



Statement of
Commissioner Thomas H. Moore
Submitted to the
Subcommittee on Commerce, Trade, and Consumer Protection
House Committee on Energy and Commerce
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Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to provide testimony on H.R. 4040, legislation to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

As the Members of this Subcommittee know, the U.S. Consumer Product Safety Commission needs help. It needs additional resources, more staff and greater authority to protect consumers from potential product hazards. And you have responded. I am extremely gratified by the authorization levels in this bill and by the bill's clear acknowledgment that consumer product safety must remain an important federal government function.

The bill recognizes that it will take time for the agency to rebuild. We cannot do it overnight. The downsizing and dismantling of the agency has been going on for a while, so I ask you to be patient with all of us at the agency as we rebuild our staff expertise and, with your strong support, refocus our efforts on providing a greater level of product safety with the increased capabilities this bill will give us.

We have lost many experienced and talented people in the last few years—people who knew instinctively when they saw a product whether it was badly designed or if it was just plain a bad idea from a safety standpoint. We have increased our information

technology spending as a way to compensate for the reduction in the size of our staff, but no computer that I am aware of can look at a product and **know** that it should be removed from the marketplace. Only experienced, trained people can do that. The real backbone of the agency is its staff: our toxicologists, our pharmacologists, our mechanical engineers, our human factors specialists, our chemists, our investigators and yes, even our lawyers. We need to retain our current employees and recruit additional staff. They are the key to the agency's ability to fulfill its role as protector and enforcer. This bill will allow us to rebuild our staff and should send a signal to current employees that the agency will be around for a long time and that they should stay and rebuild with us.

There has been much focus on recalled imported products lately and rightly so. The Commission currently has no full-time presence at any port and little or no presence at several of the major ports. We currently inspect less than 1% of the products under our jurisdiction that come into this country. This is not quite as bad as it sounds because we do targeted surveillance; that is, we look for specific products and for specific importers that we know from past experience to be problematic. I do not know what percentage of all problematic products we inspect, but it is still probably a fairly small number. We will, I am afraid, always be at a disadvantage in policing this huge import market. But with more people: at the ports; more people scrutinizing products at retail outlets and in manufacturing plants; and with more people at headquarters and at our laboratory, analyzing products and employing stronger enforcement tools to require recalls in a more timely fashion, we can do a better job of keeping hazardous products out of the marketplace before they cause injuries, than our current resources and authority permit us to do.

We tend to take the safety of our products, and the Commission's role in that, for granted until a tragedy occurs. The real tragedy would be not to take advantage of the opportunity we now have to make the Commission stronger. Your bill sends the message that the American public wants to hear—that you will not permit the Commission to wither on the vine; you will reverse the downsizing trend of recent years and you will give the agency the enforcement tools it needs to aggressively fight to protect America's consumers.

I understand that the legislation will go through changes as it moves through the legislative process, but it is a very good foundation on which to build. My staff and I have not had the opportunity to review the bill's provisions as carefully as I would like, thus the comments below are somewhat general in nature. My staff will be conferring with the subcommittee staff and may provide them with more detailed comments on some sections of the bill after we have reviewed them more thoroughly, including timing requirements and issues of prioritization.

Section by section comments of H.R.4040:

Section 101. Ban on Children's Products Containing Lead.

I have been on record for some time as stating that I hoped Congress would take up the issue of lead in children's products because the statutory constraints under which the Commission labors are too stringent when it comes to something as clearly toxic to our children as lead. Personally I do not think there should be any lead in children's products and I hope one day we are as amazed that there was ever a time that these products contained lead as we are now when we remember that water coolers were once

lined with lead. This bill's aim is to get the amount of lead down to the lowest level possible and I certainly support that goal.

Section 102. Mandatory Third-Party Testing for Certain Children's Products.

I support mandatory third-party testing and certification of children's products, especially of products intended for younger children. I am inclined to agree that the laboratory should not be controlled by the manufacturer or private labeler, but would also consider a provision that would allow manufacturer-owned labs to do testing unless and until such time as we had reason to believe their test results were not accurate.

Section 103. Tracking Labels for Children's Products.

I support having identifying marks on products and product packaging that help manufacturers, retailers, consumers and the Commission to identify when and where a product was made. I would like eventually to see this on all products so that in the event of a recall, the Commission has a tool to more clearly identify which products should be subject to it.

Section 104. Standards and Consumer Registration of Durable Nursery Products.

We know that direct notice to consumers from a product manufacturer about a recall is the most effective form of notice; therefore, I support requiring product registration card notification.

Section 105. Labeling Requirement for Certain Internet and Catalogue Advertising of Toys and Games.

I support this provision. As more and more products are purchased through a catalogue or over the Internet without the buyer ever viewing the actual product, the

effectiveness of our labeling rules becomes more and more diminished. This would rectify that problem.

Section 201. Reauthorization of the Commission.

I support substantial increases in the Commission's appropriations, and these authorization figures will provide the basis for that through 2011. I also support a congressional appropriation to modernize and re-equip our laboratory.

Section 202. Structure and Quorum.

I support both an extension of the Commission's quorum and the gradual increase in the number of Commissioners, back to the five that were originally funded.

Section 203. Submission of Copy of Certain Documents to Congress.

I support Congress receiving a copy of our initial annual budget submission to the Office of Management and Budget. I believe it will provide Congress with the information it needs to better analyze the President's budget request.

Section 204. Expedited Rulemaking.

I support giving the Commission the authority to use, in its discretion, two-step rulemaking instead of the longer three-step rulemaking process. I would expect the two-step procedure to be used on more routine matters and not, for example when the Commission is taking on an issue of which it has little knowledge or experience.

Section 205. Public Disclosure of Information.

I am on record as supporting the elimination of section 6(b) of the CPSA, which has the effect of keeping a great deal of product specific safety information secret. While the provisions of this bill do not go as far as I would like, they are a step in the right direction.

Section 206. Prohibition of Stockpiling Under Other Commission-Enforced Statutes.

I support extending the stockpiling provisions to our other statutes.

Section 207. Notification of Noncompliance with Any Commission-Enforced Statute.

I support explicitly extending the reporting requirements of section 15 (b) of the CPSA to the other statutes the Commission enforces.

Section 208. Corrective Action Plans.

I support giving the Commission the final say as to whether a proposed corrective action plan will adequately protect consumers.

Section 209. Website Notice, Notice to Third Party Internet Sellers, and Radio and Television Notice.

I support the enhanced recall notice provisions of this section.

Section 210. Identification of Manufacturer, Importers, Retailers, and Distributors.

I support requiring everyone in the product supply chain to know who they are dealing with and to supply that information to the Commission upon request.

Section 211. Export of Recalled and Non-Conforming Products.

I have urged Congress to reexamine our export policy. I believe a policy that recognizes that we can only expect other countries to protect our consumers from their exports, if we are willing to make the same commitment by not sending them products that could harm their consumers. I believe this section does that.

Section 212. Prohibition on Sale of Recalled Products.

I support prohibiting the sale of recalled products.

Section 213. Increased Civil Penalty.

I have long supported the removal of any upper limit on civil penalties because I think the types of products we regulate and the different and multiple types of violations that are possible under our statutes, as well as the circumstances that contribute to those violations, are so disparate that we need maximum flexibility to fine companies who violate our requirements. Our statutes list various factors we must take into account in determining the amount of the penalty and those are what we should look to in structuring penalty amounts not an arbitrary ceiling that has no relationship to the facts of the violation(s). But, if there must be a cap, an increase is extremely welcome, though I would urge a higher one.

Section 214. Criminal penalties to include asset forfeiture.

I support this provision to give us the additional penalty of asset forfeiture for criminal violations of our statutes.

Section 215. Sharing of Information with Federal, State, Local, and Foreign Government Agencies.

I support this information-sharing provision.

CONCLUSION

This comprehensive legislative package introduced by Congressman Bobby L. Rush and Congressman Cliff Stearns, with Energy and Commerce Committee Chairman

John Dingell and Ranking Member Joe Barton, is a big step in strengthening and restoring confidence in the U.S. Consumer Product Safety Commission.

It is very important that in whatever we do collectively—through efforts by the Administration, by Congress and by the Commission—to address the most recent problems facing the Commission, that we send the clear, unequivocal message to manufacturers, importers and retailers who sell products in this country that present a risk of injury to consumers *that their actions are unacceptable and that they will be held accountable.* This legislation will give us more resources and additional enforcement tools. It will then be up to the Commission to use them to make the marketplace a safer place for American consumers.