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CONSUMER
PRODUCT SAFETY
COMMISSION

Agency Faces
Challenges in
Responding to New
Product Risks



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Why GAO Did This Study

Growing numbers of consumer product recalls in 2007 and 2008, particularly of imported toys and children's products, focused increased attention on CPSC. In the 2012 Consolidated Appropriations Act, Congress directed GAO to analyze the potential safety risks associated with new and emerging consumer products. CPSC's approach focuses on new hazards, which could be risks associated with both new and existing products. Therefore, this report evaluates the authority and ability of CPSC to (1) stay generally informed about new risks associated with consumer products and use available information to identify product hazards, and (2) assess and address new risks posed by consumer products in a timely manner.

GAO reviewed CPSC's statutory and regulatory authorities to respond to product hazards; reviewed agency documents on risk assessment; reviewed CPSC corrective actions; and met with agency officials and representatives from national consumer, industry, and legal organizations with expertise in consumer product safety and risk assessment. GAO observed CPSC's testing facility and demonstrations of its information system upgrades.

What GAO Recommends

To better enable CPSC to target unsafe consumer products, Congress may wish to amend section 29(f) of CPSA to allow CPSC greater ability to enter into information-sharing agreements with its foreign counterparts that permit reciprocal terms on disclosure of nonpublic information. CPSC supported this matter.

View [GAO-13-150](#). For more information, contact Alicia Puente Cackley, 202-512-8678, cackleya@gao.gov

CONSUMER PRODUCT SAFETY COMMISSION

Agency Faces Challenges in Responding to New Product Risks

What GAO Found

The Consumer Product Safety Commission (CPSC) has broad authority to identify, assess, and address product risks, but faces some challenges in identifying and responding to new risks in a timely manner. CPSC uses various means to stay informed about risks that may be associated with new or existing products. These methods include (1) market surveillance activities for imported products, retail stores, and Internet sales; and (2) formal agreements and various activities with other agencies. However, certain legal restrictions may hamper CPSC's ability to stay informed about new product hazards to public health and safety. Specifically, because of certain restrictions in the Consumer Product Safety Act (CPSA), CPSC cannot agree to allow foreign agencies to disclose nonpublic information they receive from CPSC. While the Consumer Product Safety Improvement Act (CPSIA) allows CPSC greater freedom to disclose information to U.S. courts, Congress, and state and local agencies, CPSC has been unable to complete information-sharing agreements with foreign counterparts as envisioned because it cannot offer its counterparts reciprocal terms on disclosure of nonpublic information. Due to the growing number of imported consumer products, this restriction on sharing information may hinder CPSC's ability to identify risks from new products in a timely manner, possibly leading to injury and death if unsafe products enter the U.S. market. CPSC also faces challenges in collecting and analyzing large quantities of data in order to identify potential product risks. Some sources CPSC uses to identify injuries or death are dated—for example, death certificates can be 2 or more years old—or contain limited information about the product involved in the incident. To respond to these challenges, the agency has key efforts under way. First, CPSC is upgrading its data management system. According to CPSC, the upgrades are designed to enhance CPSC's efficiency and effectiveness, enable a more rapid dissemination of information, and allow consumers to search the database through a publicly available Internet portal. CPSC officials expect the upgrades to be completed in fiscal year 2013 and fully operational in fiscal year 2014. Second, in response to a CPSIA requirement, CPSC is working with Customs and Border Protection to test a new approach for identifying unsafe consumer products at the ports. CPSC port investigators have found this approach to be effective and have prevented hundreds of consumer products that were in violation of U.S. safety rules or found to be hazardous from entering commerce.

Timeliness of CPSC's actions to assess and address new risks depends on the specific product or hazard. For example, the simplest assessments may only take a few days, such as testing a product for lead content. More complex assessments can take years to complete, such as tracking potential chronic hazards from certain chemicals and nanotechnology (which involves the ability to control matter at the scale of one billionth of a meter) because no standard method for measuring toxicity associated with nanotechnology currently exists. CPSC uses various approaches to address product hazards, including conducting compliance activities, developing mandatory safety standards, and educating the public about safety hazards and safe practices. CPSC can take action to address a product hazard more quickly if it is addressing a known hazard. However, addressing a new or emerging risk can take CPSC years because it may need to develop new standards or approaches.

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Abbreviations

ANPR	Advance Notice of Proposed Rulemaking
CBP	U.S. Customs and Border Protection
CCA	chromated copper arsenate
CDC	Centers for Disease Control and Prevention
CHAP	Chronic Hazard Advisory Panel
CPSA	Consumer Product Safety Act
CPSC	Consumer Product Safety Commission
CPSIA	Consumer Product Safety Improvement Act
CPSRMS	Consumer Product Safety Risk Management System
EPA	Environmental Protection Agency
FDA	Food and Drug Administration
HUD	Department of Housing and Urban Development
IT	information technology
MOU	memorandum of understanding
NEISS	National Electronic Injury Surveillance System
NIH	National Institutes of Health
NIST	National Institute of Standards and Technology
OMB	Office of Management and Budget
State	Department of State

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United States Government Accountability Office
Washington, DC 20548

December 20, 2012

The Honorable Richard Durbin
Chairman
The Honorable Jerry Moran
Ranking Member
Subcommittee on Financial Services
and General Government
Committee on Appropriations
United States Senate

The Honorable Jo Ann Emerson
Chairwoman
The Honorable José E. Serrano
Ranking Member
Subcommittee on Financial Services
and General Government
Committee on Appropriations
House of Representatives

Growing numbers of consumer product recalls in 2007 and 2008, particularly of toys and other children's products, focused increased attention on the Consumer Product Safety Commission (CPSC). As globalization and technological advances expand the range of products on the market, the challenge of overseeing and regulating the thousands of product types becomes all the more complex. Some risks include the growth of global supply chains that assemble products across a vast web of interconnected geographies as well as the difficulty of identifying product hazards among hundreds of containers entering U.S. ports. According to CPSC, the value of U.S. imports under its jurisdiction reached about \$637 billion in 2010 and about four out of five consumer product recalls involved imported products, making imports a critical focus of the agency. These challenges are likely to grow in the future. In response to the growing concerns about unsafe consumer products, on August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act (CPSIA) to reform CPSC and strengthen its authority to enforce consumer product safety standards.¹

¹Pub. L. No. 110-314, 122 Stat. 3016 (2008).

CPSC continues to face significant public scrutiny about its ability to properly assess risks related to consumer products and take appropriate action in a timely manner. CPSC's risk management process includes obtaining information about consumer products from various sources, identifying risks, assessing those risks, and taking actions to address them. The process focuses on risks associated with both new and existing products. How quickly CPSC identifies, assesses, and addresses a particular product hazard depends on several factors, including whether or not a particular product risk is within their authority and ability to address.

In the 2012 Consolidated Appropriations Act, Congress directed us to analyze the potential safety risks associated with new and emerging consumer products, including chemicals and other materials used in their manufacture, taking into account CPSC's ability and authority to identify, assess, and address such risks in a timely manner and keep abreast of the effects of new and emerging consumer products on public health and safety.² This report evaluates the authority and ability of CPSC to (1) stay generally informed about new risks associated with consumer products and use available information to identify product hazards, and (2) assess and address new risks posed by consumer products in a timely manner.

To address these objectives, we reviewed CPSC's statutory and regulatory authority related to identifying, assessing, and addressing new risks associated with consumer products. We reviewed CPSC's policy on establishing priorities, procedures, strategic plan, performance and accountability reports, budget operating plans, and incident and compliance data, as well as relevant prior GAO reports. We reviewed existing information about CPSC data systems and interviewed agency officials knowledgeable about the data. Based on our review of documentation, we believe the data are reliable for our purposes. To assess CPSC's authority to obtain and share information that could help identify new hazards posed by consumer products, we reviewed our prior work on CPSC's authorities and legislation related to the agency.³ We

²Consolidated Appropriations Act, 2012, Division C - Financial Services and General Government Appropriations Act, 2012, Title V, Pub. L. No. 112-74, § 503, 125 Stat. 786, 908 (2011). CPSC defines a new product as a redesign of an already existing product or a product entering commerce for the first time.

³We previously have reported on CPSC's authorities, and we discuss specific authorities as appropriate throughout this report. See GAO, *Consumer Safety: Better Information and Planning Would Strengthen CPSC's Oversight of Imported Products*, [GAO-09-803](#) (Washington, D.C.: Aug. 14, 2009).

met with CPSC officials to discuss their authorities and their ability to identify, assess, and address risk, including all of CPSC's current commissioners and the Chairman.⁴ To assess certain measures of timeliness, we reviewed CPSC's performance goals and obtained information on time frames for risk assessments. We toured CPSC's testing laboratory in Rockville, Maryland, and observed various tests conducted as part of CPSC's risk assessment process. Additionally, we interviewed national consumer and industry organizations and legal professionals that have expertise in consumer product safety. See appendix I for additional information on our scope and methodology.

We conducted this performance audit from January 2012 through December 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CPSC's Authorities and Mission

CPSC was created in 1972 under the Consumer Product Safety Act to regulate certain consumer products and address those that pose an unreasonable risk of injury; assist consumers in evaluating the comparative safety of consumer products; and promote research and investigation into the causes and prevention of product-related deaths, injuries, and illnesses. CPSC's jurisdiction is broad, covering thousands of types of manufacturers and consumer products used in and around the home and in sports, recreation, and schools. CPSC does not have jurisdiction over some categories of products, including automobiles and other on-road vehicles, tires, boats, alcohol, tobacco, firearms, food, drugs, cosmetics, medical devices, and pesticides. Other federal

⁴The Consumer Product Safety Act established CPSC as an independent regulatory commission. The act provides for the appointment by the President of five commissioners for staggered 7-year terms. One of these commissioners may be designated the Chairman, who directs all the executive and administrative functions of the agency. See generally 15 U.S.C. § 2053. As of November 2012, CPSC was led by three commissioners.

agencies—including the National Highway Traffic Safety Administration, Coast Guard, Department of Justice, Department of Agriculture, Food and Drug Administration (FDA), and Environmental Protection Agency (EPA)—have jurisdiction over these products.

CPSC has broad authorities for identifying, assessing, and addressing risks associated with consumer products. The Consumer Product Safety Act (CPSA) consolidated federal safety regulatory activity relating to consumer products within CPSC. As a result, in addition to its responsibilities for protecting against product hazards in general, CPSC administers the following laws that authorize various performance standards for specific consumer products:⁵

- the Flammable Fabrics Act, which among other things, authorizes CPSC to prescribe flammability standards for clothing, upholstery, and other fabrics;⁶
- the Federal Hazardous Substances Act, which establishes the framework for the regulation of substances that are toxic, corrosive, combustible, or otherwise hazardous;⁷
- the Poison Prevention Packaging Act of 1970, which authorizes CPSC to prescribe special packaging requirements to protect children from injury resulting from handling, using, or ingesting certain drugs and other household substances;⁸

⁵See Consumer Product Safety Act § 30, Pub. L. No. 92-573, 86 Stat. 1207, 1231 (classified, as amended, at 15 U.S.C. § 2079); Energy Independence and Security Act of 2007, § 1403, Pub. L. No. 110-140, 121 Stat. 1492, 1795 (classified at U.S.C. § 8003).

⁶Act of June 30, 1953, ch. 164, 67 Stat. 111 (classified, as amended at 15 U.S.C. §§ 1191 et seq.).

⁷Pub. L. No. 86-613, 74 Stat. 372 (July 12, 1960) (classified, as amended, at 15 U.S.C. §§ 1261 et seq.). Under the Federal Hazardous Substance Act, CPSC is authorized to declare a substance to be hazardous and to regulate the labeling of substances which are declared to be hazardous. 15 U.S.C. § 1261(f)(1)(B) and § 1262.

⁸Pub. L. No. 91-601, 84 Stat. 1670 (Dec. 30, 1970) (classified, as amended, at 15 U.S.C. §§ 1471 et seq.).

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- the Refrigerator Safety Act of 1956, which mandates CPSC to prescribe safety standards for household refrigerators to ensure that the doors can be opened easily from the inside;⁹
 - the Virginia Graeme Baker Pool and Spa Safety Act of 2007, which establishes mandatory safety standards for swimming pool and spa drain covers, as well as a grant program to provide states with incentives to adopt pool and spa safety standards;¹⁰ and
 - the Children’s Gasoline Burn Prevention Act of 2008, which establishes safety standards for child-resistant closures on all portable gasoline containers.¹¹
 - the Child Safety Protection Act of 1994, which requires the banning or labeling of toys that pose a choking risk to small children and the reporting of certain choking incidents to the CPSC.¹²

In 2008 CPSIA mandated that CPSC develop an approach, not later than August 2010, to identify products imported into the United States that are most likely to violate consumer product safety statutes enforced by the Commission. CPSIA specifically requires that CPSC develop this methodology in partnership with U.S. Customs and Border Protection (CBP) using information from shipment data from the International Trade Data System and other databases. CPSC was required to incorporate this approach into its information technology (IT) modernization plan, to move to a single integrated data system intended to upgrade the data systems that support CPSC’s regulatory activities. The act also required that CPSC use this information to examine ways to identify possible shipments of violative consumer products and share this information with

⁹Act of August 2, 1956, c. 890, 70 Stat. 953 (classified, as amended, at 15 U.S.C. §§ 1211 et seq.). Under the act, it is unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator, unless it is equipped with a device enabling the door to be opened from the inside and which conforms with the standards prescribed by CPSC. 15 U.S.C. § 1211.

¹⁰Pub. L. No. 110-140, Title XIV, 121 Stat. 1492, 1794 (Dec. 19, 2007) (classified at 15 U.S.C. §§ 8001 et seq.).

¹¹Pub. L. No. 110-278, 122 Stat. 2602 (July 17, 2008) (classified as a note to 15 U.S.C. § 2056).

¹²Pub. L. No. 103-267, 108 Stat. 722 (June 16, 1994) (classified, as amended, at 15 U.S.C. § 1278).

CBP to prevent such items from entering the marketplace. CPSC has subsequently reported on its efforts to develop this approach for import surveillance.¹³ These efforts are discussed in greater detail later in this report.

While CPSC has statutory authority to regulate many types of products, it does not have authority to require pre-approval of products before they enter the U.S. market.¹⁴ Because CPSC regulates consumer products after they enter the market, identifying new products and any new hazards that may be associated with new products is difficult. Generally, CPSC can require every manufacturer of an imported product subject to a consumer product safety rule to issue a certificate that certifies based on reasonable laboratory testing that the product complies with all rules, bans, standards or regulations.¹⁵

Under several of the acts that it administers, CPSC's primary mission is to protect consumers from unreasonable risk of injury or death from consumer products under its jurisdiction. To achieve its mission, CPSC uses various approaches captured under five strategic goals: (1) to provide leadership in safety; (2) to reinforce a commitment to prevention; (3) to engage in rigorous hazard identification; (4) to provide a decisive response to identified product hazards; and (5) to raise awareness of safety issues and CPSC capabilities.

Under the Consumer Product Safety Act, CPSC is authorized to evaluate a consumer product to determine whether the product creates what the act calls a "substantial product hazard" or whether the Commission should issue a consumer product safety standard or ban by regulation to

¹³CPSC, *Staff Report to Congress Pursuant to Section 222 of the Consumer Product Safety Improvement Act of 2008 Risk Assessment Methodology* (Bethesda, MD.: Sept. 9, 2011).

¹⁴See, CPSC Nanomaterial Statement ("the Consumer Product Safety Act (CPSA) does not require the premarket registration or approval."); CPSC Drywall Information Center, <http://www.cpsc.gov/info/drywall/faqs.html> ("CPSC does not have the legal authority to perform premarket testing and approval of products.") Although, CPSC does not have premarket approval authority it does have the authority to stop items from entering the U.S. customs territory if the product, among other requirements, fails to meet applicable consumer product safety rules. 15 U.S.C. § 2066(a).

¹⁵CPSA, 15 U.S.C. § 2063(a).

prevent or reduce an unreasonable risk.¹⁶ CPSC considers the risks associated with a consumer product and assesses whether a particular risk is known or is a new or emerging hazard. New hazards can be associated with either a new or existing product. For example, a new hazard could materialize in the form of new material used to manufacture a type of product already in existence. To address product hazards, CPSC can issue regulations that establish performance or labeling standards for consumer products, often referred to as mandatory standards. CPSC refers to products subject to such mandatory standards as regulated products. Those regulated products that do not comply with mandatory standards are referred to as violative products. In contrast, many consumer products that are under CPSC's jurisdiction are subject to voluntary standards, which are generally determined by standard-setting organizations, with input from government representatives and industry groups, and are also referred to as consensus standards. Unregulated products are those products not subject to any mandatory standards and may include those covered by voluntary standards, which do not have the force of law. However, many voluntary standards are widely accepted by industry.¹⁷ The 1981 amendments to the Consumer Product Safety Act require CPSC to defer to a voluntary standard—rather than issue a mandatory standard—if CPSC determines that the voluntary standard adequately addresses the hazard and that there is likely to be substantial compliance with the voluntary standard. As a result, voluntary standard development is an important tool in CPSC's hazard-reduction efforts. In some cases, Congress has enacted a specific statutory requirement for CPSC to create a mandatory standard, or convert a voluntary standard to a mandatory standard. For instance, CPSA, as amended by CPSIA, mandated the conversion of voluntary standards for

¹⁶CPSA defines a substantial product hazard as a failure to comply with an applicable consumer product rule that creates a substantial risk of injury to the public, or a product defect, which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or other circumstances) creates substantial risk of injury to the public.

¹⁷See GAO, *Consumer Product Safety Commission: A More Active Role in Voluntary Standards Development Should Be Considered*, [GAO-12-582](#) (Washington, D.C.: May 21, 2012). We previously have reported that voluntary standards may benefit manufacturers by giving consumers added confidence in a product, providing some degree of protection from product liability, and allowing manufacturers to benefit from the safety expertise developed by voluntary standards groups. In addition, although federal law does not compel manufacturers to comply with voluntary standards, state or local regulations may incorporate some voluntary standards regarding consumer products, and some retailers prefer to carry only those goods that comply with the applicable voluntary standards.

durable infant and toddler products, all-terrain vehicles, and children's toys to mandatory standards.¹⁸

CPSC's Criteria for Establishing Agency Priorities

CPSC has established criteria for setting agency priorities and selecting potential hazards to address.¹⁹ These criteria, which are incorporated into the agency regulations, include the following:

- the **frequency and severity of injuries** resulting from the hazard;
- the **cause of the hazard**, which should be analyzed to help determine the extent to which injuries can reasonably be expected to be reduced or eliminated through CPSC action;
- the number of **chronic illnesses and future injuries** predicted to result from the hazard;
- **preliminary estimates of costs and benefits** to society resulting from CPSC action;
- **unforeseen nature of the risk**, which refers to the degree to which consumers are aware of the hazard and its consequences;
- **vulnerability of the population at risk** (such as children and the elderly);
- **probability of consumer exposure** to the product hazard; and
- **other** additional criteria to be considered at the discretion of CPSC.

CPSC's regulations do not specify whether any particular criterion should be given more weight than the others or that all criteria must be applied to every potential hazard. However, CPSC officials have noted that a product hazard that could result in death is typically granted the highest priority.

¹⁸15 U.S.C. §§ 2056a, 2056b, and 2089.

¹⁹16 C.F.R. § 1009.8 (2012).

CPSC's Organizational Structure for Managing Risks

Risk management is a primary function throughout the Commission, but certain offices have specific responsibilities for identifying, assessing, and addressing product hazards. CPSC's Office of Hazard Identification and Reduction is tasked with responsibility for identifying emerging hazards that can be addressed by agency projects, warnings, mandatory or voluntary standards, and public awareness campaigns. This office also provides technical support to the Office of Compliance and Field Operations, which is responsible for capturing information about regulated products and substantial product hazards and conducts compliance and administrative enforcement activities under the acts that CPSC administers.²⁰ The Office of Compliance and Field Operations has responsibility for identifying and addressing safety hazards for consumer products already in commerce, promoting industry compliance with existing safety rules, and conducting administrative litigation seeking remedies that may include public notice and refund. The office receives information about potential product hazards through industry reporting requirements and through its own investigation of defective products.²¹

CPSC's Information System Modernization

The CPSIA required that CPSC establish and maintain a database on the safety of consumer products and other products or substances regulated by the Commission and that it improve its IT architecture. In response, CPSC created a public database, which is accessible through the Internet at SaferProducts.gov and allows consumers to directly report product-related incidents. SaferProducts.gov was launched in March 2011 and is integrated with CPSC's larger, internal Consumer Product Safety Risk Management System (CPSRMS). To address the requirement to upgrade its IT architecture, CPSC is currently implementing improvements to CPSRMS. CPSC officials have described this system as a centralized, integrated data environment that upgrades its legacy systems to support multiple efforts at the agency, such as its case management and

²⁰The Office of Hazard Identification and Reduction and the Office of Compliance and Field Operations report to CPSC's Office of Executive Director for Safety.

²¹The Consumer Product Safety Act requires manufacturers, distributors, and retailers of a consumer product to inform the Commission if they obtain information that reasonably supports the conclusion that the product contains a defect that could create a substantial product hazard. CPSA, 15 U.S.C. §§ 2051-2089.

investigative processes.²² When fully integrated, CPSRMS will replace CPSC's historically segmented data systems with a unified information technology system. The updated system is intended to allow CPSC to analyze data from multiple sources in a centralized location to identify emerging consumer product safety hazards. The purpose of this centralization component of CPSC's IT modernization effort is to improve its ability to collect and analyze the hazard information it receives from consumers and other data sources. CPSC has reported that modernizing its IT systems will improve efficiency by connecting separate data systems, reducing or eliminating manual and redundant processing, and eliminating redundant and inefficient steps required to code the information and to share the information with businesses. In addition to this modernization effort, CPSC is developing an automated system to improve its ability to target imported products by integrating data from both CPSC and CBP. This system will also be integrated into CPSRMS.

CPSC Uses Several Mechanisms to Stay Informed about New Product Hazards, but Statutory Provisions Constrain Its Ability to Identify Risks

CPSC gathers information about new and emerging risks through several means, such as surveilling retail markets and coordinating with other agencies. CPSC could also potentially obtain nonpublic information on product-related hazards from its foreign counterparts, but its legal restrictions on public disclosure of information have hampered its ability to establish information-sharing agreements. Further, CPSC collects data on product-related injuries and deaths from a variety of sources, such as consumer reports and death certificates, and as discussed above is currently working to improve the system it uses to manage these data. Finally, CPSC has another effort under way to improve its surveillance of imported products, which could prevent violative products from entering the U.S. markets.

CPSC Uses Various Means to Stay Informed about New Product Risks

CPSC uses multiple mechanisms to stay informed about new and emerging risks from consumer products, especially new products entering the market. CPSC's market surveillance activities are one primary mechanism staff use to track new products entering the markets,

²²CPSC's legacy systems and databases are currently comprised of multiple disconnected databases that are not linked so investigations are not integrated. Additionally, these systems do not have a case management function to track the progress of an investigation throughout the agency.

including surveillance of imported products entering the United States, retail stores, and the Internet:

- Import surveillance, which is discussed in greater detail later in this report, targets products before they enter the market and is CPSC's stated key activity to address the challenge of overseeing and regulating the thousands of product types under its jurisdiction. Import surveillance activities include scrutiny of import documentation and physical screening of products at the ports.
- CPSC field program surveillance includes compliance monitoring of specified products with CPSC requirement to ensure conformance. Surveillance and inspections are done at the manufacturer, importer, and retail locations.
- CPSC's retail surveillance includes targeted activities to identify potentially unsafe products, such as children's products with unsafe lead content and unsafe electrical products, as well as some products subject to mandatory standards. This retail surveillance includes in-store screening of products to ensure they are appropriately labeled and are contained in proper child-resistant packaging when required. At times, such as for holiday sales, CPSC field staff also screen certain products to find out if they meet generally accepted industry voluntary standards.
- CPSC compliance staff also conduct searches of the Internet, to monitor the compliance of certain product sales. Since many firms sell their products exclusively from Internet websites, this surveillance functions as the primary CPSC oversight of these sellers.

Staff also attend trade shows to target possible products of interest by observing what new products are coming to market. These visits may be announced or unannounced.

Another mechanism CPSC has relied on for keeping informed about new and emerging risks is its agreements with other federal and state agencies to research various emerging issues.²³ For example, CPSC

²³Section 27(g) of the Consumer Product Safety Act, (15 U.S.C. § 2076(g)). The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized under this act.

participates in a federal effort to leverage its limited staff resources with larger research efforts under way on nanomaterials, as part of the National Nanotechnology Initiative.²⁴ CPSC has a joint agreement with EPA to research the health effects of nanotechnology in consumer products.²⁵ This effort is part of a larger international research project intended to provide a systematic, multidisciplinary approach, including both experimental and computational tools and projects, for predicting potential human and environmental risks associated with a range of nanomaterials (i.e., silver and titanium dioxide).

CPSC is also working with the National Science Foundation and EPA, which has funded and supported the development of two university-based Centers for Environmental Implications of Nanotechnology. CPSC staff support this research to use new techniques to characterize nanomaterials in selected consumer products and quantify exposures to humans.²⁶ Under a CPSC interagency agreement with the National Science Foundation and EPA, a related project is under way that is designed to synthesize data to develop a risk assessment framework for nanomaterials used in consumer products. CPSC also has a collaborative research effort with the National Institute of Standards and Technology

²⁴Launched in 2001, the Nanotechnology Initiative is an interagency research effort involving 25 federal agencies, including CPSC. This initiative is intended to bring together the expertise needed to advance the broad and complex field of nanotechnology and to create a framework for common research goals and to leverage agencies' resources. See GAO, *Nanotechnology: Improved Performance Information Needed for Environmental, Health and Safety Research*, [GAO-12-427](#) (Washington, D.C.: May 21, 2012) and *Food Safety: FDA Should Strengthen Its Oversight of Food Ingredients Determined to Be Generally Recognized as Safe (GRAS)*, [GAO-10-246](#) (Washington, D.C.: Feb. 3, 2010).

²⁵There is a growing use of compounds and materials that have been produced using nanotechnologies, which directly manipulate matter at the atomic level and fabricate molecules and materials that could not have been produced in the past. Nanomaterials are defined as materials/particles that range from 1 to 100 nanometers in length. Although they may have the same name as a material currently in use, because of their small size, these new materials may demonstrate different physical and chemical properties. Some of these new nanomaterials are being used in consumer products with the stated purpose of improving the performance and durability.

²⁶Nanomaterials represent a wide range of compounds that may vary significantly in their structural, physical, and chemical properties, and potentially in their behavior in the environment and in the human body. Because of the wide variation in potential health effects and the lack of data on exposure and toxicity of specific nanomaterials, CPSC has been unable to make any general statements about the potential consumer exposures to or the health effects that may result from exposure to nanomaterials during consumer use and disposal.

(NIST). CPSC signed an interagency agreement with NIST in 2011 to develop protocols to assess the potential release of nanoparticles into the indoor air from various consumer products and determine the potential exposure to people. Measurement protocols do not exist yet to characterize these particle emissions or to assess the properties of the emitted particles that may relate to any health impacts. Under this agreement, NIST will begin testing to assess the properties of nano-sized particles. At the completion of this project, CPSC staff expect to complete a status report on the measurement protocols developed for laboratory testing for the release of nanoparticles from consumer products, as well as for testing in actual residences. Additionally, CPSC is working with the National Library of Medicine to identify approaches to expand and improve a database to provide information on nanomaterials in consumer products.²⁷ One researcher emphasized that this database is quite important to further research efforts because companies are not required to report whether nanomaterials are used in their products.

Staff also use other channels to exchange information about consumer products with other federal agencies, including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and FDA, within the Department of Health and Human Services, the Department of Labor-Occupational Safety and Health Administration, EPA, and the Department of Housing and Urban Development (HUD). CPSC staff participate in product safety committees with these agencies. For example, staff serve on the Chemical Selection Working Group sponsored by NIH/National Cancer Institute, as well as the Federal Liaison Group on Asthma and the National Cancer Advisory Board. Staff also participate in multiple working groups sponsored by the National Institute for Environmental Health and Safety and the National Toxicology

²⁷ Founded in 1836, the National Library of Medicine, located on the campus of the National Institutes of Health in Bethesda, Maryland, is considered to have the world's largest biomedical library. The National Library of Medicine, the National Institutes of Health, and the U.S. Department of Health and Human Services provide information online for thousands of consumer products in the Household Products Database (<http://householdproducts.nlm.nih.gov>). This database provides information to consumers, scientists, and other stakeholders on the chemicals contained in brand-name products and the potential health effects of these chemicals.

Program.²⁸ CPSC staff co-chair the Interagency Lead-based Paint Task Force, working with EPA and HUD on human exposure to lead. CPSC staff also serve on the Core Committee at the Center for Evaluation of Risks to Human Reproduction under the National Toxicology Program. Staff participate in interagency committees that develop U.S. positions for international harmonization on test guidelines developed by the Organisation for Economic Co-operation and Development, guidance documents, and the globally harmonized system for the classification and labeling of chemicals.²⁹ Staff also use their professional connections, subscribe to professional journals, and attend scientific and consumer product safety conferences. For example, CPSC staff maintain contacts with individual scientists at FDA on multiple issues, such as phthalates, lead, and nanotechnology.³⁰

Furthermore, CPSC has authority to establish advisory committees to assist in advising it on new and emerging risks. Such advisory committees can be appointed to advise the agency on chronic hazards that may contribute to cancer, birth defects, and gene mutations associated with consumer products. As required by CPSIA, in 2010 CPSC appointed a Chronic Hazard Advisory Panel (CHAP) to review the potential effects on children's health of phthalates and phthalate

²⁸The National Toxicology Program is an interagency program whose mission is to evaluate chemical agents of public health concern by developing and applying tools of modern toxicology and molecular biology. The program was established because of increasing scientific, regulatory, and congressional concerns about the human health effects of chemical agents in the environment.

²⁹The mission of the Organisation for Economic Co-operation and Development is to promote policies that will improve the economic and social well-being of people around the world. The origins date to the 1960s when 18 European countries plus the United States and Canada joined forces to create an organization dedicated to global development. In 2012, there were 34 member countries.

³⁰The term "phthalate" is used to refer to certain chemicals used as plasticizers for products such as floor tiles, wire and cable insulation, and other applications where there is a need for a flexible plastic that is tough and durable. Section 108 of CPSIA permanently prohibits the sale of any children's toy or child care article containing more than 0.1 percent of each of three specified phthalates: Di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and butyl benzyl phthalate (BBP). Section 108 of CPSIA also prohibits, on an interim basis, the sale of any children's toy that can be placed in a child's mouth or child care article containing more than 0.1 percent of each of three additional phthalates: diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP).

alternatives in children's toys and child care articles.³¹ The CHAP is currently the only operating advisory committee to CPSC. The CHAP is to consider the cumulative effects of exposure to multiple phthalates from all sources, including personal care products. The CHAP was required by CPSIA to submit a final report based on its examination by April 2012. The CHAP examination is still ongoing and the report is expected to be completed in fiscal year 2013. The CHAP must recommend to the Commission whether any additional phthalates or phthalate alternatives should be declared banned hazardous substances. Within 180 days after this recommendation is made, CPSIA requires CPSC to promulgate a final rule based on the report. Pending completion of the report, staff are to provide a briefing package to the Commission for its consideration of whether to continue the interim ban that CPSIA established (effective Feb. 10, 2009) for certain phthalates, or whether to regulate other phthalates or phthalate substitutes.

Statutory Restrictions Hamper CPSC's Information-Sharing Efforts with Foreign Counterparts

Several of CPSC's strategic goals emphasize working with other federal agencies, as well as agencies of state and foreign governments. This cooperation is important to the Commission's effectiveness, particularly in light of the large volume of imported products that enter the United States each year. One key aspect of interagency cooperation is sharing information with CPSC's counterparts in other countries. CPSC has memorandums of understanding (MOU) with several foreign counterparts to share publicly available information about unsafe consumer products. These agreements provide a formal mechanism for general exchanges of information on consumer product safety, and in some cases include plans for informational seminars and training programs. For example, CPSC has taken the lead with several MOU partners on an international initiative to work towards harmonizing global consumer product standards or developing similar mechanisms to enhance product safety, known as the Pilot Alignment Initiative. This initiative involves staff from the central consumer product safety authorities of Australia, Canada, the European

³¹Under section 108 of CPSIA, CPSC was required to appoint a Chronic Hazard Advisory Panel not earlier than 180 days after enactment, that is, after February 10, 2009. CPSIA was enacted on Aug. 14, 2008. CPSC appointed scientists to the committee in early 2010 and the first meeting was held in April 2010.

Union, and the United States.³² The initiative seeks to reach consensus positions among the participants on the hazards to children and potential solutions for three products: corded window coverings (i.e., window blinds), chair-top booster seats, and baby slings.

CPSC's existing MOUs do not permit the exchange of nonpublic information because of specific statutory limitations. When we reported on CPSC's authorities in August 2009, we concluded that CPSC had adequate authorities to perform its mission and we made no recommendations to change its authorities.³³ CPSC concurred with our conclusion. CPSIA amended section 29 of CPSA to allow the Commission to make publicly available information to any federal, state, local, or foreign government agency upon prior certification or agreement that the information will be maintained in confidence, as defined in the act.³⁴ At that time, CPSC was working with its foreign counterparts to implement its new authorities under CPSIA that allow it to share nonpublic information with foreign counterparts. In the course of this review, however, we found that when attempting to implement these authorities, CPSC has faced certain legal constraints in sharing information with its foreign counterparts and has not completed any new agreements concerning the exchange of nonpublic information, as they had expected at the time of our 2009 report.

CPSC's ability to share information that identifies a specific product or manufacturer is subject to several complex statutory provisions. For example, section 6 of CPSA imposes significant restrictions on CPSC's ability to publicly disclose information.³⁵ Section 6(a) generally prohibits the disclosure of trade secrets and other confidential commercial and financial information.³⁶ Before publicly disclosing information that would

³²CPSC is also a member of the International Consumer Product Health and Safety Organization, a global organization of health and safety professionals. Founded in 1993, this organization meets annually to exchange ideas, share information, and address health and safety concerns affecting all consumers. CPSC participates in various committees and is part of the international caucus.

³³[GAO-09-803](#).

³⁴15 U.S.C. § 2078.

³⁵15 U.S.C. § 2055.

³⁶Subject to 18 U.S.C. § 1905 or 5 U.S.C. § 552(b)(4).

readily identify a manufacturer, CPSC must afford the manufacturer the opportunity to designate the information as business confidential—that is, information a company considers and designates to be proprietary or confidential—and barred from disclosure.³⁷ The CPSA contains an additional restriction on the public disclosure of certain regulatory information, such as information that identifies a product manufacturer or private labeler. Specifically, section 6(b)(1) generally prohibits CPSC from publicly disclosing information that would readily identify the product manufacturer unless it first takes reasonable steps to assure that the information is accurate and that the disclosure is fair in the circumstances and reasonably related to carrying out CPSC’s purposes under its jurisdiction. The inclusion of section 6(b) grew out of concern about damage that manufacturers would incur if the agency released inaccurate information about the manufacturers’ products. Before publicly disclosing the information, CPSC must give the manufacturer advance notice and the opportunity to comment on the disclosure of the information, which adds more time before CPSC can publicly respond to a potential product hazard. If CPSC decides to disclose information that the manufacturer claims to be inaccurate, it generally must provide 5 days advance notice of the disclosure, and the manufacturer may bring suit to prevent the disclosure.³⁸ CPSC has issued a rule that interprets the public disclosure restrictions of section 6(b) as covering disclosures to any person unless specified exceptions apply.³⁹

Section 29(e) of CPSA permits CPSC to disclose accident or investigation reports to officials of other federal, state, and local agencies engaged in

³⁷“Confidential information” means information that contains or relates to a trade secret or other matter referred to in 18 U.S.C. §1905 or that is subject to 5 U.S.C. §552(b)(4). If CPSC disagrees with such a designation and determines that the information is not business confidential, the manufacturer has the right to contest the Commission’s determination. A private labeler has similar rights. “Private labeler” is a legal reference to a company that licenses or sells products under their private label but does not manufacture the product.

³⁸Private labelers have similar rights under this section.

³⁹See CPSA Sec. 6(b)(4) (15 U.S.C. § 2055(b)(4)). See also 16 C.F.R. § 1101.12. There are several exceptions to the section 6 disclosure restrictions. Section 6 excludes disclosures to Commission officials, employees, agents, representatives, and contractors. It also excludes disclosures in connection with judicial or administrative proceedings under CPSA or with respect to products CPSC has reasonable cause to believe violate a consumer product safety rule or similar rule or a provision of CPSA or other CPSC-enforced statute.

health, safety, or consumer protection activities, but only if business-confidential information is removed and the recipient agency agrees to maintain certain confidentiality restrictions. Section 29(f) of CPSA, as amended by CPSIA, authorizes CPSC to disclose certain information to foreign government agencies in addition to federal, state, and local government if the recipient agency certifies in writing in advance that the information will be kept confidential.⁴⁰ In addition, it provides that CPSC generally is not required to disclose under the Freedom of Information Act or other law confidential information it has received from a foreign agency (although this provision does not authorize withholding of information from Congress or a court in an action commenced by the United States or CPSC).

Both Senate and House of Representatives committee reports on CPSIA legislation provided the rationale and expectation underlying the provisions enacted as section 29(f). Specifically, the Senate report noted that goods made overseas are sold not only in the United States but also in Europe, Africa, and other continents. Additionally, the Senate report noted, "To the extent that the European Union bans an unsafe product and the United States does not, shipments to Europe may well be diverted to American shores. Once in the United States, the products may move from state to state."⁴¹ Both the Senate and House committees' reports noted expectations that CPSC would work closely with any other federal, state, local, or foreign governments to share information, so long as those entities have established the ability to protect such information from premature public disclosure. The House report further noted that "The Committee expects that the CPSC will revisit and renegotiate, where necessary, existing memoranda of understanding with foreign governments and negotiate new agreements with other governments as necessary."⁴²

⁴⁰Section 207 of the Consumer Product Safety Improvement Act of 2008 (commonly known as section 29(f)) provides that notwithstanding the requirements of sections 6(a)(3) and 6(b) relating to public disclosure of information, CPSC may disclose section 6 information to federal, state, local, or foreign government agencies if the recipient agency certifies in writing in advance that such material will be maintained in confidence and used only for official law enforcement or consumer protection purposes and if certain other conditions are met. Among other things, the agency must provide a bona fide legal basis for its authority to maintain the confidentiality of the information.

⁴¹S. Rep. No. 110-265, 16 (2008).

⁴²H.R. Rep. No. 110-501, 44 (2007).

Although the addition of section 29(f) was intended to encourage information sharing, in our discussions with CPSC staff, they expressed concern that restrictive language in section 29(f) has hindered their ability to share information. Specifically, CPSC explained that during the interagency review process to address this new authority, the Department of State (State) reviewed CPSC's suggested language for an agreement to implement information sharing under section 29(f). According to CPSC, State identified that, because of certain language in section 29(f), CPSC could not agree to allow a foreign agency to further disclose information it had received under a confidentiality agreement, even under tightly controlled circumstances. As a result, CPSC cannot approve text in the information-sharing agreement that allows for further disclosures. For example, CPSC could not permit Health Canada to disclose information it received from CPSC under a section 29(f) agreement to a sister agency or provincial-level safety agency. Likewise, CPSC cannot grant approval to the European Commission to disclose such information to member states. In contrast, the confidentiality restrictions section 29(f) imposes on information CPSC receives from a foreign agency are less severe than those that apply when a foreign agency receives information from CPSC—that is, CPSC has greater freedom to disclose information than it may grant to its foreign counterparts. CPSC is required to make available to Congress and the courts information it receives, but its foreign counterparts would not be allowed to make similar disclosures to their own governing bodies or court systems. According to CPSC staff, this lack of reciprocity has made foreign agencies unwilling to enter into agreements with the United States to share nonpublic information. In August 2012, CPSC staff told us that the Commission has been unable to enter into any international agreements pursuant to section 29(f) because CPSC's foreign counterparts will only share information if the terms are reciprocal. In contrast to this difficulty in completing agreements with foreign counterparts, CPSC has on occasion been able to share information it has gathered with U.S. state and local agencies. For example, in dealing with hazards associated with defective Chinese drywall, CPSC was able to share information from the investigation involving the Chinese government with U.S. state and local agencies, which is discussed in greater detail in appendix II.

According to CPSC staff and our further analysis of the statute, section 29(f) has not achieved the results expected by Congress when it enacted this provision, as expressed in the previously cited committee reports. The primary reason for this, according to CPSC staff, is that section 29(f) does not contain a provision allowing foreign agencies to further disclose the information CPSC provides to a foreign agency pursuant to a section

29(f) agreement—even disclosures required by the foreign agency’s laws or to other agencies within the same nation or administrative area. This inability to establish information-sharing agreements may hinder CPSC’s ability to respond to a potential hazard in a timely manner because of the delay that might occur between when a foreign counterpart decides to take action in response to a product hazard and when that action becomes public. This delay may allow injuries and deaths to occur from the unsafe product’s use in the United States.

CPSC Faces Challenges in Identifying Risks Associated with New Products, but Is Taking Steps to Improve Data Systems

CPSC uses information from a number of sources to identify specific risks associated with both new and existing products. However, many of these sources have limitations, such as missing details. CPSC’s Emerging Hazards Team and Integrated Teams review the collected data to identify patterns of new hazards, but analyzing large quantities of information presents challenges. To address these challenges, CPSC is currently implementing upgrades to CPSRMS, its data management system, as required by CPSIA.

Information Sources

CPSC has authority to identify and act on a wide range of consumer product hazards. However, obtaining useful and timely information about products involved in injuries and fatalities is an ongoing challenge for CPSC.⁴³ Additionally, according to CPSC officials, it faces challenges in identifying risks from new and emerging products largely because statutorily CPSC was established to respond to risks after products have been introduced into market. To fulfill its mission of protecting the public against unreasonable risks of injuries associated with consumer products, CPSC collects, reviews, and analyzes information on consumer-product-related injuries and deaths from many sources, such as the National Electronic Injury Surveillance System (NEISS), consumer incident

⁴³See GAO, *Consumer Product Safety Commission: Action Needed to Strengthen Identification of Potentially Unsafe Products*, [GAO-12-30](#) (Washington, D.C.: Oct. 12, 2011), *Consumer Product Safety Commission: Better Data Collection and Assessment of Consumer Information Efforts Could Help Protect Minority Children*, [GAO-09-731](#) (Washington, D.C.: Aug. 5, 2009), and *Consumer Product Safety Commission: Better Data Needed to Help Identify and Analyze Potential Hazards*, [GAO/HEHS-97-147](#) (Washington, D.C.: Sept. 1997).

reports, death reports, and reports from manufacturers (see table 1).⁴⁴ CPSC uses this information to identify a hazard or hazard pattern.

Table 1: Key CPSC Information Sources to Facilitate Timely Identification of Consumer Product Hazards, Fiscal Year 2011

Information source	Purpose	Approximate number of reports received in fiscal year 2011
NEISS	Provides statistically valid national estimates of product-related injuries from a probability sample of hospital emergency rooms.	400,000
Consumer incident reports	Permit consumers, health care professionals, public safety entities, and others to submit reports of harm involving consumer products.	13,000
Death certificates	Provide information on unintentional product-related deaths.	8,000
Reports from manufacturers (i.e., CPSC section 15(b) reports)	Require businesses to immediately report to the Commission when they obtain information which reasonably supports the conclusion that a product (1) fails to comply with a voluntary standard upon which the Commission has relied under section 9 of CPSC or (2) creates an unreasonable risk of serious injury or death. ^a	467
News clips	Fill gaps in reporting from other sources and provide a source of incidents to investigate in support of hazard identification and analysis activities.	6,207

Source: GAO analysis of CPSC information.

^aFor purpose of this section, CPSC has defined immediately as within 24 hours of businesses obtaining information reasonably supporting the conclusion that a product contains a defect that could create a substantial product hazard or an unreasonable risk of serious injury or death. Businesses include manufacturers, importers, distributors, and retailers.

⁴⁴NEISS, an emergency department system for collecting injury and death information, gathers information from a nationally representative sample of about 96 hospital emergency rooms. Each hospital reports information on emergency treatments related to the use of consumer products to CPSC. NEISS provides national estimates of the number and severity of emergency room-treated injuries associated with, although not necessarily caused by, consumer products in the United States.

CPSC obtains most of its injury information from NEISS reports. According to CPSC staff, this information is timely and useful in projecting national injury estimates and monitoring historical trends in product-related injuries and is immediately accessible to CPSC staff once hospital staff input information into the database.⁴⁵ However, staff told us that the information contained in the reports has limitations. As noted in CPSC's 2011 annual report, while the reports may indicate that a consumer product was involved in an incident, a product may not necessarily have caused the incident. Nonetheless, the reports provide an important source of information concerning the nature of the incidents and injuries and the product associated with the incident. To obtain more specific information, CPSC sometimes supplements the NEISS information by conducting further investigations.

CPSC also identifies risks through incident reports received from consumers and others, such as health care professionals and child service providers, through its websites, telephone hotline, e-mail, fax, or postal service.⁴⁶ According to CPSC officials, information in the incident reports is not always complete. Furthermore, the reports may not identify the risk associated with the incident, thus CPSC may conduct a more in-depth review of the incident.

According to its 2011 annual report, CPSC also collects mortality data from each state. CPSC purchases death certificates that have a high probability of consumer product involvement. However, CPSC reported that because it does not purchase all death certificates, and because those it purchases do not always identify the products involved, the total number of actual product-related deaths may be higher than the number represented in the death certificates CPSC purchases. CPSC reported in its annual report that, similar to the NEISS reports, the death certificates do not necessarily indicate that the product involved caused the death. CPSC staff also told us that while death certificates are a good source of information on fatalities, they generally do not contain any specific product or manufacturer information. Moreover, there is often a 2 to 3

⁴⁵According to CPSC, in 2011, of the 400,000 records collected in NEISS, 50 percent of the records are received within 5 days of when the injured person was treated in the hospital emergency department, 75 percent within 10 days, and 95 percent within 31 days.

⁴⁶Every incident report CPSC receives does not necessarily involve a hazardous incident. In some instances, consumers report concern that a potential hazard might exist.

year lag before the mortality data become available. CPSC supplements information from the NEISS system, death certificates, and reports from individual consumers with reports from medical examiners and coroners. These reports are also limited because they do not typically contain information that specifically identifies the product (such as brand name, model or serial number) or manufacturer.

CPSC also receives information from manufacturers, distributors, and retailers about products distributed in commerce that the manufacturers conclude are potential substantial product hazards. Manufacturers of consumer products must notify the Commission immediately if they obtain information that reasonably supports the conclusion that a product fails to comply with a product safety standard the Commission has relied upon; fails to comply with any rule, regulation, standard, or ban under CPSA or any other act enforced by the Commission; contains a defect that could create a substantial product hazard; or creates an unreasonable risk of serious injury or death.⁴⁷ However, CPSC does not rely solely on manufacturers to report a product defect in order to identify and address hazards because CPSC sometimes obtains information on a product defect before the manufacturer becomes aware of the problem. For example, according to CPSC staff, retailers may provide CPSC with reports of safety-related information and CPSC uses this retailer information in identifying and assessing risks.

Incident Report Coding and Screening Process

Before the information previously discussed can be reviewed and analyzed, it must be coded and entered into CPSC's data management system—CPSRMS. Based on our review of CPSC's documentation, staff must enter, for example, a short summary from the narrative of the incident and assign a product code and the primary hazard category for the product.⁴⁸ According to CPSC staff, applying a product code allows for standardization of incidents involving similar products to help staff identify and monitor the frequency of the occurrence and the hazard types by product category. CPSC's public database—SaferProducts.gov—which was launched in March 2011 as required by CPSIA, allows consumers to directly enter incident information online. Previously, CPSC staff had to manually enter and code these reports. While staff must still code some

⁴⁷CPSA, 15 U.S.C § 2064(b).

⁴⁸The hazard type or category classifies the general nature of the actual or potential hazard presented by the incident, such as a chemical or mechanical hazard.

data, such as submitter's information and relationship to the victim, reports consumers submit through the public database reduce some of the manual tasks, such as rekeying of incident data.⁴⁹ According to CPSC staff, for reports received through the hotline, staff use a template to enter information directly into the database. Other reports continue to be manually coded by staff.⁵⁰ According to CPSC officials, staff must review incident reports daily to identify pertinent information to "code" the reports in the database. This work requires staff to read the narrative and extract the information, such as a description of the incident, location where the incident occurred, number of victims, severity of the injury, the source of the incident report, and a description of the product involved in the incident.

After the coding is completed, the incident reports advance to the Emerging Hazards Team. The Emerging Hazards Team is composed of statisticians, whose responsibilities include reviewing incident reports to identify new and emerging product-associated hazards, performing product safety assessments, directing new reports to appropriate Integrated Product Teams, and sending out daily death notifications. The Emerging Hazards Team's review is CPSC's first step in identifying a hazard and determining whether the hazard is new and emerging. According to CPSC staff, the Emerging Hazards Team reviews all incident reports daily, including those stored in the data management system, to identify trends and patterns. They said that this review is intended to determine whether reports should be forwarded to one of six Integrated Product Teams, which are composed of subject-matter experts from the Office of Hazard Identification and Reduction, the Office of Compliance and Field Operations, and staff from other CPSC offices and are organized by type of hazard.⁵¹ (We discuss the

⁴⁹Specifically, for reports submitted through www.SaferProducts.gov, staff accept the information the submitter entered and verified online such as the product description, how the product was being used, and any injuries that were sustained.

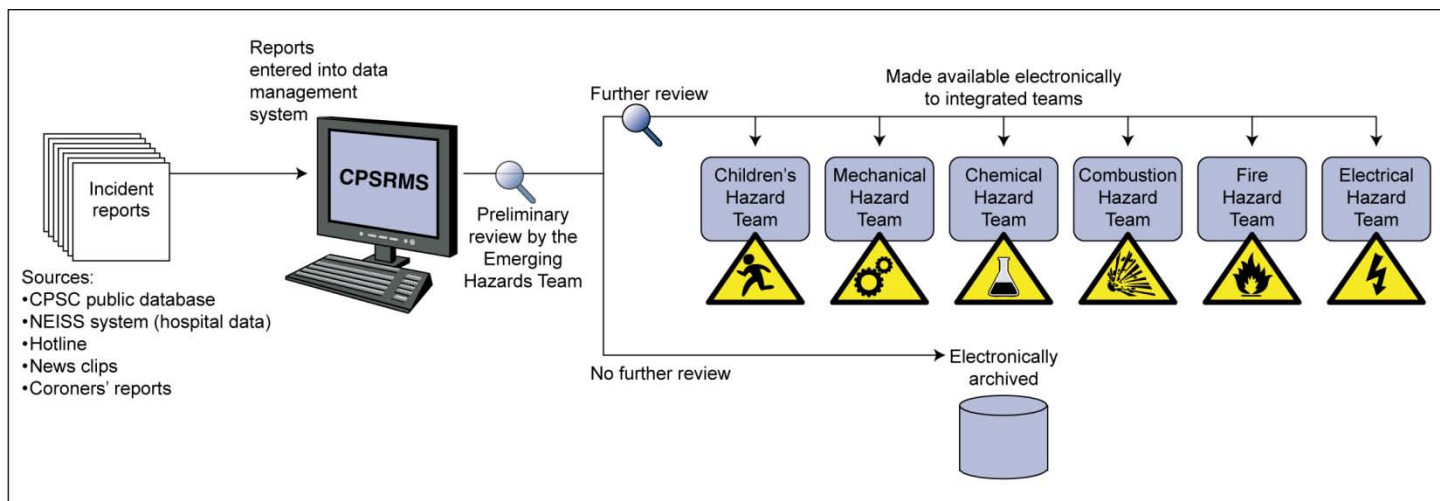
⁵⁰Unlike other data sources, NEISS reports are entered by CPSC contractors from medical records and are not a part of CPSC's general coding process.

⁵¹In 2011, CPSC adopted the Integrated Product Team approach, which is modeled after its Early Warning System. CPSC's six integrated teams are children's, mechanical, chemical, combustion, fire, and electrical hazard. These teams are comprised of staff from the Office of General Counsel, Office of Communications, Office of Import Surveillance, and subject-matter experts such as engineers, human factors experts, and health scientists from the Office of Hazard Identification and Hazard Reduction and Office of Compliance and Field Operations.

Integrated Product Teams' role in CPSC's assessment of risk in greater detail later in this report.)

CPSC officials told us that in making their determination, the Emerging Hazards Team considers the criteria set forth in 16 CFR 1009.8, such as the frequency and severity of the injury and the vulnerability of the population at risk. These criteria are considered at each step of the risk process and in setting agency priorities. CPSC officials also told us that the Emerging Hazards Team uses criteria provided to them by the Integrated Product Teams to classify reports within the system as needing no further review. Reports requiring no further review are stored in the database (see fig. 1). According to CPSC officials, incidents involving a death, particularly if it involves a vulnerable population, are granted the highest priority and are immediately forwarded to the appropriate Integrated Product Team for action.

Figure 1: CPSC Incident Intake/Screening Process



Source: GAO analysis of CPSC information; Art Explosion.

In performing its review, the Emerging Hazards Team said it uses the historical data to identify trends and patterns of potentially new and emerging hazards while at the same time forwarding the reports to the appropriate Integrated Product Team. Specifically, incidents that are unusual or that appear to be similar to previously reported incidents are analyzed more closely to determine whether they need to be assessed by both the Emerging Hazards and Integrated Product Teams. For instance, according to the staff, in April 2012 CPSC received a news clip that

detailed an incident involving a toy with a mirror that was attached but protected by a plastic cover. The staff conducted a search of CPSC's database and identified a similar incident in August 2011. In both cases, the child was able to remove the cover and gain access to the hazardous component within it. Based on this finding, the team determined that the toy was a choking hazard and the reports were forwarded to the appropriate Integrated Product Team for a more in-depth review.

According to an agency official, identifying patterns of risk is particularly challenging in situations involving many different makes and models of a particular product category. For example, CPSC staff completed a comprehensive review of crib-related infant fatalities reported to the agency between January 2000 and May 2010 involving drop-side crib hazards. During that period, staff was aware of 32 fatalities and hundreds of incidents that were caused by or related to brackets that detached from the drop-side cribs made by various manufacturers. According to the CPSC official, because the fatalities occurred across several different makes and models of cribs, it was difficult for CPSC to identify a pattern. In 2007 CPSC launched its Early Warning System to look for patterns in order to identify emerging hazards in a specific group of children's products—including bassinets, cribs, and play yards—quickly and efficiently. This system relied on the integration of timely input from technical experts and technology to rapidly identify emerging hazards and led to millions of products being recalled. According to a CPSC news release issued October 2008, since the creation of its Early Warning System, the agency has conducted five crib recalls. Because of the success of the Early Warning System in identifying hazards in these children's products, CPSC expanded the use of new technologies to address hazards in other product areas through its system upgrade and the Integrated Product Team concept.

In fiscal year 2011, staff within the Office of Hazard Identification and Hazard Reduction implemented a new business process building upon the existing NEISS coding system. The new process required that all incident reports be reviewed and screened by the Emerging Hazards Team and that all incident reports associated with certain product codes be reviewed and analyzed by the appropriate Integrated Product Teams. However, according to agency officials, before they can fully implement this process, more automation of the screening process in the data-management system remains to be completed to allow the technical experts time to focus their attention on those incidents that could indicate a potential new hazard that needs further analysis.

Data System Improvements

To improve the processing of the voluminous data it receives, CPSC is upgrading its data-management system—CPSRMS—as previously discussed. According to CPSC, the upgraded system is designed to enhance CPSC’s efficiency and effectiveness, enable a more rapid dissemination of information, and allow consumers to search the database through a publicly available portal. CPSC officials expect the system upgrades to be completed in fiscal year 2013 and fully operational in fiscal year 2014. Further, CPSC anticipates that staff will be able to create electronic files of related incidents, investigations, assessments, and other information to manage the high volume of incident reports the agency receives in order to identify emerging hazards more quickly. Finally, as part of the data system upgrade, CPSC expects to automate the process to determine which incident reports will be assigned for investigation.

As previously noted, CPSC’s incident reports contain information that CPSC enters into the data system using standardized codes. However, CPSC officials told us that in order to be more efficient in identifying patterns and trends, the Integrated Product Teams need additional standardized codes built into the system for identifying product hazards. According to CPSC staff, they are in the process of developing additional standardized codes and eventually algorithms to conduct searches using key words, such as product manufacturer or country of origin. While the officials said it will take 3 to 5 years to develop the standardized language for the system, they added that the goal of this new capability is to help the agency achieve consistency as it loses institutional knowledge due to attrition and retirement. Ultimately, they expect the upgraded system to expedite the process for identifying emerging hazards.

CPSC officials told us that before this upgraded database system, staff turnover had a more dramatic impact on CPSC’s ability to identify patterns or trends in the incident information it analyzed. In addition, the Commission did not have the capability to monitor the incidents in such a way that one person could see all the historical data, which interrupted the continuity in staff analysis. Furthermore, reviewing incident reports requires individual judgment, and automating the screening process is expected to allow the technical experts the opportunity to focus their efforts on specific records. As a result of the upgrade to CPSC’s information infrastructure, manufacturers are also able to enter information about substantial product hazards directly into CPSRMS, allowing the information to go through the coding and screening process more quickly. Furthermore, CPSC is in the process of developing case-management software for the Office of Compliance and Field Operations

that will integrate the various databases to provide efficiency to all staff working on the compliance cases. The case management system is intended to allow staff to track the progress of an investigation throughout the agency and is scheduled to be completed in fiscal year 2013.

CPSC Is Taking Actions to Improve Its Ability to Identify Unsafe Imported Products before They Enter the Marketplace

As we have previously reported, CPSC has had limited ability to identify unsafe products at the ports.⁵² In our 2009 report, we recommended that the Chairman and commissioners of CPSC take several actions to improve the agency's ability to target shipments for further screening and review at U.S. ports of entry as follows:

1. To ensure that it has appropriate data and procedures to prevent entry of unsafe products into the United States, we recommended that CPSC update agreements with CBP to clarify each agency's roles and to resolve issues for obtaining access to advance shipment data.
2. To improve its targeting decisions and build its risk-analysis capability, we recommended that CPSC (a) work with CBP, as directed under CPSIA, through the planned targeting center for health and safety issues, to develop the capacity to analyze advance shipment data; and (b) link data CPSC gathers from surveillance activities and from international education and outreach activities to further target incoming shipments.

CPSC views its import surveillance activities as a preventative strategy, intended to stop unlawful products **before** they are received into the United States. CPSC considers this strategy more proactive than relying on traditional compliance and recall efforts to remove violative products from the marketplace **after** harm may have occurred. In response to CPSIA, CPSC has developed and is pilot testing an approach for identifying and targeting unsafe consumer products at U.S. ports.⁵³ CPSC is designing this approach to evaluate products entering the United States based on a predetermined set of rules (i.e., to target specific hazardous products or importers) intended to identify imports with the highest risks to

⁵²[GAO-09-803](#).

⁵³Section 222 of CPSIA requires CPSC to formulate a risk assessment methodology to identify products imported into the United States that are most likely to violate consumer product safety statutes and regulations enforced by the Commission.

consumers. CPSC has reported that given its low staffing levels and limited coverage at the ports (as of November 2012, CPSC had 20 port investigators stationed full-time at 15 of the largest U.S. ports), developing an automated process for identifying violative products was essential to increasing its ability to target unsafe products before they enter commerce.

As detailed in CPSIA and based on our prior recommendation, CPSC is designing its approach to integrate its information with import data from CBP. CPSC has completed its agreement with CBP and obtained the shipment data as we recommended. CPSC is in the process of moving to a computer-based, systematic approach for targeting imports from its prior process for screening imported products. Under its prior process, established in 2007, CPSC staff manually screened importers' documentation and telephoned CBP staff at the ports to detain shipments for inspection. CPSC is designing the new targeting approach to provide a framework that permits rules to be added and modified easily to accommodate new risk factors and changes in operations. For example, its approach is designed to allow CPSC staff to rank or risk-score incoming shipments in order to prioritize the Commission's responses to product hazards that can be addressed at the ports.

CPSC's initial activities are focused on import compliance, such as screening children's imported products for lead content. CPSC reported that in 2011, it conducted an analysis of children's product importers that have had a history of noncompliance with safety standards and continues to target these importers for safety assessment. In a CPSC staff demonstration of this new targeting approach, we observed the use of their rule sets and the integration of import data used to make determinations for which shipments to target. When this import targeting system is fully implemented, CPSC expects to be able to systematically analyze 100 percent of shipments within CPSC jurisdiction to ensure that adequate resources are dedicated to the highest risk shipments, as indicated by its targeting rules. CPSC reported that it began limited testing of its targeting concept in fall 2011.

According to its 2013 Performance Budget, in 2011, CPSC port investigators, working with CBP agents, screened almost 10,000 import samples at U.S. ports of entry and collected more than 1,800 import samples for testing at the CPSC laboratory. CPSC projects that the full implementation of this new system will take about 4 to 7 years, depending on resources devoted to this effort. CPSC's detailed proposal on this import-targeting approach reported the need for additional staff for

strengthening their coverage at the ports and for additional laboratory staff.⁵⁴ In its report to Congress, CPSC also recommended certain legal changes to better align the Commission's authorities with those of CBP and other health and safety agencies for targeting and addressing unsafe products at import. In addition, to complete the technology piece of the import targeting system, CPSC estimated the costs to be \$40 million from fiscal years 2013 through 2019. CPSC's planned next step in this effort is to reduce the duplication of effort between cases initiated by the Office of Compliance and Field Operations and those initiated by the Office of Import Surveillance by creating a case management system, as part of upgrading its information system.

Timeliness of CPSC's Actions to Assess and Address New Risks Depends on the Specific Product or Hazard

CPSC assesses product risks on a case-by-case basis using information it collects from various sources. Once it has assessed the risk and determined the need to address a product hazard, CPSC can take a number of actions to reduce the risks of product-related injuries to consumers.

CPSC's Risk Assessment Varies with the Particular Product or Hazard Being Assessed

Once CPSC identifies product risks, it assesses those risks on a case-by-case basis.⁵⁵ According to CPSC staff, an assessment could pertain to a particular model of a product or to a class of products, such as drop-side cribs, or it may be specific to a type of hazard, such as fire hazards associated with appliances. In addition, according to CPSC officials, the types of information CPSC collects to assess product risk depend on the product and the type of assessment being conducted. In general, CPSC requires information on the severity of an injury, the probability of the hazard occurring, consumers' ability to recognize hazardous conditions, and how the consumer uses the product. In addition, officials stated that

⁵⁴See CPSC, *Staff Report to Congress Pursuant to Section 222 of the Consumer Product Safety Improvement Act of 2008 Risk Assessment Methodology*.

⁵⁵CPSC staff defines risk assessment as a four-step process that encompasses hazard identification, dose-response assessment (determining the magnitude of exposure to a contaminant and the probability and severity of adverse effects), exposure assessment, and risk characterization.

manufacturer, model, serial number, number of products sold, life-cycle of the product, and safety incidents involving the products are all useful information. As noted earlier, most of CPSC's information sources are limited in the information available. Additionally, CPSC officials told us that most information on sales of a particular product is not readily available, and surveys to establish use and exposure information are costly and often take up to a year to get approval (from the commissioners and the Office of Management and Budget) to conduct. As a result, CPSC often tries to estimate consumers' exposure using assumptions based on sales data and product life-cycle information.

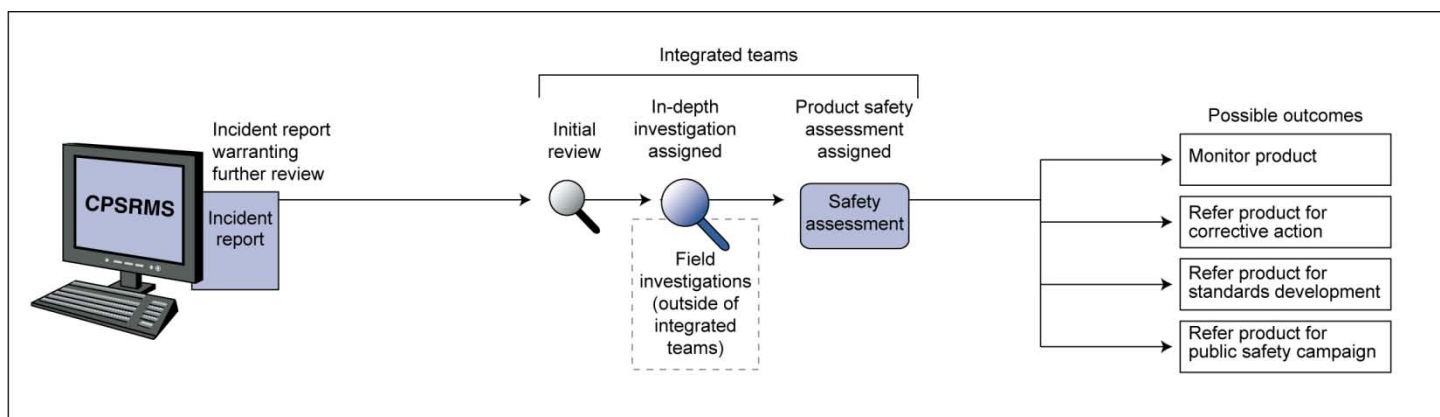
As part of its assessment, CPSC evaluates consumer products to identify both acute and chronic hazards. Acute hazards are conditions that create the potential for injury or damage to consumers as a result of an accident or short-duration exposure to a defective product. Chronic hazards are presented by substances that can damage health over a relatively long period, after continuous or repeated exposures. Hazards may be either physical or chemical in nature. The adverse effects from exposure to a chemical substance can be acute, such as poisonings, or chronic, such as cancer or reproductive or genetic abnormalities. As stated earlier, CPSC relies on its criteria for establishing priorities in assessing risk. More specifically, CPSC staff can assess a product's potential health effects to consumers using well-established chronic hazard guidelines based on the Federal Hazardous Substances Act.

CPSC staff with whom we spoke said CPSC relies on the knowledge and judgment of its staff to review and analyze incident reports in order to identify emerging hazards that the agency could address. According to CPSC's documentation, as part of their analysis, Integrated Product Team staff read all the incidents within each product code assigned to them. If a pattern emerges, they are required to review historical records and update those records accordingly. These teams are also responsible for other risk-related activities, such as requesting investigations; recommending new activities to management as needed, depending on the severity and addressability of emerging hazards; and monitoring follow-up status on compliance corrective actions and status of projects for standard development (see fig. 2).⁵⁶ According to CPSC staff, the agency plans to

⁵⁶Each integrated team develops a portfolio of projects, based on their assessments, that is included in their budget request for the Commission to consider as a part of the agency's prioritization process. According to CPSC officials, these projects are ranked based on CPSC's criteria under section 1009.8.

develop standard operating procedures tailored to each team and to establish benchmarks for the teams to use in completing their analyses of hazards and identifying a strategy to address the hazards.

Figure 2: CPSC Review and Assessment Process



Source: GAO analysis of CPSC information; Art Explosion.

When one of the Integrated Product Teams identifies a potentially new hazardous product, the team may request an investigation. CPSC staff, one Commissioner, and product safety experts said that assessing the risks posed by new products is challenging because hazards from new products are not readily apparent because historical data are not available for analysis. An investigation provides staff an opportunity to obtain additional information about use of the product that could potentially assist in their assessment. Investigation reports, which are prepared by the Office of Compliance and Field Operations staff, provide details about the sequence of events surrounding the incident, human and environmental factors, and product involvement.⁵⁷ The incident reports generally contain the consumer’s version of what occurred based on discussion with the incident victim or individual most knowledgeable about the incident. CPSC staff noted that the investigative activity is an ongoing process and the Integrated Product Teams decide whether to

⁵⁷ Staff within the Office of Compliance and Field Operations conduct investigations on specific cases to gain additional knowledge about injuries or hazards. Staff use this information to determine where hazards exist and how to address them. Some of these investigations are conducted entirely by telephone, while others are conducted at the accident site.

continue the investigative process as they evaluate new evidence they receive. Investigations may also include follow-up inspections at retail stores, discussion with fire and police investigators, as well as the inclusion of fire and police reports.

CPSC's guidance for staff involved in risk-assessment activities identifies certain factors based upon the Commission's criteria for establishing priorities. As discussed earlier, these factors include the frequency and severity of injuries, consumers' exposure to the risk, causality of injuries, foreseeability of the risk, and the vulnerability of the population at risk. CPSC's guidance specifically states that staff should consider these factors when deciding whether to investigate hazards or initiate corrective actions. According to CPSC officials, staff consider these factors throughout the risk-assessment process and in prioritizing which product hazards require action by the Commission. As an example, a CPSC official said that in a hypothetical situation involving an appliance that poses a fire hazard, staff may first determine the number of incidents involving this product, the extent of injuries, the level of exposure, and the likelihood that exposure to this appliance will result in death or serious injury. To evaluate the hazard, CPSC would collect samples of the product in order to determine the source of the defect and gather market data, such as the useful life of the product and the number of products in the marketplace. As part of their assessment, CPSC would also consider whether other types of products may be subject to this type of hazard, potentially extending the time needed for the assessment.

Product Evaluation

CPSC evaluates some products, which it has identified through investigation and market surveillance, at CPSC's National Product Testing and Evaluation Center.⁵⁸ Integrated Product Teams' evaluation and analysis of products being tested is generally geared toward improving standards or initiating rulemaking.⁵⁹ The testing center is staffed with engineers and scientists from the Office of Hazard Identification and Hazard Reduction, some of whom are members of the Integrated Product Teams. According to CPSC laboratory staff, many of

⁵⁸Products may include samples of new products on display at trade shows that CPSC staff attend, products detained at the ports for testing, or products involved in an incident.

⁵⁹Based on the results of these and other assessments, the samples are stored because they could become evidentiary items to support CPSC's position in legal proceedings. CPSC staff emphasized the importance of maintaining the samples' chain of custody for evidentiary proceedings.

the samples at the testing center were imported products that CPSC intercepted at the ports before they were distributed into commerce. During our tour of CPSC's test facility, we observed, for example, several bunk beds being tested to ensure they did not pose an entrapment hazard for children.⁶⁰ We also observed an off-road stroller that was submitted for testing. The staff explained that the Integrated Product Team was testing this stroller for stability. As designed, the stroller had three wheels and posed a tip-over hazard. As noted in table 2, according to CPSC staff, the time needed to complete testing of regulated products varies. These times reflect typical duration to complete the tests once a sample is received by laboratory staff.

Table 2: Examples of Different Types of Products Tested and Typical Time Frames to Perform Testing

Product	Regulation/Standard	Typical time frame (days)
Toys	Lead content	1-4
	Small parts	2-3
	Phthalates	3-5
Children's products	Lead content	1-4
	Phthalates	3-5
	Bunk bed	5-7
	Cribs	5-10
Mattresses	Open flame	3-5
All-terrain vehicles	Regulation	14-21
Fireworks	Regulation	14-28
Sleepwear	Flammability	18-21
Trampolines and enclosures	Consensus Standard	30-45
Pool and spa drain covers	Regulation	40-60
Carbon monoxide alarms	Consensus Standard	40-60
Electric space heater	Consensus Standard	40-60

Source: CPSC.

Note: The durations listed are typical ranges for the specific product. Actual times may be shorter or longer depending on the scope of the testing that needs to be done. The time frames do not include time from collection or when follow-up determinations are executed after testing is completed. A consensus standard is also referred to as a voluntary standard.

⁶⁰According to CPSC staff, a bunk bed design that allows a child's torso to pass through but not the head poses a head and neck entrapment hazard.

The Office of Compliance and Field Operations relies on the expertise of the Emerging Hazards Team statisticians and other staff in the Office of Hazard Identification and Hazard Reduction to perform other safety assessments, such as database reviews and engineering file reviews. As part of this process, the Office of Compliance and Field Operations may request that the Emerging Hazards Team conduct a technical evaluation of a specific type of product, such as all gas appliances that showed a pattern of fire or explosion hazard. This assessment entails searching CPSC's database for all incidents involving certain types of gas appliances with reports of gas leaks or fires using certain selection criteria. The Office of Compliance and Field Operations may also request that engineering staff review the full report from a manufacturer about a product and check the company's information against CPSC's database.

Timeliness of Assessments Varies

According to CPSC officials, the timeliness of completing a risk assessment varies. For example, the risk assessment process for a chemical substance may be completed in a matter of days if acceptable and valid toxicity and exposure data are readily available. CPSC is familiar with the hazard posed by lead and has developed a testing method that can be performed quickly. As a result, testing toys for compliance with lead content regulation can be completed within 1 to 4 days, depending on whether the product can be tested using X-ray fluorescent equipment or requires traditional chemical analysis. In contrast, the risk assessment process of some chemical substances may take years to complete if CPSC needs to generate toxicity and exposure data through laboratory experiments. For example, in assessing the risk to children from playing on wood playground equipment treated with chromated copper arsenate (CCA), CPSC staff reviewed toxicity data and determined that there were insufficient data available on the exposure to arsenic from CCA-treated wood on which to base a recommendation to the Commission on the risk to children. As a result, CPSC staff designed and performed new laboratory and field studies to obtain exposure data to assess the health risk to children. CPSC began this project in 2001 and presented the results of its study to the Commission in 2003.⁶¹ CPSC's timeline for conducting other safety assessments varied from 4 hours to perform a consultation by a technical engineer on a hazard classified as a high priority (where the risk of death or grievous injury or illness is likely or

⁶¹Based on the assumptions used in the risk assessment, the staff concluded that a young child who plays on such a structure during early childhood has an increased risk of 2 to 100 per million of developing lung or bladder cancer during his or her lifetime.

very likely or serious risk of illness is very likely) to 8 weeks to test a product sample for a routine case identified as a hazard that is possible but not likely to occur.⁶²

Furthermore, CPSC faces challenges assessing the risks associated with products manufactured using nanomaterials. In particular, the introduction of consumer products containing nanomaterials into the marketplace may require unique approaches to determine exposure and risk and poses new regulatory challenges for CPSC. According to CPSC's statement on nanomaterial, the potential safety and health risks of nanomaterials, as well as other compounds that are incorporated into consumer products, can be assessed under existing CPSC statutes, regulations, and guidelines. However, because testing methods are still being developed, conducting its risk assessment of such products will take longer. Neither CPSA nor the Federal Hazardous Substances Act requires the premarket registration or approval of consumer products. Thus, CPSC would usually not evaluate the product's potential risk to the public until a product containing nanomaterials has been distributed into commerce.

CPSC Uses Various Approaches to Address Product Hazards, but Faces Challenges in Addressing New Product Risks

To address product-related hazards, CPSC uses various approaches designed to reduce injuries and deaths. CPSC's enforcement role is based on its statutory authority to address unreasonable risks associated with consumer products. Based on CPSC's documents, CPSC staff use investigations and assessments of product hazards to determine (1) whether corrective action is appropriate and (2) what type of actions may be appropriate to address potential risks of injury to the public. Before deciding to take action, CPSC must consider whether the risk is one that the Commission can address. For example, the blade of a kitchen knife can harm a consumer, but the sharpness of the knife, by design, is not a defect and the risk it poses cannot be addressed by CPSC's actions. However, according to CPSC staff, if the handle of the knife breaks while the knife is in use and injures the consumer, CPSC would consider the product to be defective and the risk to be addressable.

⁶²These timelines include testing product samples at the CPSC testing facility.

CPSC's actions to address and reduce the risks of injury to consumers include the following.

- Compliance—conducting compliance activities, such as voluntary recalls and corrective actions, product bans, and enforcement of existing regulations by seeking civil and criminal penalties, and injunctive relief against prohibited acts.⁶³
- Standards—developing mandatory safety standards or participating in the voluntary standards process.
- Public Education—notifying the public of safety hazards and educating them about safe practices.

According to CPSC, its multifaceted approach is intended to not only address immediate problems but also future problems. For instance, CPSC identified fire pots used with gel fuel as an emerging hazard in June 2011, after a severe injury was reported (see fig. 3).⁶⁴ As of September 2011, CPSC was aware of 76 incidents involving fire pots used with gel fuel that resulted in two deaths and 86 injuries. CPSC reported that preliminary testing and evaluation of fire pots and gel fuels showed that they pose a serious risk of burn injuries to consumers due to certain features of the fire pot design, the burning and physical characteristics of the gel fuel, and the packaging of the gel fuel container. In the short term, CPSC worked with the individual manufacturers to recall the product. To address longer term concerns with the product, the agency is also working to develop mandatory standards to address risks associated with similar and future products. Between June and October 2011, CPSC announced 12 voluntary recalls involving more than 2 million bottles of gel fuel. In December 2011, the Commission issued an Advance Notice of Proposed Rulemaking (ANPR) to address the injuries and deaths associated with this product. As we previously reported,

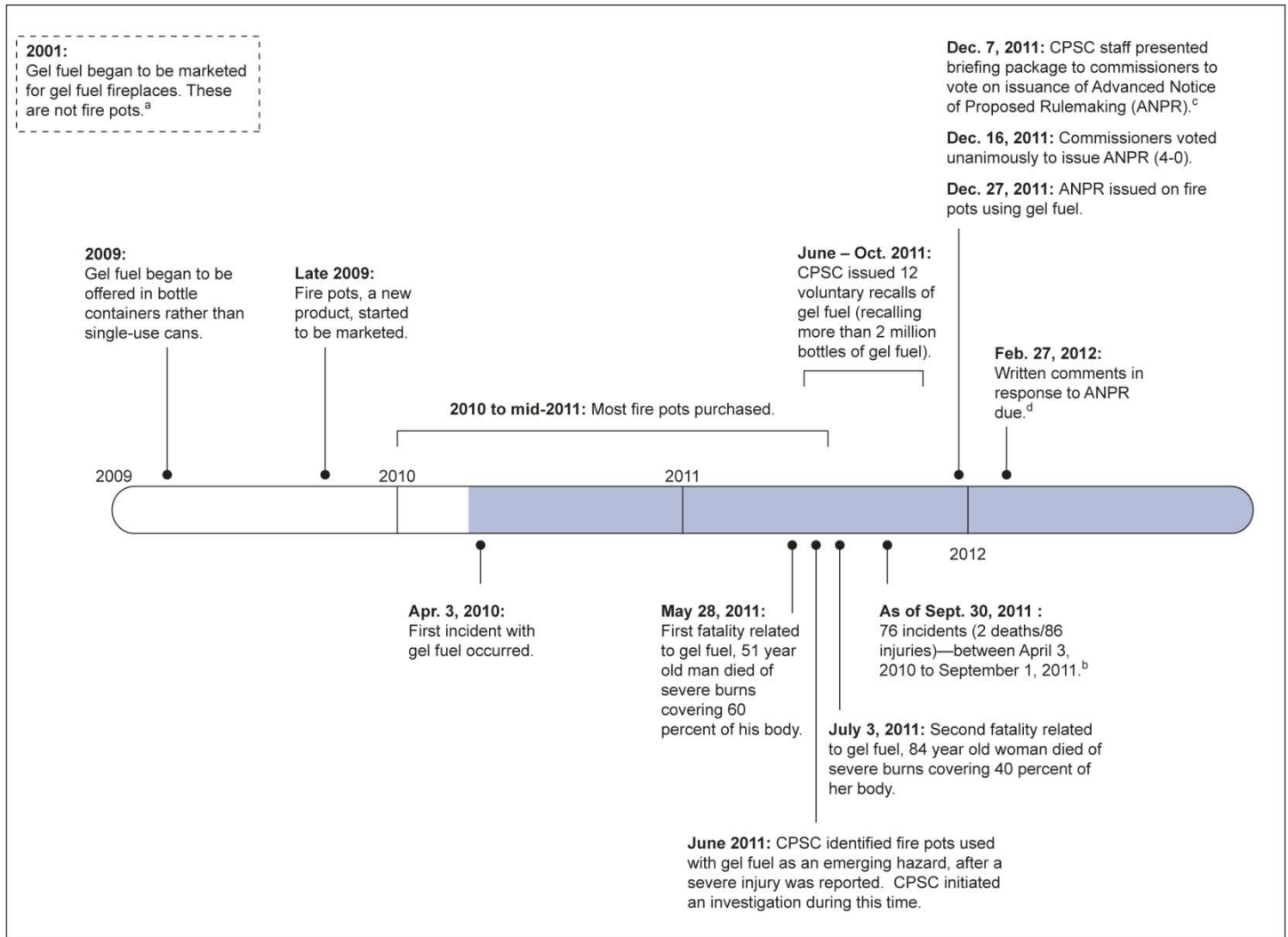
⁶³Under certain conditions cited in its statutes CPSC can apply to a district court to restrain the distribution of a product that the Commission believes is a substantial product hazard. 15 U.S.C §2064(g).

⁶⁴Fire pots are portable, decorative lighting accents marketed for indoor and outdoor use. Gel fuel composed primarily of alcohol was designed to be used as fuel for fire pots. The gel fuel produced a clean-burning flame with no visible smoke or ash. They are usually sold as separate products but are often marketed for use together, and some companies manufacture both products.

according to CPSC, the time required for mandatory rulemaking varies depending on the complexity of the product or legal requirements for enacting the rules, the severity of the hazard, and other agency priorities, among other factors.⁶⁵ For example, a legal expert told us that a mandatory rulemaking for cigarette lighters took 10 years from the decision to take action to final rule. CPSC also has been considering a mandatory rule to address the risk of fire associated with ignitions of upholstered furniture since 1994.

⁶⁵[GAO-12-582](#). Interested parties generally have 60 days to comment on an ANPR and 75 days to comment on a Notice of Proposed Rulemaking. CPSIA contains some provisions designed to shorten the time frame for rulemaking, such as making an ANPR optional, though it may be issued when CPSC deems it a necessary part of rulemaking.

Figure 3: Timeline of CPSC Actions Related to Fire pots and Gel Fuel, 2001 to 2012



Source: GAO analysis of CPSC information.

^aGel fuel for fireplaces has been available in single-use cans since the mid-1980s.

^bAn incident may include more than one death or injury. According to CPSC briefing to commissioners, the earliest incident known to staff occurred on April 3, 2010. In some cases, the incident is reported to CPSC days after it occurred, and in other cases, it has taken more than a year. Several incidents that occurred in 2010 were reported to CPSC in 2011.

^cThe purpose of the ANPR was to determine what voluntary or mandatory standards should be implemented, what, if any, changes should be made to labeling, and if the products should be banned or no regulatory action taken.

^dAccording to CPSC, in fiscal year 2013 staff plan to review comments to the ANPR and develop performance criteria and test methods for a potential mandatory rule. In fiscal year 2014, CPSC plans to prepare a Notice of Proposed Rulemaking package for the Commission's consideration.

Reliance on Voluntary Standards

CPSC's statutory authority requires the Commission to rely on voluntary standards to build safety into consumer products if the Commission determines that compliance with a voluntary standard is likely to result in the elimination or adequate reduction of risk of injury identified and that there will be substantial compliance with the voluntary standard.⁶⁶ CPSC officials told us that compliance with applicable voluntary standards would be one of many factors in the decision on whether an unregulated product is defective and poses a risk of injury, thus requiring corrective action. In addition to taking steps to ensure compliance, the agency may address the risk presented by unregulated products—that is, products not subject to mandatory standards—by recommending revisions to voluntary standards. However, having a voluntary standard that does not address the particular defect or hazard that is being examined can slow down the process of getting a corrective action. In some instances, the manufacturer may disagree with CPSC's finding that a product can meet a voluntary standard but has a defect that creates a serious risk of injury or death. If the strategy to address a risk is to develop a voluntary standard, the Office of Hazard Identification and Reduction will work to develop the standard.

If CPSC finds that a manufacturer's product fails to comply with voluntary standards or presents a substantial product hazard, it can take an enforcement action, such as seeking a public notice or recall. When a recall is deemed necessary, the Office of Compliance and Field Operations negotiates with the responsible firm to seek a "voluntary" or a negotiated recall whenever possible. According to CPSC officials, if the firm does not cooperate, CPSC can seek to (1) issue a unilateral press release asking consumers to discontinue use of the product, (2) ask distributors and retailers to stop selling the unsafe products, (3) obtain injunctive relief, (4) file an administrative complaint before an administrative law judge to affirm its position, although this process can take several months or years to complete, or (5) pursue an action against the product and manufacturer under the imminent hazard provision of CPSA. CPSC staff told us that for each recall, the Office of Compliance and Field Operations works with the Office of Hazard Identification on a case-by-case basis to determine whether standards (voluntary or mandatory) need to be developed to address similar or future products.

⁶⁶Consumer Product Safety Amendments of 1981, Pub. L. No. 97-35, title XII-A, 95 Stat. 357, 703 (1981), amending 15 U.S.C. §§ 2056 and 2058 and [GAO-12-582](#).

Improving Timeliness of CPSC's Response

In addition, CPSC can assess civil penalties if a manufacturer, distributor, or retailer knowingly fails to report potential substantial product hazards.

CPSC has established the Fast-Track recall program, which provides firms the opportunity to streamline the recall process by removing hazardous products from the marketplace immediately. Under section 15(b) of CPSA, if a company suspects that a product could be hazardous, the company must report it to CPSC. The Fast-Track recall program allows the company to propose a plan for an expedited recall. If CPSC considers the firm's plan satisfactory—and finds no other cause for concern in its review—it approves the plan and works with the firm to expedite the recall to begin within 20 days of the initial report to CPSC. This program is intended to remove dangerous products from the marketplace faster and save the company and CPSC both time and money. While some industry representatives have questioned the timeliness of the Fast-Track program, CPSC stated that a number of factors could slow the process, such as delays in receiving information from the firm, delays in completing product safety assessments, or evaluation of the remedy being suggested. CPSC reported that in 2011 staff completed technical reviews of hazardous products and initiated corrective actions within 20 days 95 percent of the time, thereby exceeding the Commission's goals for initiating Fast-Track recalls by 5 percent. Since August 1997, CPSC reported that it has used the Fast-Track recall program to conduct 2,000 recalls on over approximately 200 million products.

The timeliness of CPSC's response to new and emerging hazards depends, in part, on the extent to which U.S. companies are motivated to quickly institute and enforce stringent product safety standards because selling products that cause injury or death can have negative impacts on their brands. In addition, the tort system in the United States—by exposing companies selling unsafe products to lawsuits—helps ensure that companies are motivated to comply with product safety standards. CPSC faces a trade-off between consumer protection and industry cooperation when deciding what actions to take, such as developing standards or banning a particular product, and whether industry self-regulation can be used to protect consumers. Balancing the interests of both consumers and industry participants adds complexity and affects the timeliness of CPSC's response. If CPSC does not act quickly enough, a consumer may be harmed by using an unsafe product. However, if CPSC acts too quickly, it can be subject to lawsuits from companies that claim it has not presented sufficient evidence to prove a product hazard, which

could result in a reversal of its decision and any action taken against a company.

Other Efforts to Address Risks

Although CPSC has broad regulatory powers, the agency's efforts to address product hazards are also carried out using other methods, such as through consumer and manufacturer outreach. For example, CPSC can provide information to consumers on safety practices that can help prevent product-related accidents. These outreach efforts are carried out by the Office of Education, Global Outreach, and Small Business Ombudsman. This office's primary responsibility is to coordinate and provide education and outreach activities to various domestic and international stakeholders. The office is also responsible for working with manufacturers to help build safety into their products to prevent dangerous products from ever entering the marketplace.

CPSC uses a range of communication strategies to inform the public about safety issues. This information is intended to help consumers make informed choices about the products they purchase and to educate consumers on how to use the products safely and to act quickly if they own a recalled product. According to CPSC, the Commission has had success in educating the public through increased use of social media to communicate safety messages and through targeted campaigns that aim to reach the most vulnerable populations affected by certain product hazards. Examples include the "Safe Sleep" and "Pool Safely" campaigns, which addressed risks associated with baby cribs, baby monitor cords and sleep positioners, and swimming pools and spas, respectively. CPSC posts recalls and press releases to its website in a format that allows television stations and other media to obtain information from CPSC's website to post on their own websites. Consumers also have the option of accessing www.SaferProducts.gov or calling the CPSC hotline to ask questions about recalls or request safety information.

Challenges in Addressing New Product Hazards

CPSC finds it challenging to address hazards posed by new products because first, the product defect or hazard must be identified; second, the associated risk must be assessed; and as noted earlier, it is harder to identify and assess the risk associated with new products when there is no historical data to assess. Furthermore, according to one agency official, because CPSC does not have authority to require pre-approval of products before they enter the U.S. market, CPSC cannot take action unless a product creates a risk of harm. Generally, new products are unregulated—that is, they are not subject to existing mandatory standards. To illustrate the challenge CPSC faces with addressing risks

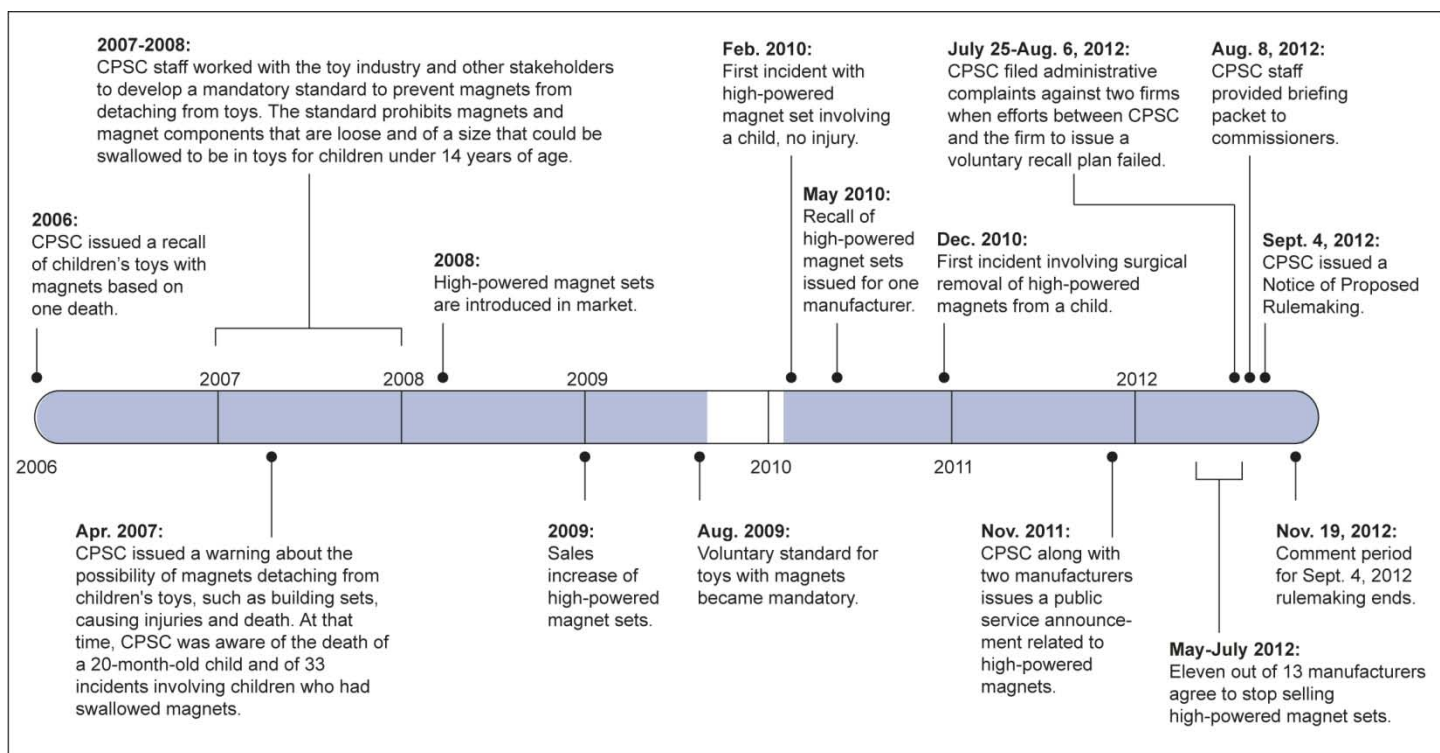
associated with new products, an agency official cited an instance where the agency collected a handful of incident reports involving a new infant sleep product. They performed a hazard profile on the product but because there had been no injury associated with the product, CPSC could not make a good case to have the manufacturer remedy an identified potential problem. In instances where CPSC may identify a potential hazard before a product is introduced into commerce, the agency's only action is to alert the manufacturer of the potential hazard or product defect.

Moreover, CPSC may not have prior experience with the potential hazard from a new consumer product and may need to take a number of actions to address a specific hazard, which can take years. For example, CPSC has recognized for several years that the ingestion of small magnets can pose a hazard for children. After 34 incidents were reported, 1 resulting in the death of a 20-month old child, and after investigating these incidents, CPSC issued a recall of children's toys with magnets in March 2006. After further incidents of magnet ingestion were reported, CPSC issued an expanded recall in April 2007. From 2007 to 2008, CPSC worked with the toy industry and other stakeholders to develop a voluntary standard, which the Commission made mandatory in August 2009. However, high-powered magnet sets became available during 2008, with sales increasing in 2009. In February 2010, CPSC received its first report of an ingestion of high-powered magnets by a child. Although there was no injury associated with this magnet ingestion, CPSC noted that the product was inappropriately labeled for children and did not comply with the mandatory toy standards. In response, in May 2010, CPSC worked with one manufacturer to issue a voluntary recall due to the improper labeling. In December 2010, CPSC received another report of high-powered magnet ingestion by a child that required surgery. Because the circumstances differed from those of previous incidents, CPSC continued to track these incidents and conducted a follow-up investigation.⁶⁷ In November 2011, CPSC and two manufacturers issued a public service announcement related to ingestion of magnets. CPSC continued to receive reports of incidents involving the ingestion of high-powered magnets. In 2012, the majority of manufacturers agreed to stop selling the product, but two manufacturers, one of which sold more than 70 percent

⁶⁷ According to CPSC NEISS data from January 2009 to December 2011, the agency estimated 1,700 ingestion incidents of high-power magnets.

of the magnet sets purchased in the United States, did not. To address the hazard associated with the products remaining in the market, CPSC filed administrative actions against the companies in July and August 2012.⁶⁸ On September 4, 2012, CPSC took further action and issued a notice of proposed rulemaking to prohibit high-powered magnet sets. The public comment period ended on November 19, 2012. See figure 4 for a timeline of CPSC's actions in response to hazards associated with magnets.

Figure 4: Timeline of CPSC Actions Related to Magnets, 2006 to 2012



Source: GAO analysis of CPSC information.

⁶⁸CPSC noted that legal action against a company is rarely taken and that this is the first administrative complaint filed by the agency since 2001. In October 2012, one of the companies decided to discontinue importing the high-powered magnet sets.

Conclusion

CPSC has broad authority for identifying, assessing, and addressing risks from unsafe consumer products. However, it faces challenges in identifying risks from new and emerging products largely because statutorily CPSC was established to respond to risks after products have been introduced into the U.S. market. Neither CPSA nor any other acts administered by CPSC require a premarket registration or approval of consumer products. Thus, CPSC does not evaluate a product's potential risk to the public until a product is introduced into commerce. CPSC also faces challenges in identifying product risks in a timely manner because of the large quantity of information it must gather and manage. CPSC has taken steps to improve its responsiveness through better technology for identifying risks, more targeted surveillance of imported products, and a program for manufacturers to streamline the process for conducting recalls. CPSC's efforts to improve its ability to identify unsafe products and target unsafe imported products through IT improvements are still under way, and the agency projects that they will be completed in 3 to 7 years.

Because CPSC faces challenges in identifying and targeting unsafe products at import, it has attempted to update information-sharing agreements with its foreign counterparts, as Congress expected when it amended CPSA by including section 29(f). However, restrictive language in CPSA, as amended by CPSIA, has hindered CPSC's ability to share certain information with its counterparts internationally. Therefore, the Commission has been unable to enter into any international agreements pursuant to section 29(f) because CPSC's foreign counterparts will only share information under reciprocal terms that permit those foreign counterparts to make nonpublic information available to their own governing bodies or court systems. Based on our analysis of the statute, section 29(f) has not achieved the results expected by Congress when it enacted this provision and CPSC may benefit from having more flexibility to exchange information with its counterparts in other countries, which would help CPSC prevent unsafe products from entering the U.S. marketplace.

Matter for Congressional Consideration

To better enable CPSC to target unsafe consumer products, Congress may wish to amend section 29(f) of CPSA to allow CPSC greater ability to enter into information-sharing agreements with its foreign counterparts that permit reciprocal terms on disclosure of nonpublic information.

Agency Comments and Our Evaluation

We provided a draft of this report to CPSC for comment. In their written comments, reproduced in appendix III, CPSC supported our matter for congressional consideration and believed that it would benefit from having more flexibility to exchange information with its counterparts from other countries through agreements that permit reciprocal terms on disclosure of information. CPSC staff also provided technical comments that we incorporated, as appropriate.

We are sending copies of this report to appropriate congressional committees and the Chairman and commissioners of CPSC. The report also is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or cackleya@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.



Alicia Puente Cackley
Director
Financial Markets and
Community Investment

Appendix I: Objectives, Scope, and Methodology

The Consolidated Appropriations Act requires GAO to analyze the potential safety risks associated with new and emerging consumer products, including chemicals and other materials used in their manufacture, taking into account the Consumer Product Safety Commission's (CPSC) ability and authority to identify, assess, and address the risks of new and emerging consumer products in a timely manner and to keep abreast of the effects of these products on public health and safety. Our objectives were to evaluate the authority and ability of CPSC to (1) stay generally informed about new risks associated with consumer products and use available information to identify product hazards, and (2) assess and address new risks posed by consumer products in a timely manner.

To address these objectives, we reviewed the statutes and regulations that provide the basis for CPSC's authorities related to protecting consumers from unreasonable risk of injury. We also examined guidance developed by CPSC that informs their approach to identifying, assessing, and addressing new and emerging risks, such as CPSC's policy on establishing priorities for action by the Commission, guidance on risk-related activities, and information-quality guidelines. In addition, we reviewed CPSC's operating procedural manuals for coding incident reports into its data-management system and for assigning hazard codes to these reports, performance and accountability reports, strategic plans, budget operating plans, 2013 performance budget request, and annual reports. We reviewed existing information about CPSC data systems and interviewed agency officials knowledgeable about the data. Based on our review of documentation, we believe the data are reliable for our purposes. We also reviewed prior GAO reports on CPSC, risk assessment in the federal government, and nanotechnology, and consulted GAO's *Standards for Internal Control in the Federal Government* and *Internal Control Management and Evaluation Tool* to assess CPSC's policies and procedures. We also examined the chronic hazard guidelines based on the Federal Hazardous Substance Act that CPSC uses to assess a product's potential health effects. In addition, we reviewed data on CPSC corrective actions. To assess CPSC's timeliness in identifying, assessing, and addressing new and emerging risks, we examined the Office of Management and Budget's (OMB) Memorandum on Principles for Risk Analysis, OMB's 2006 Proposed Risk Assessment Bulletin, and the National Research Council's Review of OMB's Proposed Risk Assessment Bulletin. We also reviewed CPSC's performance goals and obtained data on its time frames for performing product safety assessments and testing at the National Product Testing and Evaluation Center.

To assess CPSC's authority to obtain and share information that could help identify new hazards posed by consumer products, we reviewed our prior work on CPSC's authorities and legislation related to the agency.¹ In addition, we reviewed CPSC's list of its collaborative efforts with other federal agencies to remain informed of new and emerging risks. We reviewed memorandums of understanding between CPSC and some of its foreign counterparts as well as information on risk management practices developed by other countries such as the European Union.

In addition to our document review, we interviewed CPSC officials and staff as well as all of CPSC's current commissioners and the Chairman to understand the organizational structure and the roles and responsibilities of the offices involved in safety operations and data collection, as well as to gain their perspectives on CPSC's ability and authority to identify, assess, and address new and emerging risks in a timely manner. We also interviewed national consumer and industry organizations and legal professionals and toured CPSC's National Product Testing and Evaluation Center. At the center, we watched staff conduct flammability testing of a product and learned of other types of testing CPSC conducts such as chemical, combustion, and durability testing. We also observed, through CPSC staff's illustration, the data-management system CPSC uses to code and screen incident data in order to identify and assess risks. Finally, through a demonstration of CPSC's import targeting system, we viewed the type of information CPSC is using in piloting its target system to identify unsafe products at the ports.

We conducted this performance audit from January 2012 to December 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹We previously have reported on CPSC's authorities, and we discuss specific authorities as appropriate throughout this report. See GAO, *Consumer Safety: Better Information and Planning Would Strengthen CPSC's Oversight of Imported Products*, [GAO-09-803](#) (Washington, D.C.: Aug. 14, 2009).

Appendix II: CPSC's and Other Agencies' Coordinated Responses to Hazards Posed by Defective Chinese Drywall

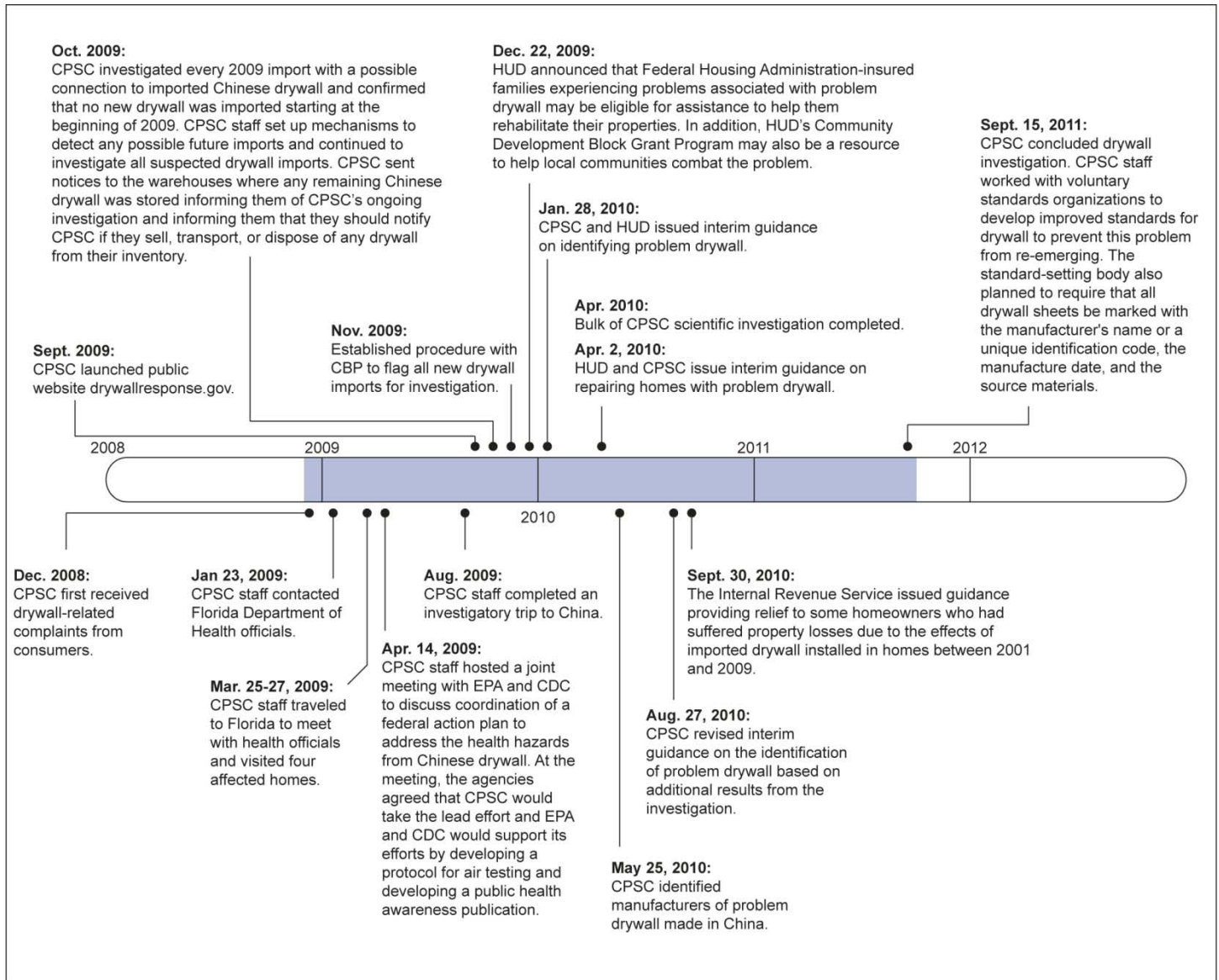
When an emerging risk related to drywall (i.e., sheetrock used in construction) was identified in 2008 that crossed the jurisdiction of several federal agencies, CPSC took the lead in coordinating what the agency reported as the largest investigation in its history. CPSC participated in an intergovernmental task force with the Department of Housing and Urban Development (HUD), Environmental Protection Agency (EPA), Centers for Disease Control and Prevention (CDC), and Department of Homeland Security.¹ In 2008, CPSC was informed of a high level of hydrogen sulfide emissions in drywall made in China that was imported into the United States from 2001 through 2008. The bulk of the almost 4,000 complaints involved homes built in 2006 through 2007.² A high level of hydrogen sulfide emissions is associated with metal corrosion, which can damage household appliances and electrical systems. CPSC performed testing and found the level of hydrogen sulfide emissions in Chinese drywall to be 100 times that of non-Chinese drywall. Some of the Chinese manufacturers were aware of the issue in 2006 but did not share the information with CPSC, as required. CPSC coordinated with EPA to conduct an elemental analysis on the components contained in Chinese and non-Chinese drywall, as well as develop a protocol for conducting air-quality testing. CDC's role was to assess health effects and develop a public awareness campaign. HUD's role was to develop guidance for the identification and remediation of problem drywall in homes and provide grants to help in these efforts. Customs and Border Protection (CBP) worked to identify any imports of Chinese drywall. CPSC also worked closely with the Federal Council on Environmental Quality and the Domestic Policy Council. In addition, the Commission worked with state partners including state attorneys general and health departments. The timeline in figure 5 illustrates how CPSC addressed the emerging risk.

¹The U.S. Immigration and Customs Enforcement and the Customs and Border Protection (CBP) within the Department of Homeland Security participated in the investigation.

²Complaints were received from 43 states, Washington, D.C., American Samoa, and Puerto Rico.

Appendix II: CPSC's and Other Agencies' Coordinated Responses to Hazards Posed by Defective Chinese Drywall

Figure 5: Timeline of CPSC Actions Related to Problem Drywall, 2008 to 2011



Source: GAO analysis of CPSC information.

Appendix III: Comments from the U.S. Consumer Product Safety Commission



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

December 5, 2012

Ms. Alicia Puente Cackley
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
411 G Street, NW
Washington, DC 20548

Dear Ms. Cackley:

The U.S. Consumer Product Safety Commission (CPSC) appreciates the opportunity to review and provide comments on the draft U.S. Government Accountability Office report "Agency Faces Challenges in Responding to New Product Risks."

The draft report provides a comprehensive evaluation of the CPSC's authority and ability to stay informed of, address, and assess new and emerging risks posed by consumer products, and we appreciate the thorough review. We support GAO's recommendation that Congress may wish to amend Section 29(f) of the CPSA to allow the CPSC greater ability to enter into information-sharing agreements with our foreign counterparts. We believe the CPSC would benefit from having more flexibility to exchange information with our counterparts in other countries through agreements that permit reciprocal terms on disclosure of information.

Thank you again for providing us with the opportunity to comment on the draft report.

Sincerely,

Handwritten signature of Inez M. Tenenbaum.

Inez M. Tenenbaum
Chairman

Handwritten signature of Robert S. Adler.

Robert S. Adler
Commissioner

Handwritten signature of Nancy A. Nord.

Nancy A. Nord
Commissioner

CPSC Hotline: 1-800-638-CPSC (2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Alicia Puente Cackley, (202) 512-8678 or cackleya@gao.gov

Staff Acknowledgments

In addition to the contact named above, Debra Johnson (Assistant Director), Tim Bober, Christine Broderick, Marcia Crosse, Philip Curtin, DuEwa Kamara, Yola Lewis, Alexandra Martin-Arseneau, Marc Molino, Nadine Garrick Raidbard, Jessica Sandler, Jennifer Schwartz, Sushil Sharma, Andrew Stavisky, and Henry Wray made key contributions to this report.

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