**Testimony of Dana Baiocco**
**Commissioner, U.S. Consumer Product Safety Commission**

**U.S. House of Representatives**
**Subcommittee on Consumer Protection and Commerce**

**April 9, 2019**

# "Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?"

**Testimony of Commissioner Dana Baiocco**
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Good morning, Chairwoman Schakowsky, Ranking Member McMorris Rogers, and Members of the House Subcommittee on Consumer Protection and Commerce. Thank you for inviting me to this hearing and for providing the Commissioners of the U.S. Consumer Product Safety Commission with the opportunity to appear before you today. This is the first time I have appeared before Congress for an oversight hearing and I believe it is a great responsibility to discuss the status of the Agency and to share with you my individual perspectives, goals, and ideas for making the Agency successful. While I only have been at the CPSC for 10 months, it has been an honor during that time to work with my fellow Commissioners to facilitate our statutory directives and to explore ways to keep the Agency as current as possible with the complex and ever-evolving issues that arise in the consumer product safety world.

The enormity of the Agency's charge cannot be overstated. In the title of this hearing, you asked, "Is the Consumer Product Safety Commission Fulfilling Its Mission?" The answer is "Yes." In fact, just during my short tenure, the Agency has taken several safety related actions including the vigorous enforcement of the Child Nicotine Poisoning Prevention Act of 2015. We have finalized safety rules for high chairs, baby changing products, booster seats and portable hook-on chairs. We have voted to ensure that a mandatory standard to address furniture tip-over hazards is finalized, and we have developed and released a CPSC "Recall App" to better inform consumers about recalled products. We have expanded our toy safety collaboration with retail outlets, trade organizations and consumer advocacy groups, and the Agency's new and

progressive social media campaign is extremely well-received. However, given the great mission before us, I believe that the Agency can and must do more.

First, we must enhance the Agency as a whole to better serve consumers. To do this, the Agency must commit to forward looking investments that make the Agency more efficient, nimble, and effective. For example, the Agency should invest smartly in three basic upgrades: (1) improved equipment; (2) additional and specialized personnel to revamp and oversee the Agency's technology, data capabilities, and hazard identification systems; and (3) a more robust plan for testing and studying new trends, products, and impending issues. Merely redecorating an outdated system does not now, and will not in the future, allow the Agency to serve the American public in the manner in which they deserve.

Given the speed with which new products enter the marketplace every day, the ease with which they get directly into consumers' homes, and the complexity of the global supply chain, which includes products that do no comply with our safety rules and standards, real action must be taken to keep the Agency relevant. Securing modern IT infrastructure is the core to addressing these challenges. We must end the cyclical exercise of patching an already obsolete system that becomes more antiquated every day. We must ensure that a generous portion of the Agency's budget is dedicated to transitioning the CPSC into a forward looking Agency rather than a reactive one. We must provide our engineers with reliable and sound data to address and solve product hazards.

Second, the Agency must be purposeful in its regulatory activities. Rulemaking, of course, is a key part of the CPSC's charge, and there are strict statutory directives that we must follow. However, the Agency can and must do a better job with this authority. For example, when the Agency promulgates a safety rule, it should do it swiftly and decisively, and have a

legally sound and scientific reason to do so. It serves no purpose to force a rule that does not solve the hazard or that leaves room for legal challenge because the rule lacks basis in data, science, or proper procedure. All Agency legal actions must be credible, rationally related to the hazard before it, and consistent with the rule of law. The Commission should not support any process that merely meets an "arbitrary and capricious" standard.

Third, the CPSC should be the gold standard in engineering, testing, and problem solving. We must allow our engineers to be independent and solution-oriented. Our entire team must be empowered to solve product hazards affirmatively, when appropriate, rather than be encouraged to merely opine on proposed solutions offered by interested stakeholders. In addressing product hazards, our engineers and compliance staff also should be reassured that they may accept and capitalize on opportunities where industry is willing to share sound testing results and successful programs that the Agency does not yet have. An "us versus them" mentality will impede good engineering principles. A true collaborative process is a united and ultimately a successful one.

Finally, I think it is imperative that the Agency implements programs that allow it to move ahead of the curve on emerging trends and impending issues. To illustrate, the marketplace is currently demanding the production of more "sustainable" products. However, the term "sustainable" has many meanings. To the extent that "sustainable" means, for example, recycled or reusable products, the Agency must ensure that this market demand does not indirectly undo safety advancements that the Agency has worked long and hard to achieve. The Agency should be studying now and not reacting later to any such potential pitfalls.

Since joining the CPSC, I have been working on some individual initiatives to contribute to the Agency's mission. One of those initiatives focuses on counterfeit products. Of course, the

CPSC does not have jurisdiction over Intellectual Property issues. However, my research has revealed that fake, "knock-off," and other brand copy-cat products are a deep pool of non-compliant goods. I am working with trade associations, large and small businesses, and other stakeholders to find ways to target and stop the flood of these risky products directly into consumers' hands.

I am immensely impressed with the work that the Agency's import surveillance team is doing on this initiative. Early in my tenure, I visited the Port of Newark where our port team, small as they may be, demonstrated their good work in stopping the inflow of these non-compliant products. The individuals working daily at the ports have developed excellent relationships with their Custom and Border Patrol colleagues to accomplish a lot on this front. They are doing an incredible job with their limited resources. I believe that the Agency should commit to allocating more resources to them so that they may expand that good work.

My office is also committed to working with the e-commerce community to develop better ways of patrolling the varying platforms for non-compliant goods. Similarly, I have opened discussions with several e-commerce hosts about direct recall notice, data-sharing to identify emerging hazards, and ways to better liaise with experts, who are studying consumer behavior so that the Agency may benefit from this information pool.

My overarching goal as a Commissioner is to ensure that the CPSC is employing best practices in all that we do. I have requested that the Commission conduct an internal review of the Agency's staff directives and procedures to identify and enhance areas that need improvement. That review, in my opinion, is essential to the integrity of the Agency.

It has been a challenging and rewarding opportunity to serve the American public as a CPSC Commissioner. Thank you for this opportunity to testify before you and for your good work on this Subcommittee. I look forward to answering your questions today and, I am always available to discuss in more detail my comments regarding Consumer Product Safety Commission in general and my perspectives, goals, and ideas for fulfilling the Agency's mission.