor to work with Chairman Kaye, my fellow Commissioners and with the amazing group of professionals who comprise the CPSC staff. Our small staff includes scientists, engineers, lawyers, compliance and communications professionals, field investigators, economists, epidemiologists, and import surveillance, operations and administrative staff. I am constantly amazed at how much we do with such a limited budget and staff. Our professionals are extraordinarily talented and certainly could be making much more money elsewhere. They stay at the CPSC because they know they are making a difference and believe in our mission of protecting the public and, particularly, our children, from unreasonably dangerous products under our jurisdiction. I very much share this mission.

I recently sat on a plane next to a woman from India who, when she learned where I work, told me she was very familiar with the CPSC and she had tears in her eyes as she said how lucky the children and parents in the U.S. are to be protected by our agency. I wholeheartedly agree with her!

It is important to me that my priorities and the CPSC priorities are aligned. It is also important to me that my fellow Commissioners and I work together to do our parts in implementing the CPSC’s agenda.

There are five key areas in which the CPSC must continue to engage and which must be funded at the appropriate levels. In order for the CPSC to carry out its critical public health and safety mission, it must be able to:

- Gather and analyze the most appropriate data on consumer product-related injuries and deaths;
- Inform and educate all populations across our diverse country concerning the real and often hidden hazards of certain products or situations;
- Effectively and efficiently monitor our ports for violative consumer products;
- Research and monitor the potential hazards to consumers of new emerging technologies being used in various consumer products; and
- Review current rules and regulations to ensure they are not overly burdensome on industry or inappropriate as a result of technological or other industry advances.

I would like to further explain these five areas and, in so doing, highlight the work my personal staff and I are doing to further support the CPSC's FY16 budget and public health mission.

(1) Gather and Analyze the Data

Within days of being sworn in as a Commissioner, I started meeting with various groups that had issues before the agency, including consumer groups, trade associations, standards development organizations, and representatives from small and large companies. Multiple times each week, I would hear arguments either for or against additional consumer safety rules, standards or initiatives. Inevitably, the data cited in support of the arguments were generated by the CPSC.

Additionally, I learned that most of our work here at the CPSC begins with an analysis of our data on consumer product-related incidents, injuries, and deaths and these data continue to be used throughout the rulemaking process. I quickly realized how vital our data are to virtually all product-safety decisions in this country and around the world. As a result, I am committed to ensuring that the CPSC gathers the best and most appropriate data possible and am constantly searching for new ideas to improve these data.

As many of you know, the CPSC collects consumer product-related incident data in a number of ways. The CPSC's statistically representative data are collected through the National Electronic Injury Surveillance System (NEISS). The NEISS was created over 30 years ago by CPSC epidemiologists. It is comprised of approximately 100 hospital emergency departments specifically selected to allow statistical extrapolation of consumer product-related injuries to the national level and assess injuries over time. The NEISS collects approximately 400,000 product-related injury reports annually from participating hospitals that represent a national estimate of over 14 million product-related injuries treated in hospital emergency departments.

The CPSC's non-statistical data are collected in several different ways. The sources of our non-statistical data have for many years included news media reports, consumer complaints to the CPSC Hotline, a limited number of death certificates, trade information, and the Medical Examiners and Coroners Alert Project.

In May 2011, the CPSC launched our searchable database, available at www.SaferProducts.gov. This database allows anyone to submit a report of harm or risk of harm related to the use of consumer products or substances within CPSC's jurisdiction. To date, there are approximately 23,300 publicly available reports on www.SaferProducts.gov, primarily

received from consumers. CPSC staff begins their analysis of this data immediately upon receipt to identify potential emerging hazards.

As I noted earlier, I have been very focused on trying to identify ways in which we may improve our data sources as well as the public's use of it. To that end, I am pleased that the FY16 budget includes:¹

- \$2.2 million for the NEISS;
- \$2.7 million for our Consumer Product Risk Management System (CPRMS), the CPSC's internal system that includes: www.SaferProducts.gov, the publicly searchable incident reporting portal; the business portal; an internal application for CPSC staff to analyze and triage incident reports; and a case management system for CPSC to respond to incidents; and
- \$900,000 for our CPSC hotline.

These funds are absolutely essential to ensure that the CPSC may do the hard work required to protect consumers from hazardous and dangerous products. At its core, the CPSC is a data- driven agency.

(2) Inform and Educate all Populations of Hazards

The CPSC FY16 budget states that one of the most cost-effective methods of reducing incidents, injuries and deaths related to consumer products is by effectively, efficiently and quickly “[c]ommunicating safety responsibilities to industry and educating the public on the best safety practices and recalled products.”² The CPSC has committed \$8 million to “raise public awareness through timely and targeted information about consumer product safety issues”³

¹ CPSC FY16 Budget Submitted to Congress, p.15.

² *Id.* at 9.

³ CPSC FY16 Budget Submitted to Congress, p. 21.

including notifying consumers about recalls as well as ongoing hidden hazards. I fully support this commitment of CPSC's precious resources to this critical priority.

a. Improving Recall Effectiveness

Because I believe one of the greatest ways of ensuring safety is to remove hazardous products from the marketplace, I am personally committed to figuring out ways to improve overall recall effectiveness of consumer products as a way to support the CPSC larger goal of "Raising Awareness."⁴

Many of you have read the *Kids In Danger Report: A Decade of Data: An In-depth Look at 2014 and a Ten-Year Retrospective on Children's Product Recalls.*⁵ I found the report both very encouraging and somewhat discouraging. It was encouraging to see that stronger standards and oversight by regulatory agencies such as the CPSC have had a measurable effect on product safety and there have been significant decreases in the past decade in incidents, injuries and deaths related to consumer products. However, it was very discouraging to read that "the majority of recalled children's products continue to remain in consumer hands (79.79%)."⁶ And that "[o]nly 14% of all 2013 recalled children's products were destroyed or fixed."⁷

The *Kids In Danger Report* concludes that companies need to devote their social media to publicizing recalls as effectively as they do marketing products. Currently, "less than a quarter of companies with a Facebook presence use it to share recall information."⁸ Companies using Facebook, Twitter, Instagram, or other social networking platforms to market toys must also use those social media tools when they have a product recall. There is more and more research being

⁴ *Id.*

⁵ http://www.kidsindanger.org/docs/research/2015_KID_Recall_Report.pdf.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ http://www.kidsindanger.org/docs/research/2015_KID_Recall_Report.pdf, pps. 14-16 and 31.

done on the implications to companies using social media in publicizing recalls. One recent study showed that companies using certain types of social media in specific ways in connection with their recall announcements experienced lower stock price reductions than those companies not using social media.⁹ Perhaps research such as this will encourage companies to be more creative in using social media to get dangerous products off the market. I intend to speak to industry about this issue as much as possible. Consumers deserve the same respect for their safety as companies give to their purchasing dollars.

b. *Hidden Hazard: TV and Furniture Tip Overs*

Another one of my priorities is increasing awareness of the dangers associated with the hidden hazards of TV and furniture tip overs. There were 430 tragic and preventable deaths between 2000 and 2013 involving young children trapped or crushed after a dresser, TV, bookcase, table, appliance, or other large item fell on them.¹⁰ Our statistics show that a child dies every two weeks from a piece of furniture, a TV, or a piece of furniture and a TV falling onto him or her and every 15 minutes, someone is taken to an Emergency Department due to a tip-over incident.¹¹

I am delighted that Commissioner Mohorovic is also committed to this issue. Together, we can leverage our positions as Commissioners to bring more awareness to this issue. We met

⁹ *The Role of Social Media in the Capital Market: Evidence from Consumer Product Recalls*, JOURNAL OF ACCOUNTING RESEARCH, Lian Fen Lee, Amy Hutton and Susan Shu, Accepted manuscript online: 3 FEB 2015 01:03AM EST, DOI: 10.1111/1475-679X.12075, p. 33. (“First, we find that corporate social media, in general, attenuates the negative price reaction to product recall announcements. This finding is consistent with social media increasing the effectiveness of the recall process itself including limiting harm, as well mitigating the repercussions of the recall for the firm’s brand equity and reputation.”).

¹⁰ *Product Instability or Tip Over Injuries Associated with Televisions, Furniture and Appliances: 2014*, CPSC August 2014, p. 2.

¹¹ <http://www.cpsc.gov/en/Safety-Education/Safety-Education-Centers/Tipover-Information-Center/>

with major retailers of both furniture and electronics at the International Consumer Product Health and Safety Organization Annual Conference in February, to brainstorm ideas beyond just education and we will be following up on these to try to make some real progress in this area

In FY15, the CPSC is dedicating \$400,000 to a media campaign “*Anchor It!*” to reach all consumers and educate them on the serious dangers of TV and furniture tip overs. This national campaign encourages everyone to anchor TVs and furniture appropriately to avoid these completely preventable serious injuries and deaths. Going forward in FY16, education and outreach on TV and furniture tip overs will continue to be one of the areas the CPSC’s Communications department works on as part of the \$8 million allocated to them.

(3) Monitor our Ports

During calendar year 2013 alone, more than 235,000 importers imported approximately \$723 billion of consumer products under the CPSC’s jurisdiction.¹² That averages nearly \$2 billion per day in imports of consumer products under the CPSC’s jurisdiction.¹³

And, since 2008, four out of five product recalls in the United States have involved an imported product.¹⁴ As you know, the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted, in part, because of a wave of noncompliant imported children’s products.¹⁵ As part of the CPSIA, the CPSC was required to develop a risk assessment methodology (RAM) and work with U.S. Customs and Border Protection (CBP) to address the influx of noncompliant children’s products and to date, on a pilot basis, our Office of Import Surveillance has done so.¹⁶

¹² CPSC FY16 Budget Request to Congress, p. 9.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

The CPSC's FY16 budget prioritizes scaling up the pilot import surveillance program nationwide. The FY16 budget further requests Congress to authorize a product safety user fee in FY16 with collections beginning in FY17 in order to fund the expansion of the surveillance program to meet the requirements of the SAFE Port Act of 2006 and Section 222 of the CPSIA.

I have made it one of my priorities to understand the CPSC's critical import issues since I began as a Commissioner. To that end, I visited our port in Los Angeles and Long Beach and discussed these issues with CPSC's import surveillance staff at headquarters and in the field. I also toured the National Commercial Targeting and Analysis Center, and earlier this year, I met with CBP and Consulate staffs in Guangzhou and Hong Kong to discuss many of the complicated safety and import issues that result from a large percentage of this country's manufactured goods coming from abroad. In addition, I have been discussing the expansion of the RAM program, the requested user fees, the comments to our proposed rule on Certificates of Compliance designed to comply with the spirit of Presidential Executive Order 13659 requiring electronic "single window entry," and the development of our pilot program on e-filing with our stakeholders and sister agencies. All of these issues are interconnected, necessary, and critically important to a comprehensive and well-grounded consumer product safety import surveillance program.

It is for these reasons that I fully support our proposal for imports in CPSC's FY16 budget.

(4) Research New Emerging Hazards

CPSC is responsible for researching new and emerging hazards. The earlier the CPSC identifies trends in incidents or injuries from unreasonably dangerous products, the more quickly we may move to eliminate those dangers.

The CPSC Directorate of Epidemiology dedicates much of its time to analyzing the data that I described earlier to identify these types of trends. However, this “early trend identification and analysis” has limitations when we are dealing with a chronic hazard.

Another approach to identifying new and emerging hazards is to focus on key materials or products in which advances in technology and new technical discoveries have created opportunities for industry to make products with these new materials or new product prototypes. The CPSC’s continuing work on nanotechnology is just that.

Nanotechnology “enables scientists to produce a wide array of materials in the size range of 1 to 100 nanometers (nm), with unique physical and chemical properties that can be incorporated into products to improve performance in areas such as greater strength, flexibility, stain resistance, or cleaning ability.”¹⁷

The National Science Foundation estimates that over \$3 trillion will be spent around the world on incorporating nanotechnology into finished consumer products by the year 2020.¹⁸ Nanotechnology will become increasingly prevalent in all consumer products over time, yet not much is known about the safety of these new and innovative materials when they are included in consumer products. There are potentially dangerous implications for using these nanomaterials in consumer products.

The CPSC has followed the lead of other federal government agencies as well as the National Nanotechnology Initiative (NNI) in conducting specific research on nanotechnology and the commercialization of products containing nanomaterials. The CPSC has been a part of the NNI since 2003 and during the past 12 years, the CPSC has committed an average of just under \$1 million per year to studying the question of human exposure to nanotechnology in

¹⁷ CPSC FY16 Budget Request to Congress, p. 12.

¹⁸ *Id.*

consumer products. However, due to the complexities of nanotechnology and the rapidly evolving technology of developing nanomaterials, the CPSC does not yet have the appropriate testing methods for characterizing and quantifying nanomaterials; the capability to identify, characterize and readily quantify consumer exposures to nanomaterials in consumer products; the capability to assess the potential health risks of exposure to nanomaterials in consumer products, or the ability to obtain reliable data on identifying new products containing nanomaterials or information on consumer use and interaction with these products once they are introduced into the marketplace.

For these reasons, I support the major investment of an additional \$5 million for the creation of the Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION) in the CPSC FY16 budget. This allocation is necessary to adequately fund research on nanomaterials and the development of technology to test, quantify and analyze nanomaterials and our exposures to those same nanomaterials in consumer products and most importantly to determine what, if any, hazards result from such exposures.

(5) Rule Review

Sometimes, government overlooks outdated regulation when it is clear that new information, data, or technology provides a better solution to a historical problem. The CPSC should regularly revisit its regulations, especially when it is clear that certain rules are potentially unduly burdensome to various stakeholders. Presidential Executive Orders 13563 *Improving Regulation and Regulatory Review*, and 13579 *Regulation and Independent Regulatory Agencies*, state the same principles.

I proposed an amendment to the FY15 operational plan that was accepted and that directs staff to review the more than 40-year-old fireworks rule in light of current fireworks technology

and provide the Commission with a briefing package on options to possibly revise this rule. After visiting fireworks manufacturing, production and testing facilities in Liuyang, China several months ago, and understanding the burdens on manufacturing and testing to the current CPSC standard, I was convinced this standard needed to be reviewed. I look forward to receiving a recommendation from our technical staff on this issue in FY15 and to the notice of proposed rulemaking included in the CPSC FY16 budget.

Another issue with which I have become intimately familiar is the desire of many of the CPSC's key stakeholders, as well as all five Commissioners, to reduce certain third party testing burdens for children's products while assuring compliance with all applicable rules, bans, regulations, and standards. It is my understanding that many of you on this Subcommittee are deeply concerned with CPSIA's potentially burdensome third party testing requirements for children's products as well.

In FY15, Congress provided the CPSC with \$1 million to conduct work targeted at meaningful reduction of third party testing costs of children's products consistent with assuring compliance with all applicable rules, regulations, bans, and standards. I have spent much time on this issue since I arrived at the CPSC. I have had detailed discussions with staff and many stakeholders, visited toy manufacturers and testing facilities both in the U.S. and China, attended the CPSC Workshop on this issue, and reviewed stakeholder comments. I know that all five Commissioners are deeply committed to this issue and I am hopeful that we are going to see real, concrete change soon. I expect to receive a recommendation from staff by the end of the FY15 and hopefully, as is directed in the FY16 budget, receive a recommendation for a final rule next year.

Conclusion

Finally, this is my first job in government and I continue to learn many new things every day. This is one of the most rewarding positions I have held in my career. As I said before, I am grateful for this opportunity to be a Commissioner at the CPSC and to testify before you here today about these extremely important and mission-critical issues.

There are some discouraging things about this job such as the length of time it takes to get a mandatory standard passed when industry simply will not pass an appropriate voluntary standard that adequately reduces the risks of death or injury.

I have learned much about Sections 7 and 9 of the Consumer Product Safety Act (CPSA) that are unique to the CPSC. These provisions require the CPSC to not only do a cost/benefit analysis of the regulatory choice we have made—a requirement of all regulatory agencies under Section 553 of the Administrative Procedure Act which I very much support—but also of each and every regulatory choice we rejected. This is extremely burdensome and time consuming and results in needless delay in passing safety standards that are truly needed to properly protect the public.

When Congress relieves the CPSC of the unique requirements of Sections 7 and 9, the rulemaking process moves forward more effectively and efficiently—as it did when a bipartisan Congress tasked the CPSC with passing drywall safety rules, and with mandatory rulemaking under CPSIA on durable infant products. Since the passage of CPSIA seven years ago, the CPSC has issued 14 final rules on durable nursery products. Compare that with a total number of 10 rules completed since 1981 when Congress amended Sections 7 and 9 of the CPSA. History shows us that when Congress wants effective, efficient, and timely rulemaking, Congress directs CPSC to use APA Section 553 rulemaking. The APA Section 553 process is the most

appropriate process to use for critical consumer product safety rules. I am hopeful that Congress will provide the CPSC with many more opportunities to address unreasonable consumer product hazards by conducting rulemaking under APA Section 553 in the future.

I want to end on a positive note and say that that I am proud of having been a part of the CPSC's work this past year and a half. One example of government working at its best was our rulemaking on small rare earth magnets sets.

In 2012, pediatric gastroenterologists came to the CPSC when they found a precipitous increase in young children being severely injured from swallowing these tiny magnets with eight times the magnetic force as is allowed in children's products. When more than one was swallowed, the child's intestines would clamp together from the magnetic force causing blood flow to be cut off and, because the parents often did not know the child had swallowed magnets and the first symptom was vomiting, the diagnosis was frequently delayed until permanent intestinal damage had been done. The CPSC worked with various industry members including retailers and others to educate people on the hazard, do recalls and, ultimately, prepare the mandatory standard that requires magnets sold in magnet sets to either be the much-weaker strength allowed in children's products or be large enough that a child cannot swallow them. The CPSC worked with interested parties and stakeholders to get this right. I am proud that I was able to be a part of this process.

Thank you again Chairman Burgess, Ranking Member Schakowsky, and the Members of the Subcommittee on Commerce, Manufacturing and Trade, for this opportunity to submit this statement for the record.

I am happy to respond to any questions that you may have upon my return to the United States.