



**Testimony of Ann Marie Buerkle
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United States Consumer Product Safety Commission**

“Overseeing the Consumer Product Safety Commission”

**United States Senate
Committee on Commerce, Science, and Transportation
Subcommittee on Consumer Protection, Product Safety,
Insurance, and Data Security**

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Chairman Moran, Ranking Member Blumenthal, and distinguished Members of the Committee: thank you for holding today's hearing on the Consumer Product Safety Commission. I had the honor of serving in the House of Representatives, and I am glad to be back on Capitol Hill in my capacity as a Commissioner at CPSC. I hope that today's hearing will strengthen our partnership to keep consumers safe from unreasonable risks of injury.

I have been a Commissioner at the agency since July of 2013. Throughout that time, what has continued to impress me is the dedication of CPSC's staff. The mission of safety is taken very seriously. I am also thankful for the tone set by our Chairman and joined by my colleagues. We often differ significantly on matters of policy, but those differences are discussed in a mutually respectful manner.

The regulated community has also impressed me, not only with their eagerness to understand and comply with our regulations, but also with their entrepreneurial drive to innovate and advance safety. It is crucial to our mission that CPSC builds strong, productive relationships with all stakeholders, especially the regulated community. Inspiring cooperation rather than hostility will yield quicker introduction of safer designs as well

as more timely removal of defective products, all of which ultimately benefit the consumer. That is one reason why I am deeply troubled by recent pronouncements that the Commission will seek higher civil penalties, changes to an important program known as retailer reporting, and the ill-considered proposals that would undercut our successful voluntary recall program and 6(b) rules. Without question, these initiatives undermine any engagement and collaborative efforts.

Consumer safety is our top priority, but safety can be achieved in a balanced, reasonable way that does not unnecessarily burden the regulated community, deprive consumers of products they prefer, or insert government into the market where it does not belong.

One of the most important CPSC activities is import surveillance. Stopping unsafe products at the ports is a critical strategy—it prevents harm to consumers. Recalls are nowhere near as effective, and they impose much larger costs on everyone involved.

CPSC's import surveillance has improved significantly over the last decade. CPSC has developed a Risk Assessment Methodology (RAM), fulfilling the

requirement of Section 222 of the Consumer Product Safety Improvement Act (CPSIA), and is using it to target shipments that pose greater risks. CPSC now has employees who are located fulltime at the busiest ports of entry, and it has field investigators located throughout the nation who can reach many other ports. CPSC also has developed a strong partnership with Customs and Border Protection (CBP). Just last month, the Commission unanimously agreed to spend \$3 million (available as a result of hiring shortfalls) this fiscal year to enhance our in-house control over the existing RAM system.

The President's budget request for FY 2016 seeks authority for CPSC to impose a so-called "user fee" on imported consumer products so it can finance an expansion of the RAM system as well as boost the number of staff working on import surveillance. While import surveillance is an extremely important part of our mission, I do not agree with the current approach. Import safety is a complex issue and its components should be examined individually as well as work together collectively.

First, before any amount of funding is requested, let alone appropriated, the "requirements analysis" that the agency is planning to conduct should be

completed. This study is to identify what capabilities an expanded RAM system should have. Until there is a consensus on what is required to expand the RAM, and a timetable to do so, any request for additional funding is premature.

Second, even when we know what is required for an expanded RAM, I do not believe that a user fee is the appropriate way to pay for it. A fee that is not matched by any benefit is unfair and of doubtful constitutionality. In any case, we should think long and hard before imposing even greater costs on American businesses, especially smaller ones.

Another piece of this complex issue is the proposed regulation requiring electronic filing of information documenting compliance with our mandatory standards. That proposal, which the Commission launched in 2013 prior to my arrival, was developed with minimal stakeholder engagement, and drew strenuous opposition. At my urging, CPSC has taken steps to engage the trade community and develop a pilot of an electronic filing program before proceeding with a final rule. While I am pleased to see the efforts at engagement, it was my hope that stakeholder feedback on the proposed rule would guide the development of the pilot. Instead, the

pilot currently being discussed retains many features of the proposed rule that met with such opposition in the first place.

I see no reason to be wed to the original proposal. CPSC is an independent agency, so we are not bound by Executive Order 13659 nor is there any statutory requirement for CPSC to move to electronic filing. In my judgment, it would be better to proceed incrementally with a series of smaller pilots rather than a kitchen sink, try-everything-at-once approach. Let's see if we can operate smoothly in simple cases before adding more complex scenarios.

Moving to electronic filing, streamlining the import process, and enhancing our targeting abilities are all worthy goals, but there are many additional steps that must be taken before we move ahead with a major expansion of our import surveillance system. I want to see us do it right rather than in haste.

One of my highest priorities at the Commission has been to reduce testing burdens faced by manufacturers. I was a Member of Congress when we passed Public Law 112-28, which relieved testing burdens directly in several

ways and directed the Commission to find other ways. When I joined the Commission, I was surprised to see how little progress had been made. At my constant urgings, CPSC is taking the matter more seriously. I am grateful to Chairman Thune for his personal attention to this matter and to the entire Congress for dedicating \$1 million to the effort in CPSC's Fiscal Year 2015 appropriation. In April of this year, I sent a memorandum to the leaders of this subcommittee and others describing CPSC's efforts in some detail. Since that time, the Commission has voted to fund another promising research project identified by our Small-Business Ombudsman and the Commission is anticipating a small burden reduction package to come before us this summer. Nevertheless, nearly four years after passage of Public Law No. 112-28, stakeholders have received virtually no relief in response to its mandate. Meanwhile, the promulgation of additional mandatory standards, pursuant to CPSIA section 104, has added to these third-party testing burdens. In addition, the agency has failed to act on the separate statutory mandate to report to Congress on opportunities for burden reduction that require new legal authority. The CPSC staff recommended a substantial opportunity of this sort to the Commission over two years ago, and others have been identified more recently. We should be more engaged with Congress on this issue and many others.

Another significant activity at the Commission is the rulemaking prescribed by CPSIA section 108, which relates to the use of phthalates in certain toys and childcare articles. Congress directed CPSC to begin this process by forming a Chronic Hazard Advisory Panel (CHAP) to develop a scientific report on phthalates and potential substitutes. The CHAP's report was transmitted to the Commission in July 2014. Unfortunately, the Commission did not allow public comment on the science of the CHAP report before formulating and promulgating its proposed regulation. Citing the timetable set forth in section 108, the Commission majority decided it must move ahead despite the known defects in the CHAP's report. Particularly glaring was the CHAP's decision to rely on exposure data from 2005-2006 and earlier when more recent data was readily available. We should always respect Congressional deadlines as much as we possibly can. However, Congress also said that the CHAP should consider "likely exposures" and the "most recent, best available" scientific data. Can anyone imagine us proposing a new standard for ATVs or toys based solely on injury data that is 8 or 9 years old?

I am pleased that the Chairman directed staff to analyze more recent data and strongly believe that analysis, as well as staff's interpretation of how it will impact the final rule, should be available for public comment. It must be emphasized, however, that this approach does not cure the original problem – the decision to forego public comment on the science of the CHAP report before formulating the proposed rule. The CHAP's fundamental mistake of using old data is only one of many concerns that I have with this rulemaking. I question banning chemicals based on a cumulative risk assessment to which they contribute little or no risk. I am troubled by the idea of banning the use of chemicals in toys when the exposures from toys are dwarfed by the exposures in food, cosmetics and other sources outside our jurisdiction. And I am greatly concerned that we have proposed to ban chemicals that have been in use for many years, and whose risks have been studied for a long time, when we know very little about the alternatives that would be needed.

Another priority issue before the Commission is window coverings. I supported the decision to proceed with an Advance Notice of Proposed Rulemaking because I believe CPSC needs to gather more information about these products before we determine how to proceed. I am anxious to

understand how the vulnerable populations of individuals with disabilities and senior citizens could be adversely affected by any changes to the functionality and operability of corded window coverings.

The reality is this: There are approximately one billion window covering products already in U.S. households. To address that hazard, we need a comprehensive educational campaign, which reaches parents, child caretakers, and healthcare professionals; increases awareness of the potential hazard of corded window coverings; and informs of safer alternatives that are already available. A serious commitment to such a program would do more to save lives than a mandatory standard, which must be limited to newly manufactured products.

No matter the issue, we must always ask ourselves: what is the problem we are trying to fix and most importantly, is our proposed solution the least burdensome way to solve the problem? As a federal agency we are stewards of the American taxpayers' dollars and we must ensure the regulations we promulgate are reasonable, balanced, and address a significant safety issue.

Based on federal government data, past reports, and contemporary studies, the costs of regulation have been estimated at about \$2 trillion annually. The costs of regulation and compliance are staggering and unfortunately, all studies indicate that the compliance costs fall disproportionately on small businesses.

Regulation is a necessary function of government, but I believe that CPSIA has forced too much regulation without regard to risk, let alone cost benefit. As a result we are unnecessarily burdening businesses, especially small businesses, and are further stifling an already stagnant economy. The solutions we seek should be balanced and address a serious problem. Consumers should be protected from unreasonable risks while the regulated community is protected from an arbitrary government.

The common goal among us all – Congress, CPSC, industry, and consumers – is safety; we are all people who have families for whom we want safe products. I have six children and sixteen grandchildren. I do not want dangerous products hurting them or anyone; however, the U.S. government cannot and should not try to create a zero-risk society.

Thank you for this time today and I look forward to answering any questions that you may have.