

**TESTIMONY OF PETER A. FELDMAN,
COMMISSIONER,
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION**

Before the

**HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON INNOVATION, DATA, AND COMMERCE**

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

JULY 23, 2024

Introduction

Chairman Bilirakis, Ranking Member Schakowsky, and members of the Subcommittee, thank you for the opportunity to appear before you today.¹ This testimony will address the Consumer Product Safety Commission's (CPSC) budget request and highlight the agency's important work to execute its safety mission, keeping Americans safe from unreasonable risk of injury and death associated with consumer products.

Our budget request is a critical planning and management tool, reflecting CPSC's vast jurisdiction and the importance of its safety mission. While I believe we can do more with less, there are also strategic areas where additional resources at CPSC could be helpful, including further expansion of our compliance, field, and import surveillance capabilities. To that end, I have worked to make investments in our core mission, within our existing appropriations with majority support of the Commission over the years. I have also voted against budget requests that do not fully reflect my priorities. I believe our budget requests should be rooted in fiscal reality and be mindful of the current budget environment. Budget requests that are not grounded in realistic assumptions about our appropriations level are not useful for planning and management purposes.

Good management is also based on measurable results. Strategic increases where we can demonstrate a return on investment are worthy of Congressional consideration. Since I last appeared before this Subcommittee, I am pleased to report there have been a number of positive

¹ This written testimony reflects my own views. The oral statement and responses to questions are also my own and do not necessarily reflect the views of the Commission or any other Commissioner.

changes at CPSC. There continues to be room for improvement, but I am proud of the progress we have made. Please allow me to discuss several of these initiatives.

CPSC's Work at America's Ports

CPSC's port inspectors are the front-line workers who assess, screen, and interdict dangerous consumer goods entering the United States before they ever make it into consumer hands. These inspectors physically screen cargo off container ships, at border crossings and airports, and increasingly, in de minimis e-commerce shipments. These shipments often originate in countries that do not respect our laws, such as China. For American families, every seizure of a dangerous or violative product is a commensurate reduction in the risk of illness, injury, or death. To put it simply, CPSC port inspectors save American lives.

During the COVID-19 pandemic, previous Commission leadership chose to withdraw CPSC's presence at the ports, sending our inspectors home for months on end. The acting chairman at the time then concealed the true extent of our operational readiness from Congress and the American public.² During this time, screenings and interdictions dropped to zero, despite the full resumption of trade and partner agencies never having abandoned their posts at the ports. That was unacceptable to me, so I pushed to restart this essential function and to secure the largest port inspector hiring blitz in the agency's history. My initiative maximized funds available to the Commission under the American Rescue Plan Act of 2021 for this purpose, and further expanded this hiring in the Fiscal Year (FY) 2022 Operating Plan and in subsequent

² See Letitia Stein & Brett Murphy, *Toys at Risk for Lead, Poison After US Stopped Inspections Amid COVID-19*, USA TODAY, Dec. 11, 2020 (quoting Sen. Richard Blumenthal) ("The total lack of inspections is absolutely inexcusable, especially because of the concealment").

years. Screenings are now at an all-time high, and our team is working more effectively than ever.

CPSC expanded the number of inspectors by almost 65 percent during this time, and increased its footprint from 17 to 24 ports, prioritizing both high volume ports and those regularly processing inbound e-commerce shipments. Screenings, which had dropped to zero during the pandemic, have rebounded with an over 350 percent increase. To put it another way, for every product screened in FY2020, CPSC port inspectors screened more than 3.5 products in FY2023. These inspections have led to increased seizures. In fact, in FY2023, our inspectors, working in partnership with United States Customs and Border Protection (CBP), intercepted over 13.5 million violative products, an increase of over 10 million more units than we intercepted in FY2020. Each of these seizures represents a dangerous product that did not reach American homes, and almost certainly, emergency room visits that never happened, homes that are still standing, and funerals that were never planned.

CPSC's Enforcement of Its Statutes and Regulations

When CPSC finds hazardous or violative products being shipped into the country or posted online, the Office of Compliance and Field Operations is our enforcement arm that works to issue violation notices, negotiate recalls, and pursue civil and criminal penalties where appropriate. When I arrived at CPSC, in 2018, this critical team needed attention after significant neglect. For example, the budget for the Compliance headquarters team had been flatlined since 2016, previous agency leadership had moved inexplicably to disband the Children's Product Defect Team, and the troubling decline in CPSC enforcement activity was

apparent to all. That changed in 2020, when I secured a 10 percent increase in funding for this team working within our existing appropriation, the first such increase in years. I worked to secure an additional 30 percent increase the following year, representing the largest single investment in the office's history, significantly strengthening agency enforcement operations. In FY2022, I also successfully restored the Children's Product Defect Team, because protecting children is our highest priority.

In FY2023, the most recent year for which we have complete data, CPSC successfully negotiated 313 voluntary recalls, representing the highest number in recent years and an almost 35 percent increase over our FY2021 numbers. While our recall numbers are influenced by externalities, including supply chain issues and the overall safety of products in the marketplace, the Commission's current experience clearly reflects a CPSC that has recommitted itself to enforcement. CPSC's civil penalty cases tell a similar story. In FY2023, our agency collected more than ten times the amount of civil penalties it collected in FY2019. The momentum continues. To date in FY2024, the Commission has already negotiated fines totaling more than three times what it collected in the entirety of FY2021. CPSC also saw the first ever corporate criminal convictions in a case involving a Chinese appliance manufacturer and its U.S. subsidiaries. In that matter, the domestic subsidiary pleaded guilty to criminal failure to report under the Consumer Product Safety Act (CPSA) and was sentenced to pay a \$500,000 criminal fine which was part of a \$91 million total monetary penalty against the manufacturer and its subsidiaries. Two corporate executives for the domestic subsidiary were tried separately and found guilty of criminal violations of the CPSA. Sentencing for the executives is expected later this year and each faces up to 10 years imprisonment.

I have been critical of certain civil penalty cases where I believe this Commission settled for less than American consumers deserved.³ I continue to advocate for a coherent civil penalty regime that consistently applies the prescribed factors and punishes the most egregious conduct with maximum penalties. I also believe the Commission should make better use of nonmonetary equitable remedies, such as third-party monitors, particularly for recidivist firms.⁴ Monitorships not only promote full compliance with the law, but also shift the financial burden of compliance monitoring from American taxpayers to the firm itself. Nevertheless, the Commission is bringing more consequential cases that matter both for American consumers and the future of this agency. CPSC is a more muscular agency than it used to be, and those who violate the law or import low-quality goods from abroad should be on notice: this Commission is focused and resolved to enforce our statutes.

CPSC's Timely Warning to Consumers Under Section 6(b)

Sometimes firms refuse to cooperate with recalls, or simply don't acknowledge CPSC. This is increasingly the case with Chinese firms who access the U.S. market via online platforms but are unreachable when problems arise. We have also moved against well-known domestic brands who later agreed to recalls. In these instances, CPSC is empowered to warn consumers directly, quickly, and unilaterally, without the consent of the firm. For years, the prevailing orthodoxy

³ *See, e.g.*, COMM'R PETER A. FELDMAN, STATEMENT OF COMMISSIONER PETER A. FELDMAN ON "WOEFULLY INADEQUATE" PENALTY AGREEMENT WITH VORNADO AIR, LLC (2022) (expressing disapproval for the proposed settlement with the offending firm because it was too lenient).

⁴ *See* COMM'R PETER A. FELDMAN, STATEMENT OF COMMISSIONER PETER A. FELDMAN OPPOSING SETTLEMENT AGREEMENT WITH THE TJX COMPANIES, INC. (Aug. 2, 2022) ("Given the size of the company and the nature of the conduct at issue, even a maximum monetary penalty ... would lack any serious deterrent effect. To promote full compliance with the law, additional injunctive relief in the form of a third-party compliance monitor should have been required").

among CPSC stakeholders held that our statute prevented the agency from warning consumers about safety hazards. The Commission has dramatically increased its use of these kinds of notices, issuing nearly 80 of them since FY2023, warning American families about everything from Peloton treadmills to Onewheel self-balancing skateboards to magnet toy sets and infant sleepers that violate the Commission’s Infant Sleep Rule and the Safe Sleep for Babies Act.⁵

It is true that for many years the Commission did not take full advantage of its authorities. But that has changed. I am pleased to announce that in FY2023, the Commission issued 26 unilateral safety notices, more than the five previous fiscal years combined. This year, the Commission has already outpaced last year's mark, issuing 53 unilateral notices as of last week.

Online Marketplaces and e-Commerce

E-commerce surveillance and enforcement remains a major challenge for CPSC. When I last appeared before this subcommittee, I testified that the Commission must rethink its market surveillance capabilities including with respect to e-commerce and new and emerging

⁵ *CPSC Warns Consumers: Stop Using the Peloton Tread+*, U.S. CONSUMER PROD. SAFETY COMM’N (Apr. 17, 2021), <https://www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Warns-Consumers-Stop-Using-the-Peloton-Tread>; *CPSC Warns Consumers to Stop Using Onewheel Self-Balancing Electric Skateboards Due to Ejection Hazard; At Least Four Deaths and Multiple Injuries Reported*, U.S. CONSUMER PROD. SAFETY COMM’N (Nov. 16, 2022), <https://www.cpsc.gov/Newsroom/News-Releases/2023/CPSC-Warns-Consumers-to-Stop-Using-Onewheel-Self-Balancing-Electric-Skateboards-Due-to-Ejection-Hazard-At-Least-Four-Deaths-and-Multiple-Injuries-Reported>; *CPSC Warns Consumers to Immediately Stop Using High-Powered Magnetic Ball Sets Due to Ingestion Hazard; Violation of the Federal Safety Regulation for Toy Magnet Sets; Sold by Dongguan Qihangren Trade*, U.S. CONSUMER PROD. SAFETY COMM’N (July 18, 2024), <https://www.cpsc.gov/Newsroom/News-Releases/2024/CPSC-Warns-Consumers-to-Immediately-Stop-Using-High-Powered-Magnetic-Ball-Sets-Due-to-Ingestion-Hazard-Violation-of-the-Federal-Safety-Regulation-for-Toy-Magnet-Sets-Sold-by-Dongguan-Qihangren-Trade>; *CPSC Warns Consumers to Immediately Stop Using DHZJM Baby Loungers Due to Suffocation Risk and Fall and Entrapment Hazards; Violations of Federal Safety Regulations for Infant Sleep Products; Infant Death Reported*, U.S. CONSUMER PROD. SAFETY COMM’N (June 6, 2024), <https://www.cpsc.gov/Newsroom/News-Releases/2024/CPSC-Warns-Consumers-to-Immediately-Stop-Using-DHZJM-Baby-Loungers-Due-to-Suffocation-Risk-and-Fall-and-Entrapment-Hazards-Violations-of-Federal-Safety-Regulations-for-Infant-Sleep-Products-Infant-Death-Reported>.

distribution models.⁶ That is as true today as it was in 2019, but with even greater urgency. In 2022, total e-commerce sales in the United States totaled more than one trillion dollars, representing an eight percent increase over the prior year.

Since that time, CPSC has stood up its eSAFE team within the Office of Compliance and Field Operations to monitor online marketplaces for banned or recalled product listings. When eSAFE finds recalled and banned products, it issues formal notifications to each seller or website for takedown or other enforcement. These sales are illegal; it is against the law to sell recalled consumer products, whether new or used.

There is consensus on the current Commission that major e-commerce platforms can do more to protect consumers by preventing both the listing and the sale of recalled products.⁷ I have advocated, along with my colleagues, that firms should incorporate access to recall information on their platforms to allow consumers to identify recalled products and seek remedies.⁸

The commission is currently litigating in this area.

I remain concerned about new market entrants, including Shien and Temu, and believe a review of these and other firms is warranted to ensure compliance with CPSA.

⁶ *Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission? Before the Subcomm. on Consumer Protection & Commerce of the H. Comm. On Energy & Commerce*, 116th Cong. 37 (2020) (Statement of Peter A. Feldman, Comm'r, U.S. Consumer Prod. Safety Comm'n).

⁷ See Letter to Mark Zuckerberg, Chief Exec. Officer, Meta Platforms, Inc. (June 6, 2023), https://www.cpsc.gov/s3fs-public/Letter-to-Meta-CEO-Zuckerberg-from-CPSC-Commissioners_1.pdf?VersionId=E38GPt0RO0VmELC_QBP67Xf_a27uqbwy (note: Commissioner Dziak joined CPSC in March 2024).

⁸ *Id.*

CPSC's Accountability to the American Taxpayer

Another important change at the Commission during my tenure has been an increased focus on accountability and stewardship of the taxpayer resources entrusted to CPSC. For years, inspector general (IG) recommendations went unaddressed, including key management recommendations relating to the 2019 Clearinghouse Data Breach. That is why I implemented new metrics for agency accountability, which were adopted in the FY2022 Operating Plan. Specifically, by creating new performance metrics, my amendment tied financial bonuses for senior agency staff either to the successful implementation of IG recommendations or to clear explanations of why they could not be implemented. That year, CPSC staff closed more IG recommendations (69) than the previous three fiscal years combined (16, 26, and 23, respectively). The IG agreed that FY2022 marked a new emphasis on closing recommendations.⁹ Forty recommendations were closed in FY2023, another relatively high mark for the Commission.

CPSC must similarly remain focused on implementing the recommendations of the U.S. Government Accountability Office (GAO). Building off the success of my amendment to expedite closure of IG recommendations, I authored a provision in the FY2023 Operating Plan to apply the same executive bonus considerations for GAO recommendation closures. At the beginning of that fiscal year when my provision went into effect, CPSC had not closed any of the outstanding GAO recommendations relating to improving processes for addressing product defect cases, which had been pending since 2020. After my provision was adopted, CPSC staff closed all of these recommendations that fiscal year. In FY2023, GAO issued an additional three

⁹ 22-O-4 CPSC OFF. OF INSPECTOR GEN. SEMIANN. REP. TO CONG. (2022) (Statement of Christopher Dentel, Inspector General) (“CPSC has placed greater emphasis on closing recommendations and over twice as many recommendations were closed this reporting period as last”) (internal citations omitted).

recommendations relating to improving preparedness and preventing product examination disruptions. CPSC staff successfully implemented all of these recommendations in short order. There are currently no outstanding GAO recommendations.

CPSC's Tribal Outreach

We must meet consumers where they are and recognize that CPSC exists to protect the safety of all Americans. I am proud of the outreach to tribal communities I have led over the past several years. Unintentional injury and mortality rates for American Indian and Alaska Natives are around two-and-a-half times higher than the average for Americans overall. That is why I have prioritized travel to hear directly from native communities.

During a 2021 meeting with the Eastern Shoshone Tribe on the Wind River Reservation in central Wyoming, tribal leaders helped shape my thinking on how to communicate more effectively CPSC's safety messages to those communities. The Wind River Reservation, like many western and rural communities, faces issues with internet access and reliable connectivity. Based on their suggestions, CPSC launched an effective and responsive billboard and radio campaign in 10 states with significant Native American populations, highlighting Safe Sleep and Carbon Monoxide Poisoning Prevention safety messaging, specifically targeting those populations using Native American models and voice actors. The campaign copy and graphics were informed by insights gleaned through tribal contacts developed through my official travel and reviewed by them for cultural competency. The Intertribal Council of Arizona deserves special recognition for its role in this effort. This initiative is ongoing, and I understand the

CPSC Office of Communications is exploring options for additional content to reach this community.

CPSC's Use of Technology to Protect Consumers

The Commission's work has become more efficient as the agency finds ways to use new technologies. Artificial intelligence represents one of the most consequential long-term investments the Commission can make to improve mission capabilities and keep Americans safe.

My initiative to establish the Office of Chief Technologist is paying dividends in the form of our Data Lake. This effort will enable CPSC to use artificial intelligence (AI) to analyze the vast data sets that we regularly receive from a variety of sources. CPSC collects data from manufacturers and retailers reporting under Section 15(b) of the CPSA, online product reviews, partner hospitals reporting through the National Electronic Injury Surveillance System (NEISS), coroners and medical examiners, and directly from consumers via our hotline and saferproducts.gov. Currently, the Data Lake is a centralized, cost-effective solution for exploring, sharing, and accessing CPSC data. Access to common data eliminates silos between various CPSC teams and allows for better intra-agency communication. Through AI predictive analytics, the Commission will be able to efficiently identify anomalies and gain important insight into safety issues that might otherwise go undiscovered. If properly implemented, these tools quite literally will allow us to identify smoke before the fire.

The Commission is making better use of technology to improve efficiency and targeting at the ports. This work is ongoing, and the opportunity for expanding these capabilities remains

intriguing. Just last week, the Commission unveiled a new Import Shipping Tracking Tool to allow importers to better track the status of their shipments in real time, something that had previously been available only by phone and e-mail.¹⁰ This year, the Commission is scheduled to finalize its eFiling Rule to modernize the agency's approach for filing certificate data for imports. This initiative will allow importers of regulated consumer products to electronically file certificate of compliance data with CBP. Our port inspectors also benefit from access to the Data Lake. While the Data Lake currently allows CPSC port inspectors to analyze hazard patterns and calculate risks for targeting inbound shipments, future expansion will greatly improve our enforcement and targeting capabilities, including the integration of de minimis shipment data.

The eSAFE program expands CPSC's surveillance capabilities online and allows the agency to more accurately target suspect e-commerce listings for takedowns and other enforcement. In fact, e-Safe take down requests have more than tripled from FY2021 to FY2023. Last fiscal year, CPSC secured the removal of almost 60,000 units of violative products. By leveraging the Data Lake and AI image recognition and natural language processing, the Commission will be able to better detect violative products, emerging hazards, repeat offenders; pursue take downs of dangerous product listings; and focus our resources to identify and respond to problems earlier than otherwise possible.

Safeguarding CPSC Systems and Improving Cybersecurity

Strengthening CPSC's cybersecurity is an ongoing, resource-intensive effort. CPSC is entrusted to protect highly sensitive data, including health records, personally-identifiable information

¹⁰ U.S. CONSUMER PROD. SAFETY COMM'N, CPSC Import Shipment Tracking Tool, <https://www.cpsc.gov/Imports/CPSC-Import-Shipment-Tracking-Tool>.

(PII), investigative documents, and market-sensitive data. CPSC must learn from past mistakes in order to improve. For example, in the 2019 Clearinghouse Data Breach, some of the agency's most sensitive data became compromised. While the inspector general issued 40 recommendations to improve processes and security, the Commission largely ignored these recommendations for over a year. That changed with new agency management and clear direction from the Commission in the FY2022 Operating Plan to prioritize this work. As a result of my amendments to this plan, the Commission began implementing these recommendations and established security policies to safeguard consumer PII, health data, and confidential business information. While work remains, I am pleased with the Commission's progress thus far.

CPSC's technology is only as good as its security. That is why I led the effort to ban TikTok from CPSC devices at the start of FY2022, making CPSC the first federal agency outside of the intelligence community to do so. While agency leadership at the time strongly disagreed, TikTok represented and continues to present a credible threat to the integrity of the agency's data systems and other critical infrastructure.¹¹ This threat, coupled with the platform's ownership by a hostile foreign actor, was clear to most. I am pleased that the Commission renewed this ban at the start of FY2023, prior to the government-wide prohibition that is currently in effect.

¹¹ See DISSENTING OPINION OF CPSC ACTING CHAIRMAN ROBERT ADLER ON COMMISSION VOTE TO IMPLEMENT ROUGHLY 50 AMENDMENTS TO FY 2022 OPERATING PLAN WITHOUT NOTICE OR AN OPPORTUNITY FOR DELIBERATION OR DISCUSSION (2021) ("Why my colleagues singled out TikTok from the many other apps that can be abused remains a mystery").

Harnessing the Private Sector to Improve Safety

In June 2024, CPSC launched an online Business Product Safety Complaint portal harnessing market forces and private sector knowledge to improve consumer safety.¹² Commissioner Dziak and I have long advocated for a formal and centralized trade complaint process at CPSC. This new portal will provide firms, importers, and other market participants an opportunity to alert the Commission to dangerous or violative products more easily.

Commissioner Dziak and I worked with CPSC staff to create this portal based on a roundtable meeting we held with stakeholders in Utah in February 2022. At that roundtable and others like it, we heard the frustration of firms that are forced to compete against unscrupulous market participants who seek unfair advantage by skirting mandatory safety requirements. Businesses often find out about unsafe products before the Commission, and they have every incentive to alert regulators about competitor products. Until now, they have not had a convenient mechanism to do so.

This portal will allow CPSC access to timely market intelligence and will serve as a force multiplier in our safety efforts. It is our hope that the business community will embrace this new tool and Commission staff will use these reports to make safety assessments and take appropriate enforcement actions.

¹² U.S. CONSUMER PROD. SAFETY COMM'N, Business Product Safety Complaint, <https://www.cpsc.gov/Business-Product-Safety-Complaint>.

CPSC's Future

Looking forward, I intend to keep CPSC focused on its core safety mission -- protecting Americans from the unreasonable risk of injury and death from the consumer products they use every day. This includes operating within our statute, conducting recalls for bona fide manufacturing and design defects, and pushing back against regulatory overreach.

Vigorous debate about policy is a sign of a healthy and well-functioning multi-member Commission. Disagreements exist, but I am pleased to report that comity among the Commissioners is as high as I have experienced since my arrival. This, and our recent successes, would not have been possible without the hard work of our Chairman, Alex Hoehn-Saric. I want to acknowledge and thank him for his leadership. I also want to recognize my colleagues, Commissioners Trumka, Boyle, and Dziak, all of whom share the goal of keeping American consumers safe.

Thank you for your attention. I look forward to your questions and our continued partnership in helping to safeguard American consumers.