

**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2011**

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**WEDNESDAY, APRIL 14, 2010**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2:30 p.m., in room SD-138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin and Collins.

**CONSUMER PRODUCT SAFETY COMMISSION**

**STATEMENT OF HON. INEZ TENENBAUM, CHAIRMAN**

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Good afternoon. This hearing of the Financial Services and General Government Appropriations Subcommittee will come to order.

And I've got to report that Senator Collins will arrive momentarily. She'll miss my opening remarks. It will be devastating, but she'll recover.

Today's hearing is on the President's fiscal year 2011 budget request for the Consumer Product Safety Commission (CPSC). And testifying is Chairman Inez Tenenbaum.

Thank you for being here.

The Consumer Product Safety Commission is the Federal regulatory body tasked to protect children and families from unsafe consumer products. Every day, infants sleep in cribs, children don bike helmets and ride bicycles, and adults purchase medicines. We rely on the Consumer Product Safety Commission to make sure that infants aren't strangled by the slats or sides of the cribs, that children don't sustain head injuries while biking, and that parents don't worry that their children will open the child-resistant packaging.

Two years ago, the Consumer Product Safety Improvement Act (CPSIA) was enacted, giving the CPSC new authorities and resources, and significantly strengthening its ability to protect Americans from defective and unsafe products. Many people deserve credit for that, and I want to single out Senator Mark Pryor of Arkansas. What a great job he did bringing us all together for a bipartisan bill to authorize and empower your Commission.

For example, lead content levels for cribs, bunk beds, infant rattles, and children's jewelry have been reduced. Levels must be certified, based on independent third-party testing by a CPSC-recognized laboratory. Tracking labels will soon be on children's products, accompanied by product registration cards. And a publicly available, searchable database with safety information on consumer products is being established and will be operational early next year, we hope.

While the new lead limits are among the most stringent in the world for some children's products, the Commission voted to defer enforcement of testing and third-party certification requirements until February 10, 2011, in order to increase the number of available testing and certification facilities.

What a difference a few years can make. The Consumer Product Safety Commission has been transformed from a quiet, modest little agency with mostly voluntary enforcement powers to a more robust and proactive agency with enhanced enforcement authority.

Staffing, at a low of 385 in January 2008, is now at 502 and will grow to more than 530 by the end of this year. The budget this year, 2010, is double what it was 6 years ago. The first foreign office in Beijing has been opened, after all of the publicity that came out about products that were being exported from China into the United States. The need—now, this is a significant—of all the statistics—the need for toy recalls has declined 75 percent from 2008 to 2009, including an 80-percent decline in toy recalls due to lead-content violations.

For fiscal year 2011, CPSC is requesting \$118.6 million—\$400,000 more than the fiscal year 2010 enacted amount of \$118.2 million, and a staffing level of 576, which is an increase of 46 FTEs.

I'm not going to go through all the details of the budget request. They're going to come up during the course of our questioning here.

I'm looking forward to the testimony of Chairman Tenenbaum, and I am going to introduce her after I defer to my colleague here, Senator Collins.

#### STATEMENT OF SENATOR SUSAN COLLINS

Senator COLLINS. Thank you, Mr. Chairman.  
And thank you for calling this hearing.

While the Consumer Product Safety Commission is a relatively small agency, as your statements pointed out, it has a critical mission of keeping the public safe from dangerous products. We all remember the alarming and too frequent tragic stories of hazardous toys that demonstrate the need to strengthen protections for consumers, particularly for children, as the chairman has pointed out.

In 2008, we acted to strengthen the laws governing the safety of goods entering this country and to provide much-needed additional resources to intercept unsafe products by passing the Consumer Product Safety Improvement Act. This new law included provisions resulting from a 2007 product safety investigation that I conducted in my role as the ranking member of the Homeland Security and Governmental Affairs Committee. That investigation produced provisions that included better coordination and information sharing between the Commission and Customs and Border Protection

(CBP) so that inspectors at our Nation's ports can focus their resources on the most risky shipments, targeting products, manufacturers, and importers with poor consumer safety records. And I'll be interested today to hear more about this improved import surveillance plan and the efforts to improve coordination with CBP.

While it is crucial for the Consumer Product Safety Commission to implement regulations to protect children from lead and other hazardous materials, we do want to ensure that the regulations do not prove overly burdensome or costly to small businesses, such as thrift shops and those who produce handmade crafts, clothing, and toys. The Commission needs to consider these small, often home-based businesses when issuing its rules and guidance, particularly for third-party testing.

Again, I very much look forward to hearing from the Chairman today, and appreciate our chairman, as we consider the budget request for the Commission.

Senator DURBIN. Thanks, Senator Collins.

I'm pleased to welcome Chairman Inez Tenenbaum, the ninth Chairman of the Consumer Products Safety Commission, sworn into office on June 23, 2009. Previously, Ms. Tenenbaum was elected as South Carolina's State superintendent of education, where she served two terms. She has extensive experience in legal, legislative, administrative, and regulatory matters and served on numerous task forces that provide oversight on children and family services.

Thanks for being here. I look forward to your testimony.

Ms. TENENBAUM. Good afternoon, thank you—thank you. I'll start all over again.

Good afternoon, Chairman Durbin and Ranking Member Collins. Thank you so much for this opportunity to appear in front of you.

I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's fiscal year 2011 budget. During the past 9 months as Chairman of the CPSC, I have had the opportunity to see firsthand the great work that the Commission undertakes every day. From new regulations to ensure the safety of cribs, to enforcement action against children's jewelry with harmful levels of lead, cadmium, and other toxic metals, the CPSC is once again an agency that means business when it comes to protecting the safety of the American consumer.

Much of this progress would not have been possible without the reauthorization of the Commission through the Consumer Product Safety Improvement Act of 2008 and the additional funding received by the agency in fiscal years 2009 and 2010. I greatly appreciate the increased resources that members of this subcommittee have supported over the past 2 years, and can assure you that these resources have been put to good use through increased staffing and improved import surveillance and enforcement efforts. It has also provided the resources necessary for the Commission to develop robust responses to new and emerging hazards, such as contaminated drywall, that has caused serious problems for thousands of homeowners. The results of this new commitment to the CPSC are already very encouraging.

One concrete example of this increased staffing and resources at the agency: During 2008, the number of CPSC full-time employees,

FTEs, had dropped to only 385. This was the lowest level in the agency's history and down from a high of 978 in 1980. Section 202 of the CPSIA required the agency to increase the number of FTEs to at least 500 by the end of fiscal year 2013. And I'm very pleased to report that we've already reached that milestone and currently have 505, as of April 9, dedicated FTEs at the CPSC.

But, employee numbers are only one indicator of change. Another key metric is results. One concrete example of that is our ability to stop dangerous products before they enter the stream of commerce. In fiscal year 2007, the CPSC collected approximately 750 samples of suspect products entering our country. In 2009, that number rose to almost 1,600. At the same time, we started to see a commensurate decrease in the number of voluntary recalls, from 563 in fiscal year 2008 to 466 in fiscal year 2009. The Commission's proposed 2011 budget requests \$118.6 million—and it's designed to accelerate this forward momentum by continuing internal modernization and rebuilding efforts.

As noted in my written statement, the proposed 2011 budget is only \$400,000 over our current 2010 level, but it will allow the Commission to support the key areas of emphasis by reallocating \$13.9 million in funds used in 2010 nonrecurring activities. Specifically, the proposed budget will allow the Commission to pursue new and enhanced initiatives in four key areas:

The first is the Commission's compliance initiative. Since the passage of the CPSIA, the Commission's staff has worked diligently to promulgate and implement the numerous rules required by that law. In 2011, the CPSC's work will shift from developing rules mandated by the CPSIA to enforcing those rules, both within our borders and at ports of entry. To further facilitate those efforts, the CPSC's 2011 budget requests approximately \$4.6 million and an addition of 41 full-time employees to support additional responsibilities associated with three key elements of the compliance program: regulatory enforcement, import surveillance, and defect investigations.

The second area is information technology modernization and Commission implementation of a searchable public database of consumer product safety information. Section 212(b) of the CPSIA requires the Commission to upgrade its information technology systems and to develop a database that allows consumers to submit incident reports that can subsequently be reviewed by all members of the general public.

In response to this mandate, CPSC is developing a single, integrated, Web-based environment. The Consumer Product Safety Risk Management System, or RMS, will change the way the Commission receives and analyzes data. With the new RMS, the CPSC will be transformed. The Commission will have one powerful database for the input and analysis of multiple sources of data. Overall, this new capability has the potential to uncover more defect patterns for staff to examine and to triage. This, in turn, could lead to an increase in recalls of defective products and the prevention of injuries and deaths. The Commission has already allocated approximately \$20 million to fund many of the initial planning and design costs of the RMS and deeply appreciates this subcommittee's past support of the program.

In 2011, funding resources—requirements will largely shift from design-and-build costs to maintenance items. Therefore, the 2011 budget requests \$1.8 million for a staffing combination of eight FTEs and contract positions to maintain the system and comply with OMB's requirements for information technology governance, cybersecurity, and privacy.

The third area is consumer outreach and education. Providing consumers with recall and product hazard information that helps make families and communities safer is one of my top priorities. Over the past year, the Commission has made great strides in consumer outreach by reestablishing our presence on network television, in the national newspapers, and on the radio. The agency also launched CPSC 2.0, a social media initiative that is reaching out to tens of thousands of consumers via YouTube, Twitter, Flickr, the OnSafety blog, and our own recall widget. This year and in fiscal year 2011, the Commission plans to accelerate efforts to conduct grassroots education and advocacy in hard-to-reach and vulnerable populations. We will also continue to focus on public education and outreach efforts to prevent drownings and entrapment involving children in residential and public pools.

Fourth, the 2011 budget proposes an additional \$2 million for the CPSC to support the National Nanotechnology Initiative. In the last few years, there have been increasing public concerns over potential health impacts associated with this technology. Although nanomaterials may have the same chemical composition as non-nanomaterials, at the nano scales, they may demonstrate different physical and chemical properties and behave differently in the environment and the human body. The \$2 million proposal will allow the Commission to conduct exposure and risk assessments of nanotechnology materials, allow for database updates to properly flag reports of nanotechnology incident with consumer products, and conduct consumer outreach efforts, such as public meetings.

#### PREPARED STATEMENT

Mr. Chairman, thank you again for the opportunity to testify on the proposed 2011 budget for the U.S. Consumer Product Safety Commission, and I look forward to working with you and other members and Ranking Member Collins on this subcommittee, and will be happy to answer any of your questions.

[The statement follows:]

#### PREPARED STATEMENT OF INEZ TENENBAUM

Good afternoon, Chairman Durbin, Ranking Member Collins, and Members of the Subcommittee on Financial Services and General Government. I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's (CPSC) fiscal year 2011 budget request.

During the past 9 months as Chairman of the CPSC, I have had the opportunity to see first-hand the great work that the Commission undertakes every day. From new regulations to ensure the safety of cribs to enforcement action against children's jewelry with harmful levels of lead, cadmium and other toxic metals, the CPSC is once again an agency that means business when it comes to protecting the safety of American consumers.

Much of this progress would not have been possible without the reauthorization of the Commission through the Consumer Product Safety Improvement Act of 2008 (CPSIA), and the additional funding received by the agency in fiscal year 2009 and fiscal year 2010. I greatly appreciate the increased resources Members of this Subcommittee have supported over the past 2 years, and can assure all of you that

those resources have been put to good use through increased staffing, improved import surveillance, and increased compliance activities. It has also provided the resources necessary for the Commission to develop robust responses to new and emerging hazards such as contaminated drywall that has caused serious problems for thousands of homeowners.

The results of this new commitment to the CPSC are already very encouraging. One concrete example of this is increased staffing and resources at the agency. During fiscal year 2008, the number of CPSC full-time employees (FTEs) had dropped to only 385—the lowest in the agency’s history. Section 202 of the CPSIA required the agency to increase the number of FTEs to at least 500 by the end of fiscal year 2013. I am very pleased to report that we have already reached that milestone, and have 502 FTE positions filled at the CPSC as of April 1, 2010.

But employee numbers are only one indicator of change. Another key metric is results. One concrete example of that is our ability to stop dangerous products before they enter the stream of commerce. In fiscal year 2007, the CPSC collected approximately 750 samples of suspect products entering our country. In fiscal year 2009, that number more than doubled to almost 1,600. At the same time, we started to see a commensurate decrease in the number of voluntary recalls from 563 in fiscal year 2008 to 466 in fiscal year 2009.

The Commission’s proposed fiscal year 2011 budget request of \$118.6 million is designed to accelerate this forward momentum by focusing on modernization efforts that will flag emerging hazards and help us keep those products out of our country and the hands of children.

While this request is only \$400,000 over the fiscal year 2010 level, it will allow the Commission to increase the FTE level by 46 in fiscal year 2011 (for a total of 576 FTEs), fund a broad new compliance initiative, implement the second phase of the Commission’s continued Information Technology (IT) modernization, continue to improve consumer outreach, and direct \$2 million in support of the Federal National Nanotechnology Initiative by reallocating \$13.9 million in funds used for fiscal year 2010 nonrecurring activities.

#### THE COMMISSION’S COMPLIANCE INITIATIVE

Since passage of the CPSIA, Commission staff has worked diligently to promulgate and implement the numerous rules required by that law. In 2011, the CPSC’s work will shift from developing rules mandated by the CPSIA to enforcing those rules—both within our borders and at ports of entry.

To further facilitate those efforts, the CPSC’s fiscal year 2011 budget requests \$4,647,000 and the addition of 41 full-time employees (FTEs) to support additional responsibilities associated with three key elements of the compliance program: regulatory enforcement, import surveillance, and defect investigations.

##### *Regulatory Enforcement*

Experience shows that enforcing new rules takes considerably more resources than enforcing an existing rule that has been in place for a number of years. The number of new rules mandated by the CPSIA during fiscal year 2009 and fiscal year 2010 are more than double the number of rules promulgated by the Commission since 1990—and will result in a dramatic increase in enforcement responsibility.

The fiscal year 2011 budget, therefore, requests \$1,647,000 and 15 FTEs to enforce the new rules. This includes four new compliance officers, five field investigators, three lab testing and other technical specialists, two attorneys, and one FTE to coordinate with state and local authorities.

##### *Import Surveillance*

The Commission’s import enforcement workload will also increase as investigators ramp up efforts to verify testing certifications and collect increasing numbers of suspect product samples at our Nation’s ports. The need for more staff and better coordination with U.S. Customs and Border Protection (CBP) was specifically highlighted in an August 2009 Government Accountability Office (GAO) report. Mr. Chairman, I know this is an area of critical interest for both you and Ranking Member Collins, and the Commission is eager to fully address this issue.

Accordingly, the fiscal year 2011 budget requests \$1,965,000 to expand coverage at the ports, verify third-party testing certifications, collect samples of suspect products, and—most importantly—stop unsafe products from entering the country. This request will support an additional sixteen FTEs dedicated to import surveillance (five investigators and analysts that will be stationed at ports, two compliance officers to process additional import samples, and nine FTEs for lab testing and other specialties), as well as \$100,000 for the destruction of goods refused at the ports by CPSC.

### *Defect Investigations*

The number of product incident reports the Commission receives almost doubled between fiscal year 2003 and now. With the rollout of the searchable public database by March 11, 2011, we expect that the number of incident reports will grow exponentially. These reports often provide critical information and data to the CPSC. However, with current resources, CPSC staff is only able to thoroughly investigate a very small number (approximately 10 percent) of the total reports received.

Increased resources are needed to enhance our defect investigation capability, and ensure that the Commission can adequately review and process the rapidly increasing number of product incident reports. Therefore, the fiscal year 2011 budget requests \$1,035,000 and ten additional FTEs (three compliance officers, five field investigators, one technical specialist, and one attorney) to support this critical effort.

#### INFORMATION TECHNOLOGY MODERNIZATION

Section 212(b) of the CPSIA requires the Commission to develop a database that allows consumers to submit incident reports that can subsequently be reviewed by all members of the general public and upgrade its information technology systems.

As noted above, the searchable public database will be launched in less than 1 year, and I look forward to working with Members of this Subcommittee to ensure that your constituents know how to access and use it. In the course of completing the database, we are also working to solicit extensive public input and establish clear rules for how the database will operate and how CPSC will interact with consumers and manufacturers.

In order to support the data that will be generated by the database and meet the information technology modernization mandate, CPSC is developing a single, integrated, web-based environment, the Consumer Product Safety Risk Management System (RMS), that will change the way the Commission receives and analyzes data. Current systems at the Commission are fragmented, and information flows often have to be manually sorted by staff to identify new and emerging hazard patterns.

CPSC will be transformed with the new RMS. The Commission will have one powerful database for the input and analysis of multiple sources of data. This capability will be absolutely critical as data streams from the new public database start flowing into the Commission. In addition, the system will have new predictive “data mining” tools that will allow the CPSC to compare new incidents electronically with all prior incidents. Overall, this new capability has the potential to uncover more defect patterns for staff to examine. This, in turn, could lead to an increase in recalls of defective products and the prevention of injuries and deaths.

The Commission has already allocated approximately \$20 million to fund many of the initial planning and design costs for the RMS, and deeply appreciates this Subcommittee’s past support of this program. In fiscal year 2011, funding requirements will largely shift from design and build costs to maintenance items. Therefore, the fiscal year 2011 budget requests \$1.880 million for a staffing combination of eight FTE and contract positions to maintain the system and comply with Congressional and Office of Management and Budget (OMB) requirements for information technology governance, cybersecurity and privacy.

#### CONSUMER EDUCATION AND OUTREACH

Providing consumers with recall and product hazard information that helps make families and communities safer is one of my top priorities. Over the past year, the Commission has made great strides in consumer outreach by re-establishing our presence on network television, in national newspapers, and on the radio. We have also re-established the trust of consumers that CPSC is putting their interests first.

The agency also launched “CPSC 2.0,” a social media initiative that is reaching tens of thousands of consumers via YouTube, Twitter, Flickr, the OnSafety blog, and our Recall Widget. This year the Commission plans to further accelerate this initiative by expanding the platforms we use to include cell phone text messages.

The Commission also plans to accelerate efforts to conduct grassroots education and advocacy in hard-to-reach and vulnerable populations. In August 2009, the GAO released a report recommending that the CPSC increase its focus on reaching minority populations. Since becoming Chairman of the CPSC, I have directed Commission staff to explore additional outreach efforts to underserved populations. In carrying out a special Minority Outreach initiative, we will increase our use of existing tools, such as the Neighborhood Safety Network (NSN) program—that provides vital information to more than 5,600 community organizations and leaders—as well as use new tools, such as targeted, grassroots programs for Hispanics, African-Ameri-

cans, American Indians, and other minority groups. This will also remain a key priority of the Commission in fiscal year 2011.

One of the most tragic subjects the Commission deals with are drownings and entrapments involving children in residential and public pools. I am pleased to note that the fiscal year 2011 budget contains \$1,000,000 specifically for continuing pool and spa safety education. This funding will build on the previous funding of \$8.1 million in fiscal year 2009 and fiscal year 2010, and continue to help the agency drive down the 300 child drownings each year and increase compliance with the Virginia Graeme Baker Pool and Spa Safety Act.

#### NANOTECHNOLOGY

The CPSC's fiscal year 2011 budget also proposes \$2 million to support the Federal National Nanotechnology Initiative, and seeks to collect additional data and explore environmental, health, and safety issues related to the increasing use of nanotechnology in consumer products.

In the last few years, there has been increasing public concern over potential health impacts associated with this technology. Although nanomaterials may have the same chemical composition as non-nanomaterials, at the nanoscale they may demonstrate different physical and chemical properties and behave differently in the environment and in the human body.

The \$2 million proposed will allow the Commission to conduct exposure and risk assessments of nanomaterials, allow for database updates to properly flag reports of nanotechnology incidents with consumer products, and conduct consumer outreach efforts such as public meetings. Perhaps even more importantly, it will also allow the Commission to take a very proactive approach to this emerging issue, rather than merely reacting to incident reports after they are received.

Mr. Chairman, thank you again for the opportunity to testify on the proposed fiscal year 2011 budget for the U.S. Consumer Product Safety Commission. It provides the funding necessary to continue the transformation of this agency from what some have described as a "teething tiger" into the world's leading lion of consumer protection.

I look forward to working with you and other members of the Subcommittee on the Budget Request, and would be happy to now answer any questions you may have.

#### STAFFING INCREASES

Senator DURBIN. Thanks, Chairman Tenenbaum.

And I might note that the increase—or, should I say—the restoration of employees at the Consumer Products Safety Commission, we thought, was warranted, because of the massive numbers of products that come your way, and particularly the increase in imports into the United States, which created a brand new challenge for us. And so, just for the record, that was our thinking behind the increase in full-time equivalent employees.

I want to discuss about five issues, and I'm sure I won't get into all of them.

#### LEAD STANDARDS

So, let me ask about lead, because we were concerned, when we wrote the bill, as to whether or not we came up with a reasonable standard for lead in toys. And before the bill was written, there was no lead limit at all for children's products. In February 2009, permissible lead levels in children's products were reduced to 600 parts per million. By August, the lead limit in children's products were to come down to 300 parts per million. In those coated with paint, the limit dropped to 90 parts per million.

A stay of enforcement on third-party testing requirements was granted by the Consumer Products Safety Commission in February 2009 for 1 year because there was "substantial confusion," in the industry, regarding specific requirements related to the applica-



bility, as well as testing and certification. An extension of that stay of enforcement was granted in December of last year on testing and certification for many children's products for 1 year, until February 2011, while the CPSC continues to accredit third-party-testing labs.

Now, I want to make sure I understand. If we have written this law in a fashion that makes it difficult for you to either understand or enforce—when I read the word “confusion,” I want to make sure I understand what's behind that—then it's our responsibility to step forward and correct any errors that we've made there. If, however, this is a question of just setting up the mechanism for enforcement, that, to me, is a different question, and I can understand it takes more time. So, could you address the lead issue in toys and children's products first?

Ms. TENENBAUM. Thank you, Mr. Chairman.

Yes, we did stay the enforcement on certain products while we put in place the specific testing requirements for those products, so that we could have laboratories who knew how to go about testing those products. But, third-party testing and certification was never stayed on lead in paint, which now is at 90 parts per million. We are also enforcing full- and nonfull-sized cribs; pacifiers; small parts; and lead content on metal children's jewelry. What we stayed was lead content in nonmetal, not in children's jewelry or in paint. So, it could be lead content in brass or something else, but not children's jewelry.

But, we've also realized that the strict levels under 101, which says that you can exempt articles where the lead is inaccessible to the child or if you can show that, through normal and foreseeable use and abuse, any lead is not absorbed into the body. So, it's that “any lead,” where you might have very small levels and contact with the children's product is very infrequent. For example, bicycles and all-terrain vehicles (ATVs).

Senator DURBIN. We heard about that.

Ms. TENENBAUM. So, we stayed the bicycles and the ATVs, in terms of testing, until we could work this out, and also certain books. The newly printed ordinary children's books do not contain lead, but, the children's books printed before 1985 do. We had a problem with exempting those. So, if we had more flexibility around section 101 for any lead, then we would be able to work with the products as they came up for our consideration.

We have proffered a discussion around functional purpose. It would require industry to come to us and say, “We need this lead in our product for the functional purpose. If it's an ATV, we need it to make the ATV stronger. The contact with lead components on the ATV will be infrequent. It will have no adverse health effect on the user.” And so, then, we could give the ATV or the bicycles an exemption.

So, it's a narrow class of products that, if we had a functional purpose amendment to the CPSIA, then we would be able to exempt those products, like ordinary children's books.

Senator DURBIN. But, do you think that's going to require an amendment to the law?

Ms. TENENBAUM. We do.

Senator DURBIN. Okay. So, we ought to look at that.

Now, let—and to make it clear, the stay does not apply to lead paints, small parts, or children’s jewelry. We are talking about functional products and ATVs and the like. If—

Ms. TENENBAUM. And we stayed enforcement of the lead in ATVs last year.

Senator DURBIN. Okay.

#### OTHER TOXIC SUBSTANCES

Now, I’m going to go 2 extra minutes and give Senator Collins the same time, because I wanted to ask, as a followup—and we’re finding that there were replacements by some who are sending products into the United States—replacing lead with cadmium and antimony. And are you regulating those, as well?

Ms. TENENBAUM. Well, I issued a stern warning to Chinese manufacturers, in a speech to the Chinese, back at the beginning of this year. I was unable to attend the conference in China, because I had a hearing in Congress. But, we gave a stern warning. And our counterpart in China, the AQSIQ, issued the same stern warning to manufacturers and said, “Do not substitute any of these metals for lead.” Now, we really don’t think that that is occurring, that they’re intentionally substituting. But, we think they’re being careless in not realizing that you cannot use these metals in children’s products.

Under the ASTM F963 standard, which is the toy standard, the surface coating on toys is regulated.

Senator DURBIN. But, I understood—

Ms. TENENBAUM. Also, children’s jewelry is regulated under the Federal Hazardous Substance Act. We could call a toxic metal a banned hazardous substance. And right now, we are doing our research to establish the level of what we will allow for cadmium and other metals in children’s jewelry.

Senator DURBIN. So, I understood that the children’s pets—Zhu Zhu pets out of China, there was—they found some evidence of antimony in those. Are you saying that—

Ms. TENENBAUM. Well, the company—

Senator DURBIN [continuing]. They did or didn’t?

Ms. TENENBAUM. The company who manufactures the Zhu Zhu pets came to the CPSC, just days after one nonprofit organization announced they had found the antimony, and showed us all of their laboratory tests. We did our own testing, and then we established that the antimony was not at harmful levels to children. And we put that press release out that there were no harmful levels of antimony in Zhu Zhu pets.

Senator DURBIN. Okay.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Obviously, our first priority is to make sure that all products, including toys for children, are safe. There has been an issue with small home-based businesses finding it very expensive to comply with the standards in the new law. They obviously do not want to be selling products that aren’t safe, that are not—that would in any way endanger our children. But, the cost of third-party testing can be prohibitive.

And I want to give you an example. Last year, I met with a woman who owned a business called The Little Hat Company in South Berwick, Maine. And she produced children's hats. And she had this network of women who made the hats out of their homes. It worked so well for them, because they all had young children and they could stay home with the children, yet be able to make some money. Well, the combination of the cost of third-party testing for the Consumer Product Safety Improvement Act plus the economic downturn has forced this business to close up altogether. And that affected not only the business owner, but all of these part-time sewers whom she employed who were producing these cute little caps out of their homes.

As a result of this concern, last year we included language in the report accompanying the omnibus bill noting the concerns of these very small manufacturers—seems even odd to call them “manufacturers”; they're really craftspeople—regarding the third-party testing requirements. And we urged you to consider these types of home-based businesses when you issue your rules and your guidance on third-party testing, because we really need to find a way that allows them to ensure their products are safe, but doesn't put them out of business when, in fact, their products are safe.

What efforts have you made to address the concerns of these small businesses?

Ms. TENENBAUM. Thank you, Senator.

We have been extremely sensitive to the concerns of small businesses and crafters throughout the implementation of the CPSIA. In fact, we wrote a guidance on the CPSIA for small businesses, resaler crafters, and manufacturers of children's products. And over the last 9 months, the Commission has had four actions which provided relief to small businesses and crafters. And here are the four rules that we promulgated to do this:

First of all, tracking labels. The CPSIA required that children's products have a tracking label. We decided that there was no “one size fits all” and for small crafters, that was very important to them.

Two, lead determinations proceeding. This was a rule that we wrote, and we said products made out of cotton, paper, untreated wood, to name a few, do not—will never have—contain lead. Therefore, businesses like The Little Hat Company, if it was a cotton hat, would not have to have third-party testing. And we put that out to tell people that you do not even have to have a certificate, which would save them a tremendous amount of resources.

The third thing was component-part testing. If the hat was made of cotton, the hat would not have been testing, but if they had buttons sewn on it to make it decorative, if they bought buttons from a company that could certify they were lead-free, then The Little Hat Company would not have had to do additional testing. And so, if you could just test the component, then you would not have to test the whole product.

And the fourth is, we continue to stay enforcement on testing and certification for many children's products, giving people time to understand this law, and also to let the component-part testing market develop. Groups like the Handmade Toy Alliance have recognized our work, and they continue to work with us. We, for ex-

ample, just last month, we had two Webinars with the ETS4 community, which is the handmade toy and handmade crafters, on eBay, and the Handmade Toy Alliance, so that we could talk to them about what the CPSIA requires and make sure they understood how to comply with the law.

We will continue to keep small manufacturers in mind as we go into our rulemaking. And we also want to make our small business ombudsman, which is a part-time job, a full-time job, and expand this into education and outreach, so that we can have regularly broadcast Webinars for small businesses and answer their questions individually to allay their concerns with compliance.

Senator COLLINS. Thank you. Those sound like very worthwhile and protective moves on the Commission's part.

This women's business was cotton hats. And she did ornament them, at times, with buttons, and was concerned about having to test the buttons. And I remember raising with her, "Well, wouldn't that be the button manufacturer's job?" So, I'm very happy that you've clarified that. And I will relay that information to her, in the hopes that, when the economy improves, she can get back in business and not have to worry about adding what really is a tremendous cost to a very small business.

I'd like to, in my remaining moment, just ask you a little more about the small business ombudsman, since I did note that you plan to establish a full-time position. How would you ensure that this position is truly going to be able to assist small businesses? How are you going to inform small businesses that it even exists?

Ms. TENENBAUM. Well, we've had a small business ombudsman for a number of years, and most recently the small business ombudsman was located in the Office of International Programs and Intergovernmental Affairs, and the duties were only part time.

We are working with Booz Allen Hamilton to write a new strategic and operational plan for the Commission. And we are already beginning to realize that one of our primary functions should be education and outreach. So, we could place this full-time small business ombudsman in a larger Office of Education Outreach, where we would work with colleges and universities. We could invite professors to participate. We could work with nonprofits. And also, we would have a regular curriculum, where we would regularly host workshops. Since I've been the Chairman, we've hosted two workshops. One was a workshop for the database and another one was for continued testing. And we reached out and reserved a block of seats just for the Handmade Toy Alliance and small businesses. And so, we will continue to be very sensitive to small businesses in that regard.

Senator COLLINS. Thank you.

Thank you, Mr. Chairman.

#### ADDRESSING HARMFUL CHEMICALS/ELEMENTS IN PRODUCTS

Senator DURBIN. I want to ask you about a couple of issues that raise a larger question: the relationship of the CPSC to some other agencies of the Federal Government, when it comes to particular hazards.

The first one is known as BPA—I'm going to mispronounce this—Bisphenol A, which is, as I understand it, a plastic coating that

may be in virtually every canned product we buy and shows up in other things—baby bottles and sippy cups, sometimes; maybe pacifiers. And it's been linked to heart disease and cancer in humans and abnormal development in animals.

The EPA, Environmental Protection Agency, listed BPA as a chemical of concern. Although some products are labeled BPA free, they're still found to contain this chemical. So, to what degree does the Consumer Product Safety Commission feel a responsibility, under the law, to verify labeled contents or claims, such as "BPA free" in consumer products?

Ms. TENENBAUM. We feel very responsible. In fact, we work regularly on interagency committees with the EPA, with the National Institute of Standards and Technology (NIST), with the National Science Foundation (NSF), and the National Institutes of Health (NIH). And the research that all of these agencies do, we read and take very seriously. So, we are tracking the research on BPA and other chemicals. We track all the nanotechnology research. And then, our scientists will make determinations and recommendations, and we will eventually go into rulemaking if we think that it's necessary.

We also can take the information and begin voluntary recalls or mandatory recalls.

Senator DURBIN. Have you done that in relation to BPA yet?

Ms. TENENBAUM. Let me get back with you. I know we have done extensive work on BPA. And before I misspeak today, let me get you a full report on what we've done on that.

[The information follows:]

#### U.S. CONSUMER PRODUCT SAFETY COMMISSION ACTIVITY ON BISPHENOL-A (BPA)

##### *Overview*

Bisphenol-A (BPA) is used in the manufacture of polycarbonate plastics and epoxy resins. Small amounts of BPA can migrate out of products made out of polycarbonate (such as reusable bottles and food containers) during their normal use. BPA is considered an endocrine disruptor. BPA has also been shown to cause reproductive and developmental effects in animals at high doses. However, there is a lack of scientific consensus over whether BPA causes these types of effects at low doses.

##### *Regulatory Jurisdiction*

Jurisdiction over BPA is split between two agencies: The Food and Drug Administration (FDA) and the CPSC.

- BPA used in food containers or surfaces that come in contact with food is considered an unintentional food additive and is subject to the jurisdiction of the FDA.
- Polycarbonate is also used in bicycle helmets and safety glasses, which is under CPSC jurisdiction. These products are made of polycarbonate because that material is very hard. The hardness of the polycarbonate in these products is beneficial in terms of the safety provided to the user, and CPSC Health Sciences staff does not believe the exposures from these products would be significant compared to products under FDA jurisdiction that come into contact with food or liquids.
- If BPA is used in children's products that are intended for children to mouth or which children could mouth, that would also fall under CPSC jurisdiction. In such products, staff would have to look at the hazard, the exposure and the subsequent risk posed by any BPA present.
- Several Federal agencies (the National Institute for Environmental Health Sciences (NIEHS), FDA, the National Toxicology Program, and the U.S. Environmental Protection Agency (EPA)) are currently conducting research on the safety of BPA, especially at low levels of exposure. CPSC staff is monitoring

these studies and are participating, as appropriate, to provide technical input and peer review.

*Current Efforts Involving CPSC and Our Federal Partners to Further Study BPA*

CPSC's Health Sciences staff recently participated in an Office of Management and Budget (OMB) coordinated Federal agency review of the EPA draft Notice of Proposed Rulemaking (NPRM) to establish the Concern List under section 5(b)(4) of the Toxic Substances Control Act (TSCA). This list included BPA.

Health Sciences staff are also currently participating in the activities of the revitalized President's Task Force on Environmental Health and Safety Risks to Children. One of the reasons for revitalization of this task force is to create a high-level group that can ensure coordination across agencies that are dealing with common chemical concerns. CPSC was specifically recognized as a key partner on this group.

Staff from EPA's Design for the Environment (DfE) project recently invited CPSC staff to participate in a group being organized to look at BPA alternatives in thermal paper. CPSC staff has participated in meetings with that working group.

Senator DURBIN. So, now let me raise another question, another issue, involving other Federal agencies, from a slightly different perspective. The first example was a claim that a product was BPA free. And, as I said, it could have contained a chemical of concern, and the manufacturer said, "No, it doesn't." And you're saying that you accept the responsibility to test to make sure that it doesn't.

Ms. TENENBAUM. We would.

If it's within our jurisdiction as a consumer product, we would follow the research and we would ask for copies of the reports. Our scientists also sit on numerous committees with the other Federal agencies.

Senator DURBIN. So, let me give you another example that comes at it from a different angle. Recent research has questioned whether Triclosan—I hope I'm pronouncing it correctly—an antibacterial chemical widely used in home products, such as liquid soaps, hand sanitizers—I probably put it on my hands 10 times a day—dish-washing liquid, shaving gels, toothpaste, some clothing and toys—may disrupt the body's endocrine system—so, that explains my problems—and whether it helps to create bacteria that are resistant to antibiotics. Now, the Centers for Disease Control has found that the chemical is so pervasive that it has been found in 75 percent of Americans.

This chemical is regulated by three agencies: Food and Drug Administration (FDA), Environmental Protection Agency, and the Consumer Product Safety Commission. The FDA now says that recent research raises valid concerns about the possible health effects of this chemical, and EPA is also reexamining it.

So, what—in light of that situation, where no claim is being made that it's free of Triclosan, but there have been questions raised by other Federal agencies about its safety and impact on humans—what is the CPSC's responsibility, and what have you done, related to this?

Ms. TENENBAUM. We saw the same article and were discussing it on the way over here. And again, we will receive the research, work with our colleagues in the other agencies, and if their concerns are such that we think consumers are endangered, then we will take action either to issue a safety warning, do a voluntary recall, or write regulations.

Senator DURBIN. So, here's what I'm getting at, Madam Chairman. Assume, hypothetically—I won't mention this particular chemical—but, assume the set of circumstances I just described for

chemical *x*. But, assume that the industry says, “Well, you’re just wrong. It doesn’t create these problems. And we have our scientists, who come to a different conclusion.” What is the threshold at which the CPSC says, “Here is what we’re looking for. We are looking for an assertion—a credible assertion by a certain Federal agency that puts us on notice that we have to be sensitive to and look for this certain chemical. It can be litigated in court, it can be disputed in laboratories, but we are looking for this threshold.” What is that threshold on a chemical, such as Triclosan, as to when the CPSC says, “We are sufficiently warned that it could be dangerous that we are going to step forward and try to protect Americans from exposure”?

Ms. TENENBAUM. The threshold would be whether or not it causes harm or the threat of harm to a consumer.

Senator DURBIN. Who makes that decision on—

Ms. TENENBAUM. We would on our products. For example, in this year’s—in the 2011 budget, we’re requesting \$2 million so that we can work with the National Nanotechnology Initiative to get the agencies who are doing the research on nanotechnology to test our consumer products so that we will know, firsthand, what we have to do with those products, regarding nanotechnology.

Senator DURBIN. So, you aren’t looking to the FDA or the EPA or the Centers for Disease Control. You’re basically establishing testing standards to establish whether there’s a danger to humans, and then regulating, based on your conclusions.

Ms. TENENBAUM. We have our own scientists who draw the threshold. In fact, they are working right now to come up with a threshold, in children’s jewelry, for cadmium and any other metals. So, we will look at what the research other agencies have done. We would not duplicate it. But, if we feel like—that the work is good science, good solid data, then we can act on it.

Senator DURBIN. Do you take into consideration if States have decided to regulate? For example, BPA, if I’m not mistaken, has been regulated—I think it’s in California, maybe even in Connecticut. Do you take that into consideration?

Ms. TENENBAUM. We do. And, in fact, when I became Chairman, I asked the Office of General Counsel to have quarterly meetings with all the States’ attorneys general. We wanted to not have an adversarial position with them. We felt like they were our partners, because we’re a small agency. We need our attorneys general in all 50 States—and I came out of State government—to work with us. And in the last meeting we had, nearly every one of them attended either in person or by conference call they or their representative. So, we feel like California, for example, is very aggressive when it comes to consumer products, and they give us information on what they find.

Senator DURBIN. Thank you.

Senator COLLINS.

Ms. TENENBAUM. Illinois’ attorney general is also very proactive.

Senator COLLINS. Madam Chairman, I want to go back to an issue I raised in my opening statement, and that is, I authored provisions of your new law that were intended to bring about better coordination and information sharing between the Commission and Customs and Border Protection. I was alarmed to learn that CBP

had so little authority, prior to this law, to actually seize and destroy dangerous consumer products. So, what was happening is, a lot of times, the products were turned back at one port and then would be shipped through another port.

So, we were trying to close that port-shopping hole, if you will. The bill authorized CBP to seize and destroy these products that are entering our ports, rather than just refusing them. But, the success of that depends on close coordination with the Commission, and the Commission was charged with developing a comprehensive risk assessment so that there would be better targeting of the incoming shipments for inspection. So, the idea was that the Consumer Product Safety Commission was supposed to target the shipment, and then CPB would go inspect that, and could actually destroy the products, rather than just refusing them.

That is why I was disappointed when the Government Accountability Office (GAO) reported, last August, that not as much progress been made in this area as I would have held—hoped. The Commission, for example, it says, does not have access to key CBP import data that it could use to target the incoming shipments. It said that it—the agreements hadn't been updated between the two agencies, that there still was not the kind of information sharing that's absolutely essential for this to be successful.

Why hasn't there been more progress made in this very important area? Because this is really critical to keeping dangerous products from ever coming into our country in the first place.

Ms. TENENBAUM. You are so right. And actually, the GAO report helped propel us to having even closer coordination and cooperation with the CBP.

On March 25 of this year, we submitted our concept of operation to define our plans for using the International Trade Data System to the CBP. And that will help us look at the types of products and the names of importers, to help us quickly and more proactively identify potential risk and provide more timely responses.

And we're also asking for resources, in the 2011 budget, so that we can have the capacity for our IT system and CPB's to talk to each other; we need to be able to data-mine between the two agencies.

We are working with the CBP and have piloted enforcement programs that are developing new and streamlined import procedures with them. So, we already have pilot projects going. We have placed a full-time employee at the Commercial Targeting and Analysis Center (CTAC), right here in Washington, which is CTAC, which allows us to look at pre-arrival manifest systems, so that our people know what is coming in on the shipments. We can target whether or not our products—consumer products—are on that shipment.

We also have developed a repeat-offender listing and work with the CBP to identify and stop potentially hazardous shipments. Also, we work with them to have specific targeting operations which have proven that, when we can target shipments, we're finding a very high percentage of products that are violative of the standards.

We have the Operation Guardian Program, which we use the CBP's resources, and they will go ahead and identify violative holi-



day lights, Christmas lights, children's upper- and outerwear with drawstrings, and seize those products.

Right now, we're waiting to have the memorandum of understanding (MOU) between the two agencies signed. Once that MOU is signed, then we hope that we will have access to their automated targeting system. And once we have access to their system, we will have greater knowledge and potential information on how to improve further targeting methodologies. In fact, we will have a risk assessment methodology, and we're asking for funding in the 2011 budget to help us with this project, because then we'll be able to have information to develop a full-risk assessment methodology so that CBP and the CPSC can share data and collectively target incoming ships.

Senator COLLINS. Well, I'm pleased to hear of that progress, a lot of which is quite recent. I think it might be helpful, after 6 months or so, if the Chairman and I ask the GAO for a new assessment on how that relationship is working.

I just have one final issue that I wanted to raise with you, and that's the Chinese-made drywall problem. Now, I feel fortunate, because my State, fortunately, did not, apparently, get a lot of the Chinese-made drywall that has produced such problems in 37 other States. What concerns me is, there were some 3,000 reports from residents of 37 States related to problems with this drywall, including health concerns, noxious fumes, metal pipe corrosion—significant problems. What can CPSC do to better anticipate and prevent problems like this? It seems like you shouldn't have to get to a point where you have 3,000 complaints before a problem is identified.

Ms. TENENBAUM. Well, let me start by saying that I understand the anxiety and stress that the families that have had the impacted drywall have gone through. I've visited homes in Florida and Virginia, and I saw, firsthand, the impact that they had on people's lives. Young families, where all their equity was tied up in this one home, had to move out and move in with relatives. Some of them had to file for bankruptcy. And it was a crisis that I walked into when I became the Chairman last year.

There have been more resources spent on this—over \$3.5 million—than any other investigation we've ever undertaken at the CPSC. It's taken longer than we had liked for it to, but, we were also pioneering protocols and testing to validate a new science.

We partnered, last year, with other Federal agencies to do a 51-home study. We were able to find out that certain gases were being off-gassed in the homes. With that information, we then went to Lawrence Berkeley Laboratories. We recently released the findings of those chamber tests, in which we found that the Chinese drywall was off-gassing hydrogen sulfide at 100 times greater limits than domestic drywall.

Now, not all Chinese drywall was off-gassing the hydrogen sulfide. In fact, there were over 6 million pieces of Chinese drywall imported into the country after Hurricane Katrina, and not all of it had the problem. What we are able to do working with the Department of Housing and Urban Development (HUD), is to develop an identification protocol to determine if you have the off-gassing in your home. We've just come out with our own protocol for reme-

diation, which basically is, remove all the Chinese drywall, rewire the house, and remove the pipes. This is the only way to make the homeowner able to move back into the home.

Now, we provided all of our research to the multidistrict litigation, which was a Federal lawsuit in Louisiana, and the judge in that case, last week, even went further. There was a company—a Chinese company, called Taishan, which did not respond to the complainant. It was a damages hearing tried in their absence, in which the judge awarded \$2.6 million to seven Virginia homeowners. In that case, he said, “Take out all the drywall, Chinese and non-Chinese. Take out all the wiring. Take out all the cabinets and appliances, carpet. And essentially take the home down to the studs, and rewire. So, it was more extensive than what we said was the remedy.

And now we are wrapping up studies. We have one study ongoing on long-term corrosion. How much would this corrosion result in any kind of fire hazard, for example? And that’s what the long-term corrosion is. But, this was an anomaly, the off-gassing of hydrogen sulfide, because it wasn’t found in all the Chinese drywall, just some out of parts of China.

So, the next step is, how can homeowners find resources to remediate? There are really four ways.

In some cases, the builder has gone back in—I’ve seen this in Florida and in Virginia—and torn out the drywall, torn out the wiring, rewired the house, put in new drywall, and moved the homeowners back in. And that has happened in both States.

In other cases, there have been civil suits. We have the multidistrict suit, down in Louisiana. There have been other civil suits where builders, retailers, manufacturers on up the chain of commerce are being sued.

A third way is to try to find some kind of public funding. I know that the Director of HUD has sent a letter saying States can use the community block grant funding. If that funding is available, that funding can be used.

And then, the fourth way is to try to get some participation from Chinese manufacturers. We have told the AQSIQ and the Chinese, from the Chinese Ambassador to all the people with whom we deal, that we are going to work with the Chinese companies to try to find a just and fair solution. We want them to participate in some way, financially. And so, we will begin those talks relatively soon.

Senator COLLINS. Thank you.

Senator DURBIN. I had the same issue on my list to bring up, and I’m glad Senator Collins did. And I think her question, though, is one that I still want to try to probe a little more.

After 3,000 complaints, we knew we had a problem. The question is, when it comes to children’s products and toys, we’re basically trying to reach a point where we have a certification of testing before they arrive in the United States. So, let me ask about a product like drywall, here. Is it your impression that there is any requirement for testing in China of such things before they are exported to the United States?

Ms. TENENBAUM. The regulations relating to drywall in the United States have to do with the strength, in terms of how much weight it can bear. We did not have regulations which said, “You

cannot off-gas hydrogen sulfide.” It was a novelty. And so, therefore, we had to build the protocols. We had to start from the ground up and work through getting the test designed to even figure out what was coming off the drywall.

Senator DURBIN. So, look at it prospectively. If there was another shipment of drywall being manufactured in China for export to the United States, would it be subject to testing for this hydrogen sulfide?

Ms. TENENBAUM. Not right now. And it was only after Katrina, when we needed more drywall than we could manufacture domestically, that we started importing the drywall. We were handling our own needs just in the United States, and we did not have the problem.

Senator DURBIN. Well, I would say—

Ms. TENENBAUM. But, the other thing is, we have started requiring labeling. We want tracking labels so that we know the company and the area of China in which the drywall was manufactured. And we also have worked with the CBP, where they have stopped shipments into the country. In fact, they found a shipment coming in from San Francisco, and they notified us. And then we went out to check on it, and it was not gypsum.

Senator DURBIN. Well, I can tell you that—whether it’s this situation with drywall or the melamine spiking into the pet food, which showed up as a higher level of protein, and therefore, was worth more—nominally worth more, until they discovered it was dangerous. It really might be beyond us to imagine how many possible things could happen from products coming in from a place where there are very few standards being applied at the source of manufacture.

I’d like to close by asking about one of your beloved retirees, whom we talked about over and over again in this subcommittee. And I don’t even remember his last name, but his name was Bob. And Bob was the toy-tester. And some of our staff went out with their cameras and took pictures of Bob’s workshop, which consisted of a table with toys stacked up on them. And Bob had made some marks on the wall at certain levels—4 foot and 6 foot—and then would drop the toys from those levels and see if they busted into little pieces that kids could swallow. And it didn’t strike most of us as the kind of sophisticated testing most Americans would expect from an agency with your reputation. Now, Bob has retired, God bless him. And I know he did a good job for us while he was there, with the resources available. But, please tell me what the world of toy testing looks like at CPSC after Bob.

Ms. TENENBAUM. Well, thank you. Bob the toy-tester has retired. And we do not have just one person testing toys. Our staff estimates, depending on the workload, that toy-testing involves up to 20 staff from the Office of Hazard Identification and Reduction at any given time, including the laboratory, the engineering, human factors, and health scientists.

In addition, our field and import surveillance staff tests or screen toys at the port and the field. For example, investigators at the port have XRF machines, and they can screen for lead and other metals. If the toy fails XRF screening, it’s sent to the laboratory for further analysis by our toxicologists and our chemicals. And if the

toy fails on the small-parts screening, then it's sent to human factors to conduct an age determination to identify the age of the child for whom the toy will be purchased and is most appropriate. And based on this age determination, the laboratory and health scientists test the toy for small parts and sharp edges.

For toy hazards that fall outside of a specific toy regulation, many other CPSC technical personnel conduct product safety assessments on the specific toy in support of compliance activities.

And if you give me a moment, I'd like to tell you about our new lab. We brought pictures of the new lab. After 35 years at our current antiquated lab space, the CPSC will open a new modern testing facility in Rockville, Maryland. We're leaving Gaithersburg. And we will open it in December 2010. And this facility has 63,000 square feet, and we will be able to hold 100 staff and guest researchers in our laboratory. And for the first time, we'll have all of our technical personnel involved in testing housed under one roof.

This building was built by a private company as a laboratory. And it's very impressive. And we invite you, when we open the lab later on this year—you might want to wait til January 2011—to go with us out to see our new lab.

Senator DURBIN. Only if you invite Bob.

Ms. TENENBAUM. All right. We'll bring Bob back.

But, we want to show you—this is our new lab, and this is the old lab. The old lab has 37,000 square feet, as compared to the 63,000 square feet. And these were nine buildings that were 1950s-era buildings, all over that campus. And it only was able to hold 42 people. And we would have to do one test and then take the equipment down to reassemble it to do another test. This new lab allows us to test multiple products at one time. It enhances our ability to look at the children's electrical, combustion, sports, recreational equipment. We will have a dedicated space for children's testing. So, we'd love to show it to you, when we're ready.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator DURBIN. Chairman Tenenbaum, we're going to send you some more questions in writing—

Ms. TENENBAUM. Thank you.

Senator DURBIN [continuing]. And open it up to other members of the subcommittee who might like to do the same.

Keep the record open until Wednesday, April 21, at 12 noon for subcommittee members to submit statements or questions.

And I thank you very much for your testimony.

I thank Senator Collins for joining me today.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

##### CHINESE PRODUCTS

*Question.* How are things progressing with the safety of Chinese products?

*Answer.* Recalls of product manufactured in China have begun to decline. After increasing steadily for many years, from a low of 121 in fiscal year 2003 to a high of 346 in fiscal year 2008, the number of recalls of consumer products manufactured

in China dropped to 230 in fiscal year 2009. Through June of fiscal year 2010, we have recorded 80 recalls of these consumer products, indicating a rate that should put the China recalls well below 200 for fiscal year 2010.

In general, we find the Chinese government cooperative in pressing its industry to correct specific issues. However, while the government has publicly stated its policy that industry should comply with best manufacturing practices for making safe consumer products, it needs to put more resources behind that policy.

*Question.* Have the Chinese disseminated information on standards and manufacturing processes throughout China and are their toys being tested and certified? How does the process work?

*Answer.* The Chinese government has stated that its own laboratories that inspect toys for export under Chinese rules must adhere to the safety requirements of the export market. We have conducted training for these laboratories on numerous occasions. CPSC also has made a significant amount of information about toy safety requirements available in Chinese on our web site and Chinese toy industry publications have picked up our material and reprinted it for their readers on several occasions.

All toys imported from China (and elsewhere) are subject to the CPSIA mandate that they be certified compliant with U.S. regulations and tested for compliance by an independent third party conformity assessment body (lab) accepted by CPSC. Importers typically select a lab from CPSC's list and instruct their Chinese suppliers to have the product tested by the lab. Alternatively, they permit the Chinese suppliers to select the lab from our approved list.

*Question.* In October 2009, the Chinese CPSC (AQSIQ) agreed to take immediate action to eliminate the use of lead paint in toys. Have the Chinese banned products with lead paint? What about products with lead?

*Answer.* There is an AQSIQ directive in place prohibiting the practice. AQSIQ has been aggressive in taking corrective action with manufacturers who attempt to use lead paint on toys exported to the United States. Overall, we have seen a substantial decrease in cases of toys with lead paint level exceeding current limits.

*Question.* When is your next meeting with Chinese officials and what do you hope to accomplish?

*Answer.* I will participate in a trilateral U.S.-EU-China Product Safety Summit in October 2010. AQSIQ will participate at the ministerial level and the European Commission will send their Commissioner responsible for product safety. Both the CPSC and our European partners view the event as an important opportunity to impress upon AQSIQ the need to get Chinese manufacturers to rely on best manufacturing practices for producing safe consumer products.

*Question.* Have any other countries followed suit to make their products safer?

*Answer.* The European Commission is a close partner with CPSC in our work with China. We have conducted joint training for manufacturers and continue to coordinate our messaging on product safety to the Chinese government.

#### BEIJING OFFICE AND ACTIVITIES

*Question.* I understand that at the end of last year, you established CPSC's first overseas office at the U.S. Embassy in Beijing and hired a Product Safety Specialist to work there. What are the responsibilities of this individual?

*Answer.* The Product Safety Specialist—

- acts as a pro-active resource distribution point for Chinese suppliers and government officials who need U.S. consumer product safety compliance information;
- serves as a liaison with AQSIQ to ensure timely exchange of critical regulator-to-regulator information;
- reports regularly to CPSC, in writing, on China's regulatory implementation of product safety measures and the effectiveness of Chinese product safety reform efforts;
- works closely with the CPSC Office of International Programs and Intergovernmental Affairs' China Program Coordinators to facilitate implementation of the U.S.-China Product Safety Work Plan (i.e., personnel and information exchanges);
- proposes and coordinates monitoring and evaluation activities to determine the impact of CPSC product safety initiatives for Chinese suppliers;
- analyses data from Chinese government and industry sources regarding safety and quality of consumer products;
- provides information to CPSC and the Beijing Embassy Economic Section on changes in Chinese practice, regulations, laws, or structures associated with product safety;

- translates relevant product safety documents and verifies document translations;
- coordinates visits to China of CPSC officials and assists with visits to CPSC by Chinese officials;
- with approval from CPSC headquarters and using fully cleared materials, provides selected Chinese audiences with briefings on U.S. requirements for consumer products;
- upon specific request by CPSC headquarters, visits production facilities and test labs, by arrangement with, and at the invitation of Chinese government officials and facility managers, in order to observe specified operations and verify specific activities.

*Question.* What are your plans to hire a Regional Product Safety Officer? What will be the responsibilities of that individual and what countries will be overseen?

*Answer.* The recruiting announcement for the Regional Product Safety Officer was listed on USAJOBS.gov on August 6, 2010. The deadline for applications is September 6, 2010.

The Regional Product Safety Officer will have the following responsibilities in the Asia-Pacific region:

- act as a pro-active resource distribution point for Asia-Pacific regional regulators, suppliers, and other stakeholders, who should understand U.S. consumer product safety compliance information;
- serve as a liaison with regional regulators to ensure timely exchange of critical regulator-to-regulator information;
- report regularly to CPSC on important regulatory implementation of product safety measures in the region and the effectiveness of national product safety programs;
- speak at appropriate events in the region to brief key target audiences on U.S. requirements for consumer products.
- with CPSC headquarters approval, visit regional production facilities and test labs, by arrangement with, and at the invitation of local government officials and facility managers, in order to observe specified operations and verify specific activities; and
- supervise the local hire Product Safety Specialist working in Beijing.

#### STAFFING

*Question.* Your 2010 operating plan states that staffing will remain at 530 FTEs in 2010, however, our enacted fiscal year 2010 conference report language states that the increased funding we provided shall support new staff hires, including at key ports of entry. May I have your assurances that you intend to hire additional staff in 2010? What will your FTE goal be? How many part-time and full-time employees are currently employed at the Commission?

*Answer.* The Commission continues to aggressively hire key staff during the remainder of fiscal year 2010. As of July 28, we have made 96 new hires since the start of the fiscal year 2010, which represents a 21 percent increase in overall agency staffing. During the current fiscal year, we have hired four additional employees at ports of entry for our Import Surveillance Division, and currently have five additional hires pending in this Division.

To date in fiscal year 2010, the CPSC has had 38 resignations and retirements. As a result, we project that we will average about 490 “annualized” FTEs for the fiscal year. This is a 13 percent increase over the annualized FTE usage for fiscal year 2009. The current FTE ceiling target we have given managers for fiscal year 2011 is 576 FTEs. This is the FTE number funded in the fiscal year 2011 CPSC budget request.

As of August 7, 2010, CPSC employment stood at 520.4 FTEs. This number includes approximately 25 temporary student hires that count against our FTE limit. As of August 7, 2010, we also have 15 pending hires and over 69 active vacancy announcements.

*Question.* I am aware that a number of long-time, well-qualified and knowledgeable staff have left the Commission. What are you doing to fill the gaps left by these important staff members? Are you having difficulty recruiting the highly technical staff that you need?

*Answer.* Our attrition rate has remained steady and is 5.9 percent thus far in fiscal year 2010. We continue to hire in all of our technical areas to handle the workload, provide for expertise in each technical area and ensure the transfer of knowledge as staff leave.

We have had difficulty filling positions for a few technical areas such as Mathematical Statisticians, Engineering Psychologists, Fire Protection Engineers, Toxi-

cologists, and Chemists. To maximize hiring potential in these areas, we have utilized the full range of recruitment flexibilities and incentives available for these positions, including recruitment and relocation bonuses, annual leave service credit, superior qualifications appointments, and telework opportunities. We have also opened many of these positions at both the entry grade level and at the senior journeyman level to ensure opportunities for applicants with varying degrees of education and experience.

The CPSC has also sought to expand the pool of qualified applicants by attending targeted job fairs, posting ads in professional journals and engaging in outreach to colleges and universities with a concentration in the technical areas we are recruiting.

#### WORKLOAD

*Question.* The reauthorization placed many new requirements on CPSC along with deadlines for achieving those milestones. How is CPSC managing the balance of meeting its long-standing responsibilities with the new mandates placed on the agency by the Consumer Product Safety Improvement Act?

*Answer.* In the Consumer Product Safety Improvement Act (CPSIA), Congress set an aggressive regulatory agenda for the CPSC over the course of the first 2 to 3 years after enactment. While the CPSIA mandates 42 separate action items for the Commission to undertake, that number understates the agency workload that results from each of those mandates. For example, that count does not include any interpretative rules, such as the definition requirements for “child care article” and “toy” under section 108.

To put this in context, mandatory rulemaking activity averaged less than seven per year from fiscal year 2000 through fiscal year 2008, with the number of rulemaking projects per year ranging from a low of one in fiscal year 2005 to a high of 10 in both fiscal year 2007 and fiscal year 2008. With the passage of the CPSIA, rulemaking activity has increased significantly, averaging about 26 substantial rulemaking activities each year for fiscal year 2009, fiscal year 2010 and proposed fiscal year 2011. The Commission also conducted an additional 15 activities supporting rulemaking proceedings in fiscal year 2009 and 15 to date in fiscal year 2010.

The work required by the CPSIA is in addition to the Commission’s ongoing regulatory activity in a variety of areas, including upholstered furniture, portable generators and cigarette lighters, as well as our ongoing compliance work in evaluating and recalling products that present hazards to consumers.

Timely implementation of the CPSIA is the agency’s top priority, but we have also tried to prioritize our work in a way that maximizes effectiveness and provides flexibility if new hazards emerge. One example of this flexibility is the Commission’s ongoing investigation of contaminated drywall, which is now the largest investigation in the history of the CPSC.

*Question.* How is the Commission prioritizing work associated with new responsibilities as a result of the reauthorization act? What criteria are being used to prioritize this work?

*Answer.* The CPSIA established a schedule of mandatory rulemaking activities, and these requirements have been placed on the Commission’s rulemaking agenda.

In addition, the CPSC has a regulation entitled “Policy on Establishing Priorities for Commission Activities,” (16 CFR § 1009.8) that guides its efforts to prioritize the work of the agency. A description of the process for prioritizing Commission action can be found in our semi-annual regulatory agenda/plan submission that summarizes the regulation cited above and lists following general criteria: frequency and severity of injuries; causality of injuries; chronic illness and future illness; cost benefit of CPSC action; unforeseen nature of the risk; vulnerability of the population; probability of exposure to the hazard; and any additional criteria.

Completion of congressionally mandated tasks is a key agency priority and resources have been allocated accordingly. Other work, such as the investigation of contaminated drywall and other potential emerging hazards are also allocated priority resources as necessary.

*Question.* In what areas do you feel that CPSC has been slow to act due to the complexity of issues and why?

*Answer.* The development of a draft proposed rule addressing the third-party testing requirements under CPSA section 14(d)(2) has been extremely complex and involved thousands of hours of staff resources. This proposed rule has the potential to offer families a vital new layer of safety and reassure U.S. consumers that toys and other children’s products are free of many known hazards. On the other hand, the rule also impacts tens of thousands of manufacturers and importers across all

of the various industry sectors producing children's products, including small business entities.

Given the complexity of the global supply chain and the number of various industries affected by these requirements, CPSC staff has sought extensive public comment from all interested stakeholders to further inform development of the proposed rule. On December 10 and 11, 2009, the Commission held a Testing Policy Workshop and invited public comment on aspects of section 14 of the CPSA, as amended by the CPSIA. Staff presentations were given, and breakout sessions were held on the following topics: Sampling and Statistical Considerations; Verification of Third-Party Test Results; Reasonable Test Programs and Third-Party Testing; Challenges for Small Manufacturer/Low Volume Production; Component Testing and Material Changes; and Protection Against Undue Influence.

A draft Federal Register notice for the proposed rule was published April 1, 2010, and the comment period expired August 3, 2010. Work is progressing, with the final rule scheduled for completion this year.

#### PORT SURVEILLANCE

*Question.* How many full-time CPSC staff work at how many U.S. ports?

*Answer.* The Import Surveillance Division currently staffs 11 U.S. ports with 14 on-site compliance investigators. The 11 U.S. ports with current on-site CPSC staffing include: Buffalo, New York; Denver, Colorado; Houston, Texas; John F. Kennedy International Airport, New York City, New York; Los Angeles/Long Beach, California; Miami, Florida; Newark, New Jersey; Norfolk, Virginia; San Francisco, California; Savannah, Georgia; and Seattle, Washington. We are currently recruiting for four additional locations (Chicago, Illinois; Laredo, Texas; Detroit, Michigan; and Port Everglades, Florida) and expect to have staff in place in those locations by October 30, 2010.

CPSC has also co-located staff in the Commercial Targeting and Analysis Center (CTAC) located within the Office of International Trade at U.S. Customs and Border Protection in Washington, DC.

*Question.* How will your fiscal year 2011 budget request augment this?

*Answer.* The fiscal year 2011 budget request proposes to increase the number of personnel in the Import Surveillance Division to 23 FTEs. Of those 23 FTEs, 19 would be stationed in ports of entry.

*Question.* In what ways are you working with Customs and Border Patrol?

*Answer.* CPSC has partnered with U.S. Customs and Border Protection (CBP) on a series of efforts focused on increasing surveillance of imported consumer products.

In March 2010, CPSC submitted to CBP our revised Concept of Operations that defines CPSC's plans for using the International Trade Data System. This plan includes defined processes to create screening and targeting criteria and the overall automation of import enforcement mechanisms. By doing so, we have identified touch points between the agencies where cooperation and coordination can be developed.

On April 26, 2010, CPSC was the first agency to sign an interagency Memorandum of Understanding (MOU) with CBP allowing CPSC personnel to co-locate at the Commercial Targeting and Analysis Center (CTAC). This MOU will greatly improve upon our interagency communication and information sharing.

This month, CPSC also formally executed an MOU with CBP that will give CPSC access to information in the Treasury Enforcement Communication System (TECS). This will assist CPSC investigators in the ports by providing them access to information that will improve local targeting and product interdiction activities.

CPSC is also actively involved in supporting the Importer Self Assessment-Product Safety (ISA-PS) program that is currently being piloted by CBP. The ISA-PS is envisioned to be a partnership among CBP, CPSC and importers to maintain a high level of product safety compliance to prevent unsafe imports. The ISA-PS is a voluntary approach to product safety compliance and will allow the agency to direct our resources to those companies with higher risk.

*Question.* For the future, do you envision locating a testing laboratory on the west coast so that many of the nation's imports can be tested at, or near their point of entry?

*Answer.* It does not appear that funding will be available in the near future for an additional CPSC testing laboratory on the west coast. However, CPSC and CBP have been in discussions for several months on utilizing CBP laboratories to test samples collected by CPSC at import. Training of select CBP laboratory personnel has been completed and beginning September 20, 2010, targeting will begin for an operation at several ports of entry focusing on potentially violative imitation jewelry.



Products collected as part of this operation will be sent to both CPSC's lab and a CBP lab for analysis. This pilot analysis program will enable us to determine if the results obtained at a CBP lab are comparable to those obtained at the CPSC lab. If the pilot confirms that the results are comparable, the anticipated next step is to begin having CBP labs test CPSC samples independently, with Compliance relying on those results to make admissibility determinations. When implemented, the use of CBP labs will increase the number of import samples that can be collected and tested.

#### GAO REPORT ON CPSC'S OVERSIGHT OF IMPORTED PRODUCTS

*Question.* A GAO report from August 2009 found that CPSC didn't have access to key Customs and Border Patrol import data that could be used to target incoming shipments for inspection. Further, the report found that CPSC's activities at U.S. ports could be strengthened by better targeting incoming shipments for inspection and by improving CPSC's coordination with CBP. What is being done to address these issues? Are you revising your agreements with Customs and Border Patrol? Please address the additional key issues raised in the August 2009 GAO report (GAO-09-803) on CPSC's Oversight of Imported Products, and discuss steps taken to address these concerns.

*Answer.* As noted in a previous response, CPSC is now an active participant in the Commercial Targeting and Analysis Center (CTAC) that has been developed by U.S. Customs and Border Protection (CBP) to spearhead the coordination of the efforts of the various Government agencies responsible for import safety enforcement.

On April 26, 2010, CPSC and CBP signed a Memorandum of Understanding (MOU) for the exchange of information within the CTAC. This document gives both agencies authority to share information, combining for the first time CBP entry and advance cargo data with CPSC violator information. This partnership has enhanced information exchange, improved targeting decisions, and assisted in development of risk analysis capability.

In addition, CPSC and CBP just executed an MOU that gives CPSC access to information in the Treasury Enforcement Communication System (TECS). This will assist CPSC investigators at the ports by providing them access to information that will improve local targeting and product interdiction activities.

#### NANOTECHNOLOGY

*Question.* Your fiscal year 2011 request includes \$2 million to support the Federal National Nanotechnology Initiative data collection activities and environmental, health and safety research, related to consumer products. Why are nanomaterials of concern? What kinds of activities will CPSC undertake as part of the National Nanotechnology Initiative?

*Answer.* The National Nanotechnology Initiative (NNI) has developed a definition of nanomaterials that specifies that these materials have a specific size range in the nanoscale, 1–100 nm (a nanometer (nm) is one-billionth of a meter), and unique physical and chemical properties that differ from other materials not in that specific size range. Because of the small size and unique properties of nanomaterials, there is a concern that they may cause health effects in humans or organisms in the environment. In particular, there is concern about nanomaterials incorporated into consumer products, and the potential risk of nanomaterials entering the bodies of adults and young children who use products that contain these materials.

As part of the NNI activities, several Federal agencies, including the CPSC, have worked together to identify and prioritize the questions that should be addressed and the types of research to be conducted to ensure the responsible development of nanotechnology and the safe use of nanomaterials. These research priorities are listed in the Federal environmental, health, and safety research plan that is currently undergoing revision by several Federal agencies. (A copy of the plan is available online at [http://www.nano.gov/NNI\\_EHS\\_Research\\_Strategy.pdf](http://www.nano.gov/NNI_EHS_Research_Strategy.pdf)).

There are also international efforts, including the OECD Working Party on Manufactured Nanomaterials (WPMN), to prioritize the testing needed for nanomaterials, sponsor health effects studies, and share information on test results. The CPSC staff participates in the international efforts along with several Federal agencies.

CPSC staff is aware of its role in the national and international efforts to address nanomaterial health and safety concerns, and has proposed a number of projects for fiscal year 2011 that address the identified needs outlined in the Federal strategy. In fiscal year 2011, CPSC plans to establish agreements with a number of agencies including the Environmental Protection Agency (EPA), National Institute for Occupational Safety and Health (NIOSH), the National Institute for Standards and Technology (NIST), and the National Science Foundation (NSF) to develop testing meth-

ods and conduct studies to quantify the releases of a variety of nanomaterials from several classes of consumer products. The information derived from these studies will be used in evaluations to determine if there are any potential risks associated with identified releases of nanomaterials from tested products. The CPSC also intends to work with other Federal agencies to increase the availability of information about nanomaterials in publically available databases and literature.

#### CHINESE DRYWALL INVESTIGATION

*Question.* I understand that CPSC and HUD have now issued guidance to homeowners with problem drywall, instructing that all problem drywall and wiring be eliminated and replaced. Is your guidance the culmination of your work on this subject or what are the next steps with regard to Chinese drywall?

*Answer.* CPSC and HUD have provided the public an effective means of identifying homes with problem drywall and of remediating those homes through the issuance of our interim guidance. In our remediation guidance, we have recommended the replacement of all possible problem drywall, all fire safety alarm devices, all electrical components and wiring, and all gas service piping and fire suppression sprinkler systems. CPSC and HUD expect to fine-tune our guidance documents as we analyze the results of our scientific studies as those studies wrap up.

While our scientific investigation is wrapping up, the CPSC continues to vigorously pursue avenues for relief for consumers as we continue to monitor private litigation and remain engaged with AQSIIQ.

#### LABORATORY STATUS

*Question.* I believe you were scheduled to move into your new laboratory space this year but the contract award process took longer than expected and you now expect to move at the end of the year. What activities will occur at the new laboratory space?

*Answer.* The CPSC Laboratory supports the overall CPSC mission to reduce unreasonable risk of injury associated with consumer products. This function requires selecting, procuring, calibrating, operating, and maintaining sophisticated laboratory equipment by knowledgeable and skillful personnel. Work results must be competent in order to withstand the scrutiny of litigation.

The new laboratory will house facilities for the testing and evaluation of products for hazards under Sections 7, 8, 12, or 15 of the Consumer Product Safety Act. This includes facilities for testing of regulated products such as children's sleepwear, general wearing apparel, mattresses and futons, and carpeting.

The flammability test laboratory will include a 2-hour fire-rated burn room for large- and bench-scale ignition test, various hoods and test chambers for small-scale ignition tests, and a chemistry laboratory and chemical hood for fiber analysis and specialized (plastic film, chemicals and solids) flammability testing.

The chemistry laboratory will house all the analytical instrumentation used by the chemists to evaluate children's and consumer products and household chemicals. This laboratory will contain four separate laboratory testing cells used for sample preparation where solvents and acids are used, the analysis of total acids and bases, testing for flash point and viscosity analysis and extractions such as those used in the phthalate plasticizer project.

The Instrumentation Laboratories will house the inductively coupled plasma spectrometer, which is used for analysis of metals, two Gas Chromatograph Mass Spectrometers, a Fourier Transform Infra-red Spectrophotometer, and two small indoor air quality exposure chambers.

CPSC's combustion products and appliances laboratory will contain three specialized and highly sophisticated chambers and instrumentation for testing a range of residential appliances including furnaces, stoves, ovens, gas-fueled fireplace sets, unvented space heaters, and camp stoves and heaters. A temperature- and humidity-controlled carbon monoxide gas chamber used to test CO alarms will also be situated in that space. Adjacent to these chambers, we plan to install the apparatus of the mechanical test laboratory: a large fatigue cycle test frame, a 14-foot tall monorail head-form drop tester for helmet and playground surface testing, two tensile/compression strength testers for evaluating mechanical support structures (such as bicycle frames), and a hydraulic pressure test facility for evaluating fire suppression sprinklers.

The electrical and mechanical test laboratories will be used for testing various consumer products, such as ATVs, small electrical household appliances, cribs, baby walkers, and toys. We will also have fireworks laboratory space to test some of the characteristics of Class C pyrotechnic devices for compliance with Federal regulations.

*Question.* I understand that the new facility does not allow for fireworks testing? Are you not testing fireworks then?

*Answer.* CPSC is not able to conduct the full range of fireworks testing at our current laboratory and will not be able to conduct the full range of testing at our new facility. We conduct testing to evaluate fireworks fuse burn time, functionality and reliability of the fuse to ignite the device, launch tube integrity, functionality and location of the aerial effects, and other characteristics at the Blossom Point Research Facility in southern Charles County.

SEARCHABLE CONSUMER PRODUCT SAFETY INCIDENT DATABASE

*Question.* In less than a year, the public will be able to access a CPSC database that will allow an individual to report an incident or injury from a product and also allow an individual to research safety information about a product. Where is the Commission, at this point, in developing the system?

*Answer.* In September 2009, funds were apportioned by the Office of Management and Budget (OMB) for the development of the public database. Since that apportionment, CPSC staff has worked diligently to complete the tasks required to implement the database by the March 2011 deadline.

In January, public workshops were held with consumer groups and industry to solicit comments and suggestions about how to best meet the requirements of Section 212 of the CPSIA. In April, the Commission proposed a rule specific to the implementation of the database. Comments received through this implementation proceeding have been used to help develop the system.

With strong support from agency executives, much of the development work has been completed and internal and several external focus groups have reviewed specific parts of the application. CPSC has also taken advantage of opportunities for presentations at meetings held by the Consumer Federation of America, the International Consumer Product Health and Safety Organization, and with the National Association of Manufacturers. Comments have been positive.

Later this fall, CPSC plans to hold more workshops with industry and consumer groups to garner more feedback. CPSC's Office of Public Affairs is also coordinating the development of the public awareness campaign consistent with the release of the database in March 2011. Overall, development work for the public consumer product safety incident database is on target and we anticipate a successful release in March 2011.

*Question.* What types of issues are you grappling with as you envision the system's development?

*Answer.* CPSC has not run into significant issues with the development of the system. During the public workshops held on the database many useful comments and suggestions were provided by industry and consumer groups. The Commission also received close to 50 comments in response to the proposed rule. These comments are currently being analyzed in preparation of the final rule. Although some of the technical details of the database design may be affected by the adoption of the final rule, the possible changes are manageable within the implementation timeframes.

*Question.* What types of input or assistance are you receiving for this type of undertaking?

*Answer.* As noted above, CPSC held public workshops with industry and consumer groups to help provide input for the design and functionality of the system. Meetings with other stakeholders and external focus group testing in recent months have also proven useful. Additional workshops are planned, along with more extensive use of the Commission's saferproduct.gov website to provide more information to the public as updated information becomes available. CPSC will continue to work as closely with industry and consumer groups well in advance of the launch of the public database to ensure its success.

STATEMENT SUBMITTED SUBSEQUENT TO THE HEARING

Senator DURBIN. Subsequent to the hearing Senator Mary Landrieu has requested that a statement she has submitted be inserted into the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR MARY L. LANDRIEU

Thank you Chairman Durbin and Ranking Member Collins for calling this oversight hearing on the Consumer Product Safety Commission's (CPSC's) budget for fiscal year 2011. The Consumer Product Safety Commission continues to do great work

to ensure that consumers protected against hazardous products. Of particular interest to me and the state of Louisiana is the CPSC's ongoing investigation into defective drywall made in the People's Republic of China. As homeowners in my state, and nationwide face possible health and environmental risks from Chinese-made drywall products, it is my hope that the CPSC will be able to provide a definitive solution in the investigation into this issue facing impacted consumers in the near future.

According to published reports, since 2006 more than 550 million pounds of drywall have been imported to the United States from China. This is enough to make tens of thousands of homes. However, these products may have come into the country as far back as 2000 and could be in over 100,000 homes nationwide. This is because since 2004, builders have turned overseas for materials because our own U.S. suppliers could not keep up with demand created by the U.S. construction boom, as well as a series of hurricanes and other natural disasters. This would include the 2004 Florida hurricanes, Hurricanes Katrina and Rita of 2005, and other disasters. The drywall entered the United States through numerous ports, including the Port of New Orleans. As I understand it, Florida was the number one destination for these products with over 3 million drywall boards. Louisiana was next with almost 660,000 drywall boards. In Louisiana alone, this could be as many as 7,000 homes. Overall to date, the CPSC has received about 3,082 incident reports from 37 states, the District of Columbia, Puerto Rico, and American Samoa. This problem spans the country, from California in the West to right here in the District of Columbia and Virginia. It is not just an isolated issue for homeowners in the Gulf Coast—Chinese drywall is a nationwide problem.

It is my understanding that the CPSC received its first consumer incident report from Florida in December 2008. In Louisiana, we began to see reports from homeowners in southeast Louisiana in late February of 2009. These reports were similar to those seen in Florida homes: a "rotten egg" smell within homes; health issues such as skin irritation, persistent cough, bloody noses, hair loss, and asthma attacks; lastly homeowners noticed blackened and corroded metal components in their homes. According to the Louisiana Department of Health and Hospitals, 990 calls have been received regarding defective drywall, and 551 of those callers have completed the DHH survey. The majority of these reports were centered in New Orleans and surrounding parishes in southeast Louisiana. From Orleans Parish, 151 calls have been received, followed by St. Tammany Parish with 118 calls, and Jefferson Parish, St. Bernard Parish, and East Baton Rouge Parish follow close behind. Just to give you an example of how widespread this issue is in my state, we have seen hundreds of homeowners ranging from St. Bernard Parish Fire Chief Thomas Stone to New Orleans Saints Head Coach Sean Payton report this product in their homes. Many parents have been seeking answers on what might be making their kids sick or, now that more details are coming out, how they should safely remove this product from their homes. This defective Chinese drywall represents an attack on these families and presents another obstacle on our road to Gulf Coast recovery.

In response to these reports, my office has heard from countless constituents on the need for consistent, scientifically-based information on the product, as well clear guidance on the public safety, health, and environmental impact. Families have asked for information on which Federal or State agencies to contact, in addition to any updates we have on the health risks posed by this product. Many families also called concerned about the impact of defective drywall not just on their children but also on pets. To address these questions, on April 23rd, my office issued a fact sheet for homeowners updating them on the Federal/State response, providing key contact information, and answering frequently asked questions. My office updates this document regularly as new information becomes available.

On the state level, it is my understanding that the calls which the Louisiana Department of Health has received have ranged from homeowners requesting home inspections, advice on home evacuations, in addition to inquiries on specific health information to provide their primary care physicians and veterinarians. A key question is that of remediation or possible financial assistance in order to deal with this problem. Many of my constituents received either Federal Emergency Management Agency (FEMA) or Small Business Administration (SBA) disaster assistance to rebuild these homes following Hurricanes Katrina and Rita of 2005. These families spent months in FEMA trailers and rental units following these disasters, they paid out of pocket or took on debt to rebuild. Now they find their rebuilt homes in worse shape than these post-disaster temporary units. In this situation, families are looking for answers and a timeline for when more information will be known on the definitive health impacts of this product.

In response to these concerns from my constituents, I have been working closely with Senators whose states contain contaminated drywall. Along with my col-

leagues, I have sent letters to various agencies requesting appropriate assistance for homeowners and I have filed S. 2731, the "Small Business Administration Disaster Recovery and Reform Act of 2009." S. 2731 includes a provision, which with restrictions, would authorize SBA to make disaster home loans for the repair and replacement of Chinese drywall. Senator Nelson has co-signed, and I look forward to pushing for this bill to become law to provide relief to homeowners.

Earlier this year, CPSC and the U.S. Department of Housing and Urban Development (HUD) issued a protocol to help identify problem drywall in homes. Further, interim remediation guidance was released by these agencies on April 2 based on CPSC's ongoing scientific research. These guidelines are a positive step to relief for affected homeowners, and the coordination of the CPSC and HUD is to be commended. However, it is important for all Federal agencies to better coordinate with CPSC and HUD in an effort to better assist in the remediation and recovery efforts.

While I understand the need to be thorough and build a case that might stand up to future legal scrutiny, and I understand that accurate scientific testing takes time, my constituents need definitive answers now. Parents caring for sick children or pets need answers, workers removing these products from homes need to know potential health risks, and local health officials need to know what environmental impact may occur if this drywall is dumped into landfills. Though results which have been released and interim remediation protocol are great leaps, I must stress the importance of a final solution.

In closing, I believe that the scope of this problem is huge because it touches on so many different stakeholders. The first thought is on the impact to homeowners and renters, as it should be for a health risk of this nature. However, medical professionals and veterinarians are also dealing with this issue as families report health problems. The possible public safety impact also draws in fire marshals, construction workers, and environmental inspectors. So this defective product is not just a concern for homebuilders or homeowners, but is a concern for many other professions in both the public and private sectors. That is why the testing of this hazardous material is so important—we must ensure that there is a timely and effective Federal response in cooperation with local health authorities. I look forward to working closely with my colleagues to support additional efforts to address this critical matter facing our homeowners.

I thank the Chairman and ask that a full copy of my statement appear in the record.

#### SUBCOMMITTEE RECESS

Senator DURBIN. And this meeting of the subcommittee stands in recess.

[Whereupon, at 3:26 p.m., Wednesday, April 14, the subcommittee was recessed, to reconvene subject to the call of the Chair.]