



October 2022

# CONSUMER PRODUCT SAFETY COMMISSION

## Action Needed to Improve Preparedness for Product Examination Disruptions

Accessible Version

# GAO Highlights

Highlights of [GAO-23-105445](#), a report to congressional addressees

## Why GAO Did This Study

In support of CPSC’s product safety mission, agency investigators examine consumer products entering certain U.S. ports. To protect worker safety during the COVID-19 pandemic, CPSC’s leadership withdrew investigators from these ports in March 2020. As a result, CPSC was largely unable to conduct in-person examinations of imported products until investigators began returning to ports in September 2020.

GAO was asked to review CPSC’s withdrawal of investigators during the COVID-19 pandemic. In addition, the CARES Act requires GAO to report on ongoing monitoring and oversight efforts related to COVID-19. This report examines, among other objectives, (1) CPSC’s risk mitigation strategies and the extent to which CPSC had emergency plans, and (2) CPSC’s implementation of COVID-19-related statutory requirements.

GAO analyzed CPSC documentation; reviewed relevant laws and regulations, including requirements for federal agency continuity of operations plans; interviewed officials at CPSC headquarters and three selected ports and other selected agencies that perform similar inspections; and analyzed data on CPSC examinations and international trade volume.

## What GAO Recommends

GAO is making three recommendations, including that CPSC (1) finalize its continuity of operations plans, and (2) fully develop and implement actionable steps and set specific milestones for complying with the Consolidated Appropriations Act, 2021. CPSC concurred with GAO’s recommendations.

View [GAO-23-105445](#). For more information, contact Alicia Puentes Cackley at (202) 512-8678 or [cackleya@gao.gov](mailto:cackleya@gao.gov).

October 2022

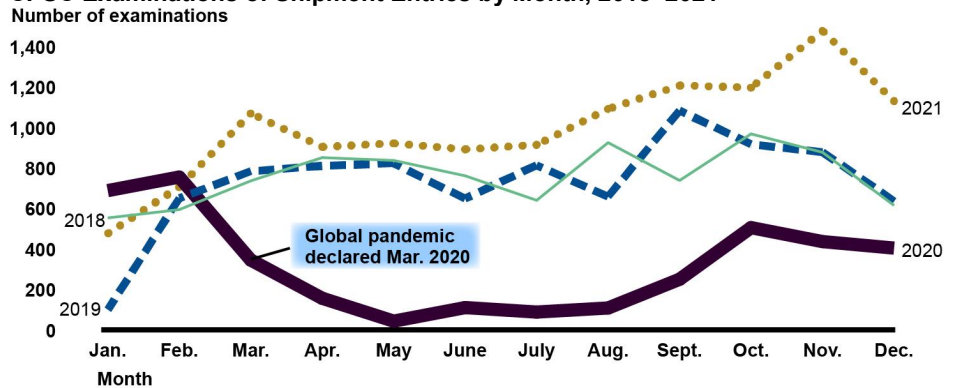
# CONSUMER PRODUCT SAFETY COMMISSION

## Action Needed to Improve Preparedness for Product Examination Disruptions

### What GAO Found

The Consumer Product Safety Commission (CPSC) implemented remote examination procedures in March 2020 in response to the COVID-19 pandemic. During the period when all CPSC investigators worked remotely—March through August 2020—investigators conducted significantly fewer examinations of consumer products than during similar periods in prepandemic years. Specifically, port investigators conducted 850 examinations during this period compared to 4,537 in March through August 2019 (see figure). Monthly examinations returned to prepandemic levels in early 2021, although the trade value of imported consumer products had returned to prepandemic levels in July 2020. CPSC also identified significantly fewer import violations for consumer products during the period its port staff worked off-site—187 violations between March and August 2020, compared to 1,413 during the same period in 2019.

**CPSC Examinations of Shipment Entries by Month, 2018–2021**



Source: GAO analysis of Consumer Product Safety Commission (CPSC) examination data. | GAO-23-105445

**Data table for CPSC Examinations of Shipment Entries by Month, 2018–2021**

Month	2018	2019	2020	2021
Jan.	553	99	688	476
Feb.	594	650	755	706
Mar.	736	784	345	1069
Apr.	851	810	156	904
May	837	823	43	921
June	761	648	110	892
July	640	814	88	914
Aug.	925	658	108	1092
Sept.	738	1083	250	1207
Oct.	968	917	505	1197
Nov.	877	878	436	1477
Dec.	615	636	404	1130

Source: GAO analysis of CPSC examination data. | GAO-23-105445

CPSC did not have a finalized continuity of operations plan prior to the pandemic, and had not assessed catastrophic emergency risks, as required by federal directives. As a result, CPSC made decisions regarding continuity of operations at the ports and its remote procedures as conditions evolved. The scope of products CPSC examined when port investigators were withdrawn was limited. Remote procedures also did not account for differences across ports, such as the types of products arriving at individual ports. This led to variations in the number of examinations investigators conducted while working remotely compared to examinations conducted prepandemic at selected ports. No examinations were conducted at one of these ports during the withdrawal period. By finalizing a comprehensive continuity of operations plan, CPSC would be better prepared for disruptions from future emergencies.

CPSC has taken steps to implement COVID-19-related requirements in the Consolidated Appropriations Act, 2021. However, it has not addressed two specific requirements to (1) examine a sample of de minimis shipments (valued at \$800 or less) for violations of standards and (2) develop performance metrics for its efforts to reduce noncompliant de minimis shipments. As a result, CPSC's ability to detect and report on noncompliant de minimis shipments, typically found in the growing e-commerce environment, is limited.

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**Abbreviations**

APHIS	Animal and Plant Health Inspection Service
ARPA	American Rescue Plan Act of 2021
CAA	Consolidated Appropriations Act, 2021
CBP	Customs and Border Protection
CPSC	Consumer Product Safety Commission
CTAC	Commercial Targeting and Analysis Center
FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FTE	full-time equivalent
HTS	Harmonized Tariff Schedule

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OMB	Office of Management and Budget
OPM	Office of Personnel Management
RAM	Risk Assessment Methodology

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October 27, 2022

Congressional Addressees

The COVID-19 pandemic generated unprecedented challenges for federal agencies tasked with keeping their workers safe while continuing to carry out their missions. The Consumer Product Safety Commission (CPSC), whose mission is to protect the public from unreasonable risks of injury and death from consumer products, assigns investigators to examine and test consumer products at certain U.S. ports of entry. At the onset of the pandemic in March 2020, CPSC's leadership required port investigators, who were physically located at 18 of the 328 U.S. ports of entry, to work remotely, citing health risks and a lack of personal protective equipment. As a result, CPSC was largely unable to conduct in-person examinations of shipments until investigators began returning to ports in September 2020.

Congress mandated that CPSC implement certain COVID-19-related requirements outlined in the Consolidated Appropriations Act, 2021 (CAA) and the American Rescue Plan Act of 2021 (ARPA).<sup>1</sup> Some Members of Congress, the CPSC Office of Inspector General, and some consumer advocacy groups have raised questions about CPSC's temporary removal of on-site port staff and the reduction of port examination activity during that period.

We were asked to examine CPSC's decision to withdraw port investigators during the COVID-19 pandemic and the potential increased risk to consumers. In addition, the CARES Act includes a provision for us to report on ongoing monitoring and oversight efforts related to the COVID-19 pandemic.<sup>2</sup> This report examines (1) the factors CPSC considered in making the decision to withdraw port staff and the time frames for staff returning to ports, (2) CPSC's risk mitigation strategies and the extent to which CPSC had emergency plans in place at the onset

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<sup>1</sup>Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. FF, title XX, § 2001, 134 Stat. 1182, 3301. American Rescue Plan Act of 2021, Pub. L. No. 117-2 § 7401, 135 Stat. 4, 108.

<sup>2</sup>Pub. L. No. 116-136, Title IX, § 19010, 134 Stat. 281, 579 (2020). All of GAO's reports related to the COVID-19 pandemic are available on GAO's website at <https://www.gao.gov/coronavirus>.

of the pandemic, and (3) the extent to which CPSC implemented COVID-19-related statutory requirements outlined in the CAA and ARPA.

To address our first objective, we reviewed CPSC's internal communications and decisions related to the withdrawal of port investigators, guidance from the Office of Management and Budget (OMB) and Office of Personnel Management (OPM), and other documents. We also reviewed CPSC data on the time frames for its staff returning to ports.

To address our second objective, we reviewed CPSC's remote examination procedures, CPSC's June 2021 staff report to Congress, reports from CPSC's Office of Inspector General, and other documents on CPSC's processes and procedures. We also compared CPSC analysis and plans on continuity of operations against federal directives and guidance in this area.

We also reviewed CPSC's import examination and violation data; import targeting data from the Department of Homeland Security's Customs and Border Protection (CBP); and Census Bureau import trade data for 2018–2021. We assessed the reliability of these data by reviewing relevant documentation, interviewing CPSC and CBP officials about steps taken to ensure the accuracy of the data, and testing data by comparing them to summary and published data. We found the data to be reliable for the purposes of identifying and analyzing trends in CPSC's import examinations, violations, and trade volumes and for describing trends in CPSC's use of CBP data.

For our first two objectives, we also conducted interviews with CPSC headquarters officials and port investigators and staff at a nongeneralizable sample of three ports where CPSC is colocated with CBP. We selected ports to include those with high import volumes (ports in the top 10 percent for import value from September 2018 through August 2021) and a mix of geographic locations and transportation modes. The selected ports included an East Coast airport, a Southwest Border port, and a West Coast sea port. We interviewed officials from CBP and two agencies with similar roles in port inspection—the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). We interviewed representatives from two consumer groups and four groups representing the shipping, manufacturing, and retail industries. We selected these groups because they were cited in multiple sources as being relevant to CPSC's port inspection process and represented consumers and a mix of industries.



To address our third objective, we reviewed documentation on staffing and hiring at ports during fiscal years 2021 and 2022. We also reviewed CPSC's June 2021 staff report to Congress. We reviewed CPSC's fiscal year 2021 proposed spending plan for ARPA funds, fiscal year 2021 annual financial report, fiscal year 2022 operating plan, and performance budget requests for fiscal years 2022 and 2023. See appendix I for more information on our scope and methodology.

We conducted this performance audit from September 2021 to October 2022 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.

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## Background

CPSC was created in 1972 under the Consumer Product Safety Act to regulate consumer products that pose an unreasonable risk of injury, to assist consumers in evaluating the safety of consumer products, and to promote research and investigation into product-related deaths, injuries, and illnesses.<sup>3</sup> CPSC's jurisdiction is broad, encompassing over 10,000 product types, including children's toys, pajamas, cigarette lighters, hair dryers, generators, and certain all-terrain vehicles.<sup>4</sup>

Congress enacted the Consumer Product Safety Improvement Act of 2008 to strengthen CPSC's authority to enforce safety standards and provide greater public access to product safety information.<sup>5</sup> CPSC's approach to protecting consumers from unreasonable risk of injury or death includes issuing and enforcing regulations that establish mandatory

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<sup>3</sup>Pub. L. No. 92-573, 86 Stat. 1207 (1972) (codified, as amended, at 15 U.S.C. §§ 2051-2090).

<sup>4</sup>While CPSC's jurisdiction includes most consumer products, a number of consumer products are regulated by other federal agencies and are explicitly carved out of the Consumer Product Safety Act. For example, food, drugs, and cosmetics are regulated by the Food and Drug Administration.

<sup>5</sup>Pub. L. No. 110-314, 122 Stat. 3016. The Consumer Product Safety Improvement Act was further amended in 2011 to provide CPSC with greater authority and discretion in enforcing current consumer product safety laws. Pub. L. No. 112-28, 125 Stat. 273 (2011).

standards for consumer products.<sup>6</sup> Products covered by these regulations that are not in compliance are often referred to as “violative products.”<sup>7</sup> Examples of products that should comply with such requirements include children’s toys (which must meet standards for chemical and lead content). Generally, CPSC also requires every manufacturer of an imported product that is subject to a consumer product safety rule to certify—based on reasonable laboratory testing—that the product complies with all rules.<sup>8</sup>

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## CPSC Import Surveillance Function

CPSC, in cooperation with other appropriate federal agencies, is required to maintain a permanent product surveillance program for preventing the entry of unsafe consumer products into the U.S.<sup>9</sup> Import surveillance, which is a major component of CPSC’s prevention and compliance strategies, is carried out through CPSC’s Office of Import Surveillance. This office has focused primarily on traditional ports—those receiving large container shipments. However, the volume of e-commerce shipments that do not enter in shipping containers, for which CPSC is also responsible, has seen steady growth in recent years.<sup>10</sup>

Because of the broad range of consumer products it oversees, CPSC focuses on those products with the greatest safety risks. CPSC’s Office of Import Surveillance targets and inspects high-risk shipments using three methods:

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<sup>6</sup>In addition to the Consumer Product Safety Act, as amended by the Consumer Product Safety Improvement Act of 2008 and Pub. L. No. 112-28, CPSC also administers, as amended, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act of 1970, the Refrigerator Safety Act, the Virginia Graeme Baker Pool and Spa Safety Act, the Children’s Gasoline Burn Prevention Act, the Drywall Safety Act of 2012, and the Child Nicotine Poisoning Prevention Act of 2015.

<sup>7</sup>In a regulated product case, CPSC is authorized to initiate a recall when the agency determines that the firm’s product constitutes a substantial product hazard through violation of an existing statute or regulation.

<sup>8</sup>15 U.S.C. § 2063(a).

<sup>9</sup>15 U.S.C. § 2066(h).

<sup>10</sup>The Office of Import Surveillance considers e-commerce to be any shipment imported into the U.S. that was or is intended to be purchased online.

- **Colocation with CBP.** CPSC port investigators, known as compliance investigators, have a presence at selected U.S. ports of entry, working alongside CBP officers. While CBP has staff at all U.S. ports of entry, CPSC's port investigators are at selected ports with the highest volumes of imported consumer products (23 of the 328 ports as of March 2022). Staff from both agencies coordinate efforts daily, including targeting shipments that are at high risk of not complying with CPSC requirements. In some instances, CBP independently identifies shipments for CPSC examination. CPSC port staff can also conduct their own targeting based on port-specific activity and then request that CBP hold the selected shipments for CPSC to examine.
- **International Trade Data System/Risk Assessment Methodology (RAM).** CPSC's RAM system assesses the potential risk of shipments and targets them based on information from CBP's Automated Commercial Environment system.<sup>11</sup> Entry information includes the importer of record; the shipment's weight, origin, and value; and a 10-digit Harmonized Tariff Schedule (HTS) code classifying the imported product.<sup>12</sup> Agencies such as CPSC use HTS codes to identify products under their jurisdiction. CPSC compliance investigators use RAM and its related risk-scoring information to determine which import entries to select for further examination. RAM contains the formal record of examinations of products during the import process.
- **Commercial Targeting and Analysis Center.** CPSC collaborates with CBP at its Commercial Targeting and Analysis Center (CTAC) to target products at the national surveillance level. CTAC, led by CBP, is a multiagency center that shares information and enhances federal targeting efforts on shipments. In coordination with a CPSC representative, CBP uses its system containing information on shipments entering the U.S. to identify high-risk shipments for CPSC examination at the ports. CBP also works with other federal regulatory agencies that conduct port inspections—such as FDA and APHIS's Plant Protection and Quarantine program—by notifying them about the arrival of imported products and providing information about those products using CTAC data.

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<sup>11</sup>CBP's Automated Commercial Environment is the system through which the trade community reports imports and exports and the U.S. determines admissibility.

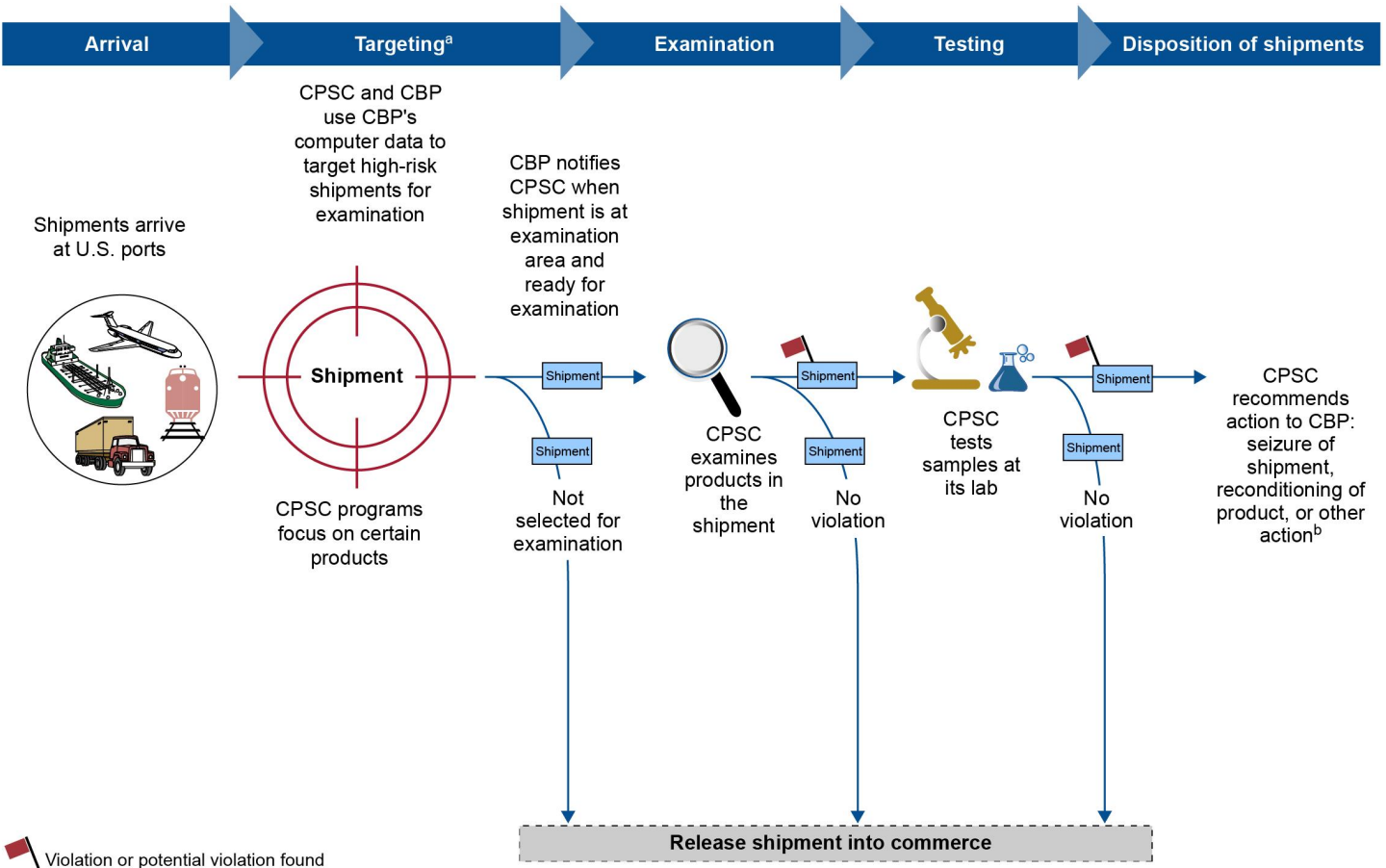
<sup>12</sup>Congress enacted the Harmonized Tariff Schedule of the United States, which is an internationally recognized system and is maintained and published by the U.S. International Trade Commission. HTS is used to classify goods and provide applicable tariff rates for imports into the U.S.

Once a targeted shipment is brought to the examination area, CBP notifies the CPSC compliance investigator that the shipment is ready for examination. The examination consists of an initial field screening and, if needed, product sample testing. For the initial field screening, the CPSC compliance investigator selects samples from the shipment and examines them to determine whether each product

- complies with the relevant requirements and
- is accompanied by a certification of compliance with the relevant product safety standard that is supported by testing, in some instances by a third party.

If the compliance investigator decides that further testing of a sample is necessary, the investigator sends the sample to the CPSC Product Testing Laboratory. If the sample is found to violate any of the above criteria, CPSC recommends one of several possible actions to CBP including, but not limited to, seizure of the shipment, reconditioning of the product, or other action related to the release of the product (see fig. 1).

**Figure 1: CPSC’s and CBP’s Process for Inspections of Consumer Goods at U.S. Ports of Entry**



Sources: GAO analysis of Consumer Product Safety Commission (CPSC) and Customs and Border Protection (CBP) documents; Art Explosion (clip art). | GAO-23-105445

**Text of Figure 1: CPSC’s and CBP’s Process for Inspections of Consumer Goods at U.S. Ports of Entry**

- 1) Arrival.
  - a) Shipments arrive at U.S. ports
- 2) Targeting /a/
  - a) CPSC and CBP use CBP's computer data to target high-risk shipments for examination.
  - b) CPSC programs focus on certain products.

3) Examination

- a) CBP notifies CPSC when shipment is at examination area and ready for examination
  - i) CPSC examines products in the shipment
    - (1) Products selected for examination move to testing
    - (2) Not selected for examination
      - (a) Release shipment into commerce

4) Testing

- a) CPSC tests samples at its lab

5) Disposition of Shipment

- a) No Violation
  - i) Release shipment into commerce
- b) Violation
  - i) CPSC recommends action to CBP: seizure of shipment, reconditioning of product, or other action /b/

Sources: GAO analysis of Consumer Product Safety Commission (CPSC) and Customs and Border Protection (CBP) documents; Art Explosion (clip art). | GAO-23-105445

<sup>a</sup>In some cases, targeting of products occurs prior to the shipment's arrival based on the entry information that the importer files electronically before a shipment's departure from its point of origin.

<sup>b</sup>CPSC recommends one of several possible actions to CBP including, but not limited to, seizure of the shipment, reconditioning of the product, or other action related to the release of the product.

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## Federal Agency Continuity of Operations Plans

To ensure that essential government services are available in emergencies—such as pandemics, terrorist attacks, or severe weather—federal agencies are required to develop continuity of operations plans. These plans help ensure that an agency can continue to perform its essential functions, provide essential services, and deliver core capabilities during a disruption to normal operations. The Federal Emergency Management Agency (FEMA) is responsible for formulating guidance on these plans and for assessing executive branch continuity of

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operations capabilities. Continuity planning requirements are outlined in Federal Continuity Directives 1 and 2.<sup>13</sup>

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## CPSC Withdrew Port Staff Based on Pandemic-Related Concerns and Federal Guidance

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### CPSC's Withdrawal and Return of Port Staff Were Informed by Pandemic Concerns and OMB and OPM Memorandums

On March 16, 2020, CPSC leadership announced that CPSC employees, including port staff, would be required to work remotely as of the next day.<sup>14</sup> Leadership cited three general factors contributing to its decision:

- **Pandemic-related concerns.** In email communications leading up to the decision, CPSC leadership cited concerns about the health and safety of its workers. In addition, the Acting Chairman cited the increasing numbers of school closures and businesses and government offices shutting down physical office spaces.
- **OMB guidance.** On March 12, 2020, OMB issued memorandum M-20-13 encouraging federal agencies to maximize telework availability to workers who were eligible to telework and faced higher risk of complications from COVID-19, such as those with chronic health conditions.<sup>15</sup> The memorandum encouraged agencies to approve leave for employees who were not eligible for telework and faced

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<sup>13</sup>Federal Emergency Management Agency, Federal Continuity Directive 1, Federal Executive Branch National Continuity Program and Requirements (Jan. 17, 2017) and Federal Continuity Directive 2, Federal Executive Branch Mission Essential Functions and Candidate Primary Mission Essential Functions Identification and Submission Process (June 13, 2017).

<sup>14</sup>The communication specified that CPSC was requiring all telework-eligible employees to work remotely starting on March 17, 2020, and was no longer allowing an on-site presence unless staff were deemed necessary to perform an essential function.

<sup>15</sup>Telework Enhancement Act of 2010, Pub. L. No. 111-292, § 2, 124 Stat. 3165-3166 (codified at 5 U.S.C. § 6502). The act required each federal agency to determine the eligibility of all of its employees to telework and enter into a written agreement between the agency and each employee authorized to telework. The agreements are to outline the specific work arrangements that are agreed to.

higher health risks. The memorandum also stated that agencies should consider the mission-critical nature of their work to determine their telework and leave decisions.<sup>16</sup> Consistent with this OMB memorandum, on March 12, 2020, CPSC announced maximized telework flexibilities and informed staff who had a telework agreement in place that they could choose to telework. However, CPSC senior management specified that port staff conducting investigations should continue to remain on-site.

On March 17, 2020, OMB issued memorandum M-20-16 directing federal agencies to adjust operations immediately to minimize face-to-face interactions, except where operations were necessary to protect public health and safety.<sup>17</sup> CPSC had made the decision the day before to require all CPSC employees, including port staff, to work remotely.

- **OPM operating status.** CPSC officials also stated that OPM's operating status informed their telework decisions. OPM's operating status was "Open with maximum telework flexibilities for all current telework-eligible employees, pursuant to direction from agency heads," starting on March 16, 2020, for employees in the Washington, D.C., area and on March 17, 2020, nationwide.<sup>18</sup>

CPSC's decisions related to telework, including for port staff, involved the Acting Chairman, Executive Director, Commissioners, and other senior management. In making the decisions, these officials discussed concerns in email communications about balancing the need for on-site examinations against safety concerns and decided to withdraw port staff for their safety.

CPSC officials stated they communicated telework decisions within the agency primarily through agency-wide emails, an agency-wide meeting open to all staff, and weekly meetings of senior managers. CPSC also

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<sup>16</sup>Office of Management and Budget, *Updated Guidance on Telework Flexibilities in Response to Coronavirus*, Memorandum M-20-13 (Washington, D.C.: Mar. 12, 2020).

<sup>17</sup>Office of Management and Budget, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19*, Memorandum M-20-16 (Washington, D.C.: Mar. 17, 2020).

<sup>18</sup>OPM's next update was on May 7, 2020, when OPM issued a nationwide status that the federal government would begin a phased transition to normal operations in line with the national guidelines.



communicated the telework status of its employees externally to other agencies, such as OMB and CBP.

In addition, CPSC developed internal guidance and operational procedures to implement the transition to telework and eventual return to on-site work. For example, CPSC provided port staff with procedures for conducting examinations from their remote work locations. CPSC implemented the procedures on March 24, 2020, and updated them on August 17, 2020. These procedures generally remained in effect until port investigators returned to their respective ports. CPSC also developed an operational guide to inform its staff about the criteria and procedures it used in transitioning back to on-site work.

CPSC leadership used OMB and OPM memorandums, CPSC's operational guide, and the availability of personal protective equipment as the basis of decisions about when to return staff to the ports. In April 2020, OMB and OPM jointly issued memorandum M-20-23 directing agencies to begin developing plans to return to normal operations, including the return of staff on-site based on national guidelines.<sup>19</sup> The guidelines followed a three-phase approach, with criteria to be met in a state or county before proceeding to each of the three phases. For example, agencies were to follow each state's assessment of its ability to control its level of COVID-19 infections. Further, the memorandum directed federal agencies to ensure they provided appropriate personal protective equipment and implemented relevant hygienic procedures.

In April 2020, CPSC began drafting its reentry plan (known as the operational guide), and it finalized it in May 2020. The guide used the three-phase framework referenced in memorandum M-20-23. CPSC officials told us they reviewed states' weekly COVID-19-related information such as infection rates, testing access, and the availability of personal protective equipment to help determine whether to bring staff back on-site. CPSC officials said that the lack of access to personal

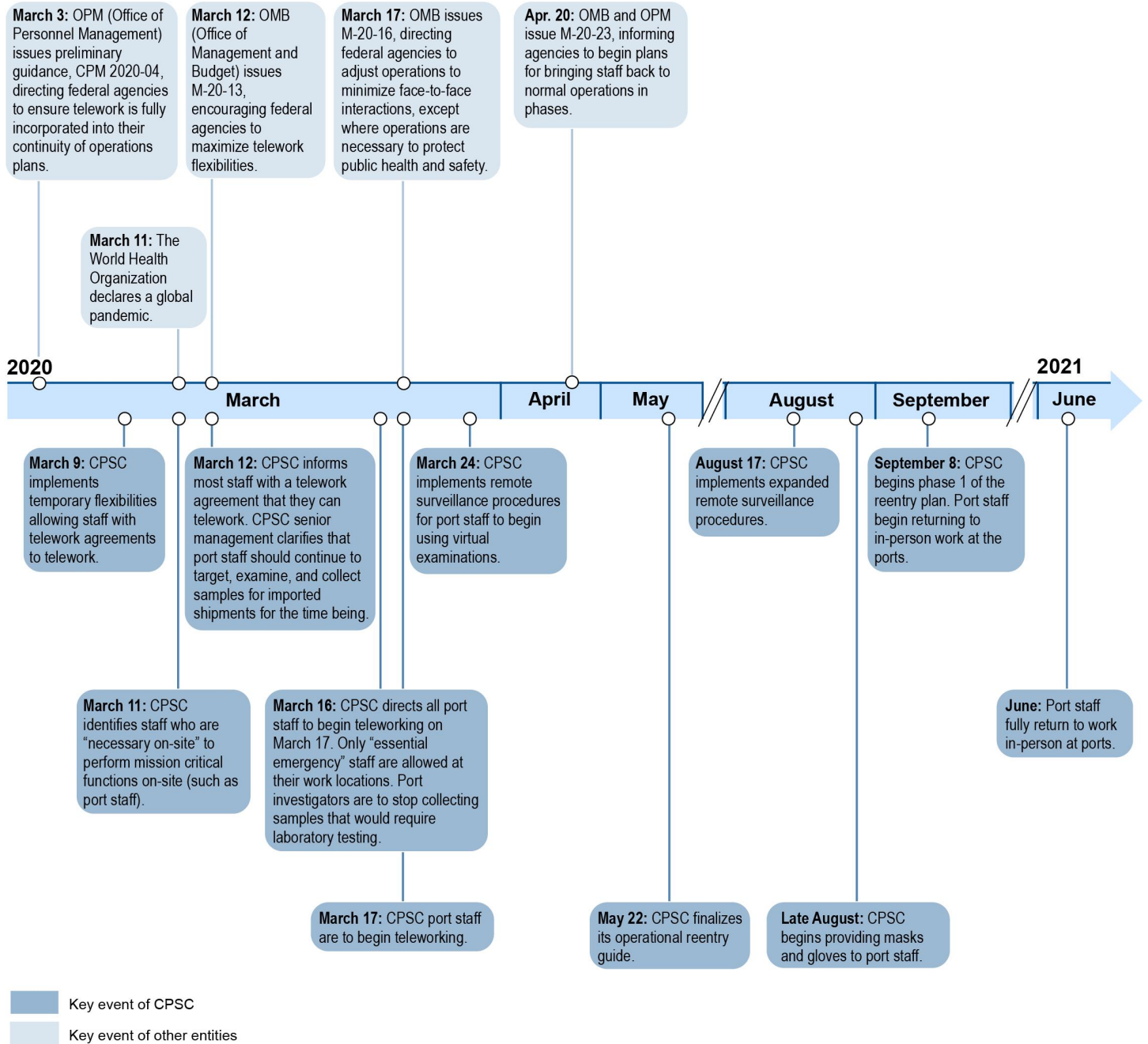
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<sup>19</sup>Office of Management and Budget and Office of Personnel Management, *Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again*, Memorandum M-20-23 (Washington, D.C.: Apr. 20, 2020). Updated guidance released by OMB, OPM, and the General Services Administration on June 10, 2021, rescinded the initial reentry guidance from April 2020; see Office of Management and Budget, Office of Personnel Management, and General Services Administration, *Integrating Planning for a Safe Increased Return of Federal Employees and Contractors to Physical Workplaces with Post-Reentry Personnel Policies and Work Environment*, Memorandum M-21-25 (Washington, D.C.: June 10, 2021). See also White House and Centers for Disease Control and Prevention, *Opening Up America Again* (Washington, D.C.: Apr. 16, 2020).

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protective equipment remained a key challenge during the first 6 months of the pandemic. In late August 2020, CPSC began providing masks and gloves to port staff, and in early September 2020, port staff began returning to the ports. See figure 2 for a timeline of port staff withdrawal and return to work.

**Figure 2: Timeline of Key Events for CPSC Port Staff Withdrawal and Return**



Source: GAO analysis of Consumer Product Safety Commission (CPSC) documents and federal guidance. | GAO-23-105445

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**Text of Figure 2: Timeline of Key Events for CPSC Port Staff Withdrawal and Return**

- 2020
  - March 3: OPM (Office of Personnel Management) issues preliminary guidance, CPM 2020-04, directing federal agencies to ensure telework is fully incorporated into their continuity of operations plans.
  - March 9: CPSC implements temporary flexibilities allowing staff with telework agreements to telework.
  - March 11: The World Health Organization declares a global pandemic.
  - March 11: CPSC identifies staff who are “necessary on-site” to perform mission critical functions on-site (such as port staff).
  - March 12: OMB (Office of Management and Budget) issues M-20-13, encouraging federal agencies to maximize telework flexibilities.
  - March 12: CPSC informs most staff with a telework agreement that they can telework. CPSC senior management clarifies that port staff should continue to target, examine, and collect samples for imported shipments for the time being.
  - March 16: CPSC directs all port staff to begin teleworking on March 17. Only “essential emergency” staff are allowed at their work locations. Port investigators are to stop collecting samples that would require laboratory testing.
  - March 17: OMB issues M-20-16, directing federal agencies to adjust operations to minimize face-to-face interactions, except where operations are necessary to protect public health and safety.
  - March 17: CPSC port staff are to begin teleworking.
  - March 24: CPSC implements remote surveillance procedures for port staff to begin using virtual examinations.
  - Apr. 20: OMB and OPM issue M-20-23, informing agencies to begin plans for bringing staff back to normal operations in phases.
  - May 22: CPSC finalizes its operational reentry guide.
  - August 17: CPSC implements expanded remote surveillance procedures.

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- Late August: CPSC begins providing masks and gloves to port staff.
  - September 8: CPSC begins phase 1 of the reentry plan. Port staff begin returning to in-person work at the ports.
  - 2021
    - June: Port staff fully return to work in-person at ports.

Source: GAO analysis of Consumer Product Safety Commission (CPSC) documents and federal guidance. | GAO-23-105445

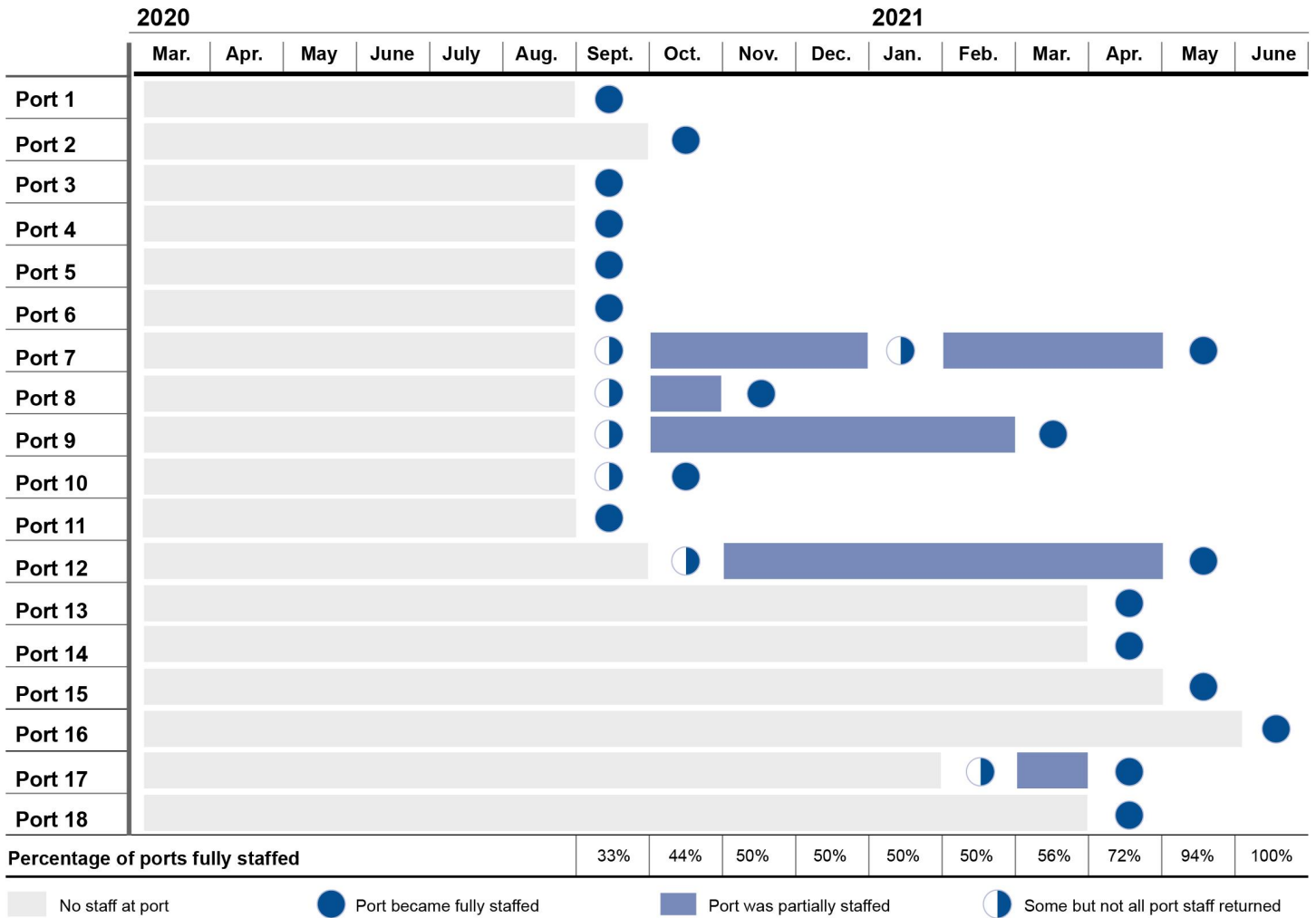
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## CPSC Port Staff Began Returning in September 2020 and Returned Fully by June 2021

CPSC allowed staff to return to the ports to conduct examinations beginning September 8, 2020, and staff at all ports returned by June 2021. Staff could obtain exemptions from returning to work on-site if they met criteria stated in CPSC's operational guide, such as a medical condition associated with an increased risk for severe illness from COVID-19. CPSC officials stated that port investigators generally resumed using examination procedures in place before the pandemic, but certain limitations related to COVID-19 prevented full implementation of the prepandemic procedures. For example, one CPSC compliance investigator told us that CBP's social distancing requirements limited the investigator's ability to walk around certain areas of the dock to examine cargo. On-site examinations were further limited at some ports because CPSC port staff had not fully returned.

Nine of the 18 ports where CPSC port staff were working on-site before the pandemic were fully staffed by November 2020, representing about 65 percent of port staff. The remaining ports gradually reached full staffing levels by June 2021 (see fig. 3)

Figure 3: Timeline of CPSC Port Staff Returning to Ports



Source: GAO analysis of Consumer Product Safety Commission (CPSC) documentation. | GAO-23-105445

Data for Figure 3: Timeline of CPSC Port Staff Returning to Ports

U.S. Port of Entry	Number	Staffing
Baltimore	Port 1	Fully staffed in Sept. 2020
Champlain	Port 2	Fully staffed in Sept. 2020
Dallas	Port 3	Fully staffed in Sept. 2020
Detroit	Port 4	Fully staffed in Sept. 2020
Houston	Port 5	Fully staffed in Sept. 2020
Laredo	Port 6	Fully staffed in Sept. 2020

U.S. Port of Entry	Number	Staffing
Los Angeles/Long Beach	Port 7	Partially staffed in Sept. 2020 Fully Staffed in May 2021
Miami	Port 8	Partially staffed in Sept. 2020 Fully staffed in Nov. 2020
Newark	Port 9	Partially staffed in Sept. 2020 Fully staffed in March 2021
San Francisco	Port 10	Partially staffed in Sept. 2020 Fully staffed in Nov. 2020
San Juan	Port 11	Fully staffed in Sept. 2020
Seattle	Port 12	Partially staffed in Oct. 2020. Fully staffed in May 2021
Buffalo	Port 13	Fully staffed in April 2021
Charleston	Port 14	Fully staffed in April 2021
Chicago	Port 15	Fully staffed in May 2021
Norfolk	Port 16	Fully staffed in June 2021
New York/JFK	Port 17	Fully staffed in April 2021
Savannah	Port 18	Fully staffed in April 2021

**Percentage of U.S. ports fully staffed:**

- Oct. 2020 = 33%
- Nov. 2020 = 44%
- Dec. 2020 = 50%
- April 2021 = 56%
- May 2021 = 72%
- June 2021 = 94%

Source: GAO analysis of CPSC data. | GAO-23-105445

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## Limitations in CPSC's Risk Mitigation Strategies Resulted in Fewer Examinations, and Emergency Plans Were Not Complete

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### CPSC Developed Procedures to Mitigate Risk of Noncompliant Products Entering the U.S. While Port Staff Worked Remotely

CPSC implemented remote examination procedures in March 2020 to allow examinations to continue while port staff worked remotely. Examinations were limited to shipments of products in six selected areas for which investigators could determine compliance by visual assessment and without physical screening or laboratory testing. The remote procedures relied on CBP officers at U.S. ports of entry to provide photos and videos of selected products through mobile phone texting, videoconference technology, and email.

In August 2020, CPSC expanded the types of products compliance investigators could examine remotely and implemented new procedures that did not rely on CBP assistance to conduct remote examinations. These procedures called for port investigators to review the tracking labels and certificates of children's products for documentation compliance, which could be done off-site.<sup>20</sup> The new procedures also allowed CPSC port investigators to request that importers ship product samples to CPSC compliance investigators.

According to CPSC's June 2021 staff report to Congress, as part of its efforts to mitigate the risks associated with the withdrawal of port investigators, CPSC also reviewed imported products in early 2021 to detect potentially violative products that may have entered during the first 6 months of the pandemic. The first effort was a review of high-risk importers through inspections that, according to CPSC officials, started in

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<sup>20</sup>Children's products for use by children ages 12 or younger must have distinguishing permanent marks (generally referred to as "tracking labels"). Further, manufacturers and importers of children's products must certify, in a written Children's Product Certificate based on test results from a CPSC-accepted laboratory that their children's products comply with applicable children's product safety rules. A compliance investigator can obtain and review entry documentation, specifically certificates and test reports for children's products, from the importer or broker and determine if the products require physical examination.



February 2021. CPSC's review of selected high-risk importers for compliance with documentation requirements included inspections of importers that were unresponsive or did not provide adequate or appropriate documentation. These inspections included obtaining information on the importer's operations, onsite screening of products, and collecting product samples for lab testing. The second review was a targeted online surveillance of products with the highest number of import violations that, according to CPSC officials, started in April 2021. In this surveillance effort, CPSC identified products sold online to review for compliance with product safety regulations and later tested them at its testing and evaluation center. The types of products included in the review were those with the highest number of import violations.

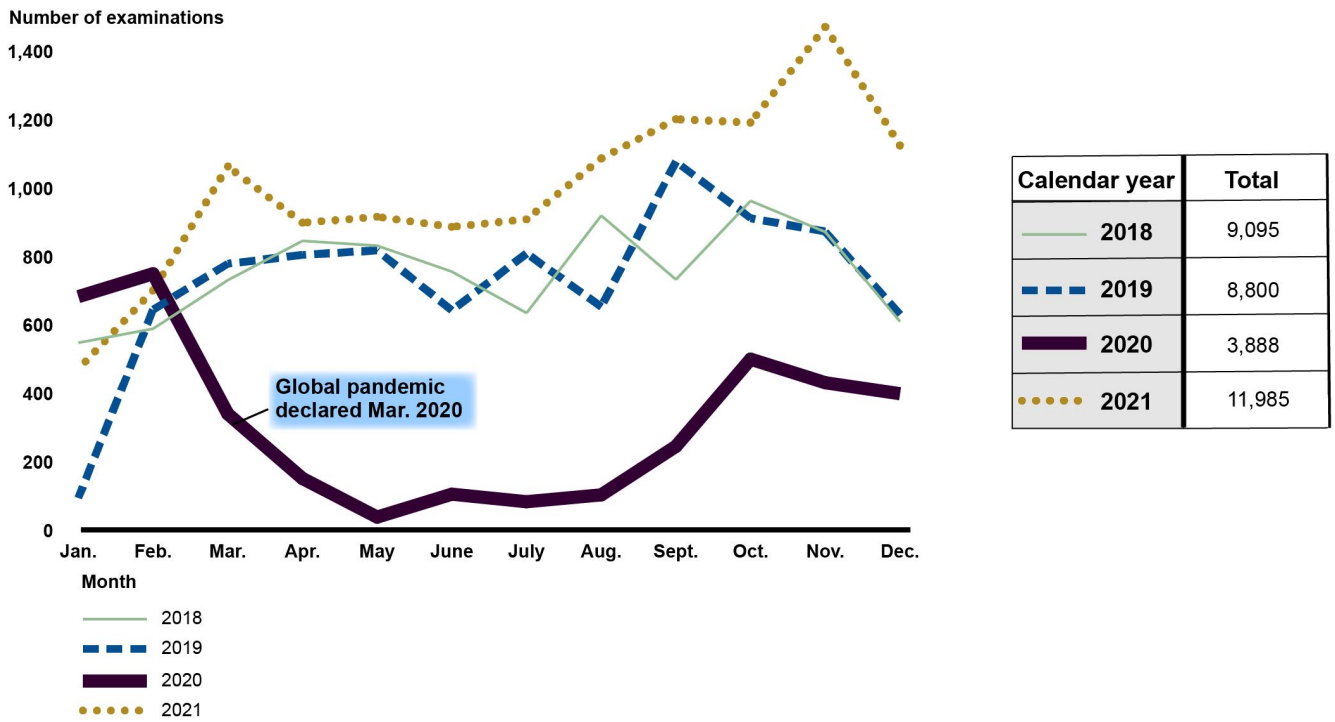
Further, beginning in March 2020, CPSC launched a communication program to warn consumers about the potential risks resulting from spending more time at home. For example, during the pandemic, many consumers took on new outdoor recreational activities and do-it-yourself home improvement projects.

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### CPSC Examined a Limited Number of Products under Remote Inspection Procedures

CPSC conducted significantly fewer examinations during the period when all port staff were withdrawn from ports, according to our analysis of CPSC's monthly examination data. From March 2020 through August 2020, CPSC recorded 850 unique examinations, compared to 4,537 examinations for the same period in 2019—a year-over-year decline of 81 percent (see fig. 4).

**Figure 4: Number of CPSC Examinations of Shipment Entries by Month, 2018–2021**



Source: GAO analysis of Consumer Product Safety Commission (CPSC) examination data. | GAO-23-105445

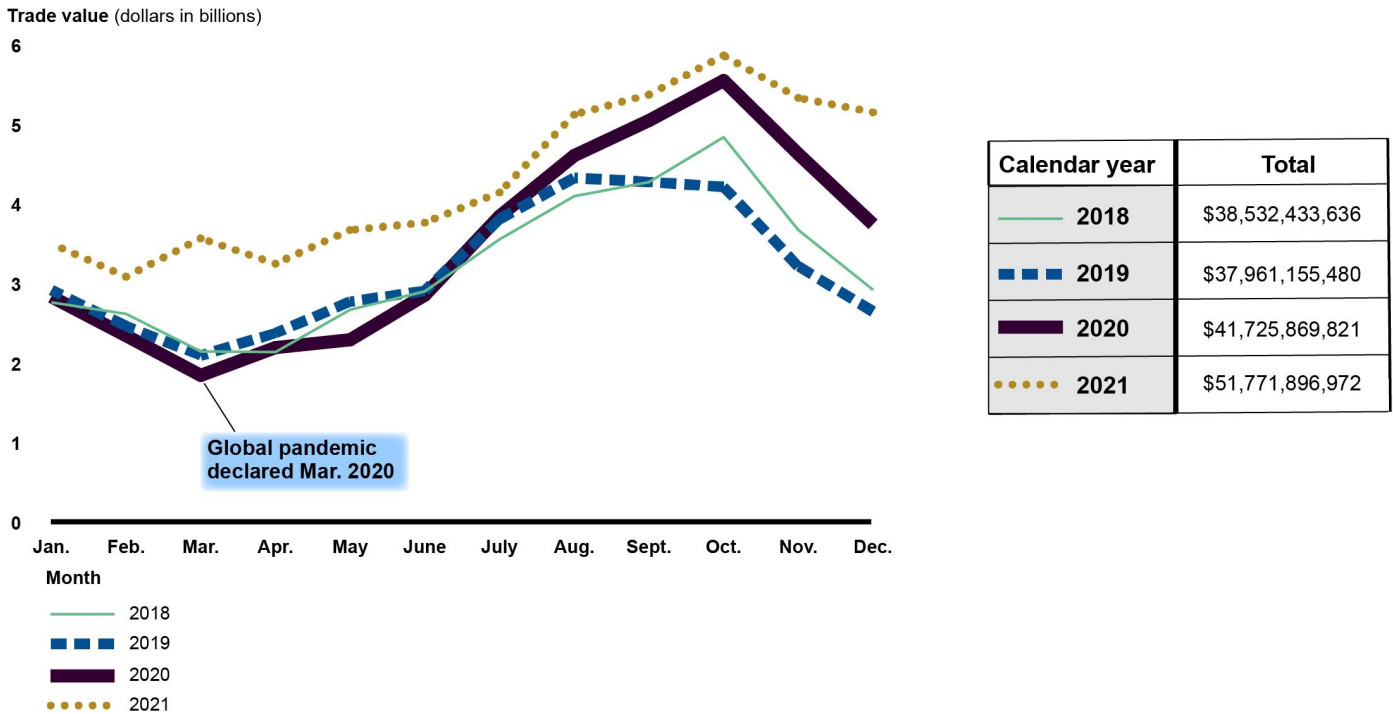
**Data table for Figure 4: Number of CPSC Examinations of Shipment Entries by Month, 2018–2021**

Month	2018	2019	2020	2021
Jan.	553	99	688	476
Feb.	594	650	755	706
Mar.	736	784	345	1069
Apr.	851	810	156	904
May	837	823	43	921
June	761	648	110	892
July	640	814	88	914
Aug.	925	658	108	1092
Sept.	738	1083	250	1207
Oct.	968	917	505	1197
Nov.	877	878	436	1477
Dec.	615	636	404	1130

Source: GAO analysis of CPSC examination data. | GAO-23-105445

The value of imported products CPSC typically examines did not see a similar decline during this period (see fig. 5).<sup>21</sup> According to census trade data, for Harmonized Tariff Schedule (HTS) codes that CPSC typically examines, imported trade value declined by 3.6 percent from March 1 through August 31, 2020, compared to the same period in 2019.<sup>22</sup> The largest year-over-year decline was 17.3 percent in May 2020.

**Figure 5: Value of Imported Products That the Consumer Product Safety Commission (CPSC) Typically Targets, by Month, 2018–2021**



Source: GAO analysis of U.S. Census Bureau data. | GAO-23-105445

<sup>21</sup>We measured trade by the value of imported products because prior GAO reports used this variable and trade economists use it as an acceptable measure of trends in trade. We did not use the number of shipments or units of products because of limitations in the trade data available that left these variables incomplete or misleading.

<sup>22</sup>As discussed earlier, the harmonized tariff schedule, is an internationally recognized system that classifies goods. CPSC maintains a list of HTS codes that the agency typically targets, and it makes regular updates to the list, including during the pandemic, on factors such as changes to the classification of products or the agency’s product targeting priorities. See app. 1 for information on how we measured trade value changes.

**Data table for Figure 5: Value of Imported Products That the Consumer Product Safety Commission (CPSC) Typically Targets, by Month, 2018–2021**

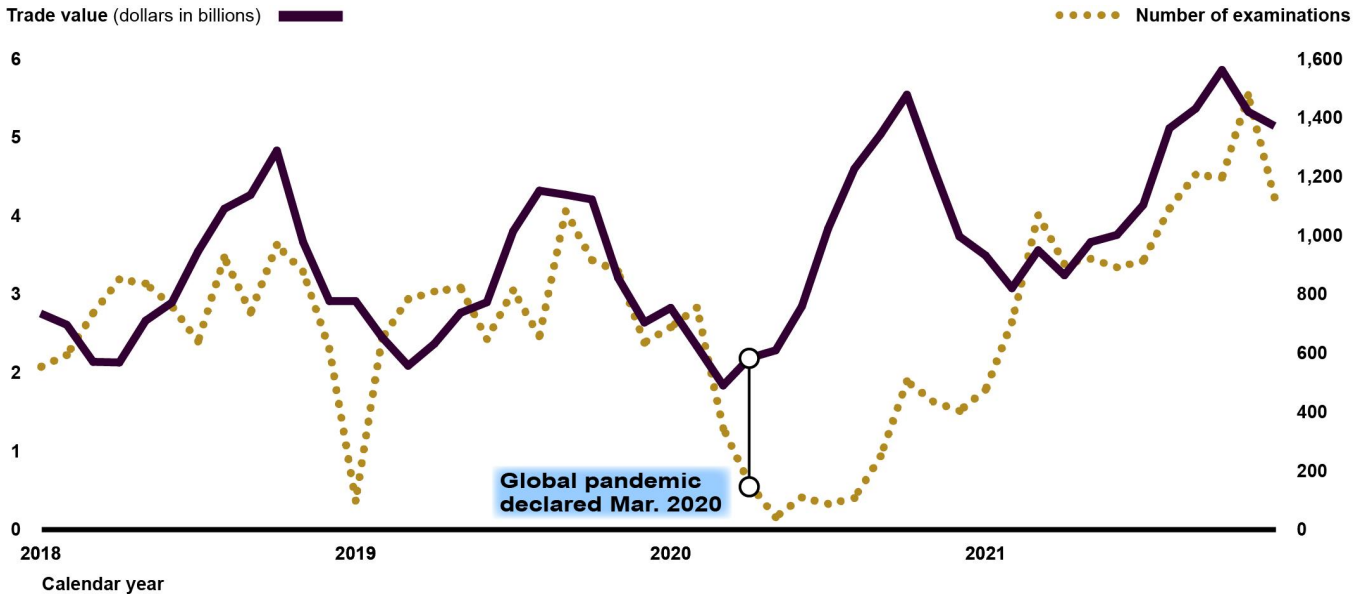
Month	2018	2019	2020	2021
Jan.	2.75724	2.91433	2.8287	3.49541
Feb.	2.61289	2.45674	2.33887	3.07995
Mar.	2.1409	2.09131	1.83996	3.56244
Apr.	2.13302	2.37106	2.18911	3.24441
May	2.6651	2.7664	2.28754	3.66685
June	2.89626	2.90068	2.849	3.7591
July	3.54946	3.80506	3.84028	4.14018
Aug.	4.09187	4.32226	4.60259	5.11797
Sept.	4.26937	4.27099	5.04287	5.369
Oct.	4.83344	4.21055	5.54543	5.86079
Nov.	3.66719	3.2093	4.62283	5.32879
Dec.	2.9157	2.64247	3.7387	5.147

Source: GAO analysis of U.S. Census Bureau data. | GAO-23-105445

Note: We measured “typically targeted” in terms of Harmonized Tariff Schedule codes that CPSC uses and updates regularly for its own targeting purposes. The Harmonized Tariff Schedule is an internationally recognized system that classifies goods.

CPSC’s number of monthly examinations reached prepandemic levels by early 2021, although trade values had returned to prepandemic levels by July 2020 (see fig. 6). By March 2021, CPSC examinations had surpassed prepandemic levels—1,069 examinations compared to 784 in March 2019. However, by July 2020, trade values (the value of products CPSC would normally have expected to target) had already surpassed those of the prior year—\$3.84 billion in July 2020 compared to \$3.8 billion in 2019.

**Figure 6: Value of Imported Products the Consumer Product Safety Commission (CPSC) Typically Targets and Number of CPSC Examinations of Shipment Entries, by Month, 2018–2021**



Source: GAO analysis of U.S. Census Bureau data and CPSC examination data. | GAO-23-105445

**Data table for Figure 6: Value of Imported Products the Consumer Product Safety Commission (CPSC) Typically Targets and Number of CPSC Examinations of Shipment Entries, by Month, 2018–2021**

Date	Number of examinations	Trade value
2018 Jan.	553	2.75724
2018 Feb.	594	2.61289
2018 March	736	2.1409
2018 April	851	2.13302
2018 May	837	2.6651
2018 June	761	2.89626
2018 July	640	3.54946
2018 Aug.	925	4.09187
2018 Sept.	738	4.26937
2018 Oct.	968	4.83344
2018 Nov.	877	3.66719
2018 Dec.	615	2.9157
2019 Jan.	99	2.91433
2019 Feb.	650	2.45674
2019 March	784	2.09131

Date	Number of examinations	Trade value
2019 April	810	2.37106
2019 May	823	2.7664
2019 June	648	2.90068
2019 July	814	3.80506
2019 Aug.	658	4.32226
2019 Sept.	1083	4.27099
2019 Oct.	917	4.21055
2019 Nov.	878	3.2093
2019 Dec.	636	2.64247
2020 Jan.	688	2.8287
2020 Feb.	755	2.33887
2020 March	345	1.83996
2020 April	156	2.18911
2020 May	43	2.28754
2020 June	110	2.849
2020 July	88	3.84028
2020 Aug.	108	4.60259
2020 Sept.	250	5.04287
2020 Oct.	505	5.54543
2020 Nov.	436	4.62283
2020 Dec.	404	3.7387
2020 Jan.	476	3.49541
2020 Feb.	706	3.07995
2020 March	1069	3.56244
2020 April	904	3.24441
2020 May	921	3.66685
2020 June	892	3.7591
2020 July	914	4.14018
2020 Aug.	1092	5.11797
2020 Sept.	1207	5.369
2020 Oct.	1197	5.86079
2020 Nov.	1477	5.32879
2020 Dec.	1130	5.147

Source: GAO analysis of U.S. Census Bureau and CPSC data. | GAO-23-105445

Note: We measured “typically targeted” in terms of Harmonized Tariff Schedule codes that CPSC uses and updates regularly for its own targeting purposes. The Harmonized Tariff Schedule is an internationally recognized system that classifies goods.

CPSC identified significantly fewer violations during the period when its port staff worked off-site, consistent with the reduced number of examinations. CPSC reported finding 187 violations between March and August 2020, compared to 1,413 during the same period in 2019 (an 87 percent decline). This included a decline of 79 percent in lead and phthalate violations—regulated product violations often found in children’s products, such as toys, that require in-person testing.

The decline in CPSC’s examinations and violations can be attributed to CPSC’s remote examination procedures implemented on March 24, 2020, which narrowed the agency’s focus to six product areas that port staff could visually inspect. These six product areas were all-terrain vehicles, bicycle helmets, children’s clothing, lighters, generators, and hairdryers. Based on our analysis of CPSC’s HTS codes used for targeting, CPSC would have typically expected to target 322 HTS codes as of March 2020. However, the narrowed focus implemented in March 2020 covered 82 HTS codes (about 25 percent of the typical level). These HTS codes accounted for \$112 million worth of imported products as of April 2020, or about 5 percent of the more than \$2 billion the agency typically would have targeted, according to our analysis of census data.<sup>23</sup>

CPSC’s updated remote procedures in August 2020 expanded the types of products examined, but the procedures still did not include all the products and HTS codes that CPSC would have typically targeted. Port staff working remotely started to use the updated procedures on September 1, 2020, according to CPSC officials, and continued to do so until they returned to in-person examinations. Under the updated procedures, CPSC targeted 202 HTS codes, or about 62 percent of the 325 HTS codes the agency would have typically expected to target in August 2020.<sup>24</sup> These 202 HTS codes accounted for \$2.6 billion worth of imported products, or about 55 percent of the \$4.6 billion accounted for by the codes it typically would have targeted.

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<sup>23</sup>We analyzed April 2020 data from the Census Bureau’s International Trade dataset. For this analysis, we used CPSC documentation to compare the set of 322 HTS codes that CPSC would normally target to the subset of 82 codes that CPSC was actually targeting under the remote procedures at that time.

<sup>24</sup>From April 2020 to August 2020, CPSC reported two separate updates to its normal targeting list. A May 2020 update added one new code because of an interim code change by the U.S. International Trade Commission, which manages product categories. An August 2020 update added two new codes in response to the July 2020 update.

The remote procedures affected the mechanisms CPSC used to target products:

- **National-level targeting.** Early in the pandemic, CPSC suspended national-level automatic targeting—a system in which CPSC works with the Commercial Targeting and Analysis Center (CTAC) to create rules that automatically hold shipments for examination that meet certain criteria, such as product type, value, or country of origin. According to a CTAC analyst, national-level automatic targeting was suspended from March 16 to September 13, 2020. In comparison, for shipments arriving in the same period in 2019, CTAC recorded 2,109 national-level automatic targeting hits. Under CPSC’s remote examination procedures, the CPSC representative at CTAC still performed manual targeting of high-risk shipments for CPSC by adding shipment information to RAM and emailing a notification to CPSC compliance investigators. National-level automatic targeting surpassed prepandemic levels in October 2020, shortly after the suspension ended.
- **Local targeting.** Local targeting continued during the pandemic, but it was limited to the product areas that were identified within the remote procedures and relied on CBP support. CPSC staff at three ports we interviewed told us that they continued to target these product areas at their specific ports using CPSC’s RAM system, and they manually requested CBP to hold products during this period. According to the remote procedures, local targeting relied on collaboration with CBP officers to hold shipments, coordinate virtual examinations, and refer targeted products to CPSC. When port staff returned to in-person activities, they returned to pre-telework targeting procedures and discontinued the remote procedures, according to CPSC officials.

The remote procedures did not call for targeting and examining certain key high-risk products because examination of those products requires more than a visual inspection. For example, children’s toys are tested for lead content or phthalates. Our analysis of one product code that is a subcategory of children’s toys (and includes dolls and tricycles) found a significant decline in examinations of these types of products during the telework period.<sup>25</sup> Specifically, CPSC reported 192 examinations of shipments with this code between March and August 2020, a 91 percent decline compared to the prior year. In contrast, the value of imported shipments with the same product code between March and August 2020

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<sup>25</sup>The product code is HTS 9503.00.0090.



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declined only 8 percent compared to the same period in 2019, according to our analysis of census trade data.

The March 2020 remote procedures also omitted examinations of tracking labels and certificates of children's products. Our past work found that tracking label and certificate violations were among the top violation types identified by CPSC.<sup>26</sup> CPSC officials said they took this step so as not to overburden the agency's collaboration with CBP with administrative violations. As discussed earlier, a compliance investigator working off-site still had the ability to obtain documentation that included certificates and to test reports for children's products from the importer or broker and determine if the products required physical examination. In addition, CPSC's updated August 2020 remote procedures included steps for reviewing tracking labels and certificates for children's products, and the procedures added children's products as the seventh product area.

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### CPSC's Remote Procedures Did Not Consider Differences across Ports

CPSC's remote procedures did not consider differences in operations at individual ports, leading to variations in the number of examinations investigators conducted while working remotely compared to examinations conducted pre-pandemic at the three selected ports we reviewed.<sup>27</sup> Factors affecting implementation of these procedures included the types of products that came through the ports, the level of assistance CBP could provide, and variations in the methods port staff typically use to examine shipments.

The list of products CPSC examined under the remote examination procedures applied to all ports, even though some products on the list may not typically come through all ports. When trade at a port did not align with the product areas identified in the procedures, compliance investigators were limited in what products they could examine. For

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<sup>26</sup>From 2016 to 2019, five violation types accounted for approximately 66 percent of all notices of violation CPSC sent to firms: violations related to tracking label requirements (26 percent), lead in children's products (20 percent), third-party certificate requirements (11 percent), art material labeling requirements (5 percent), and products containing small parts (4 percent). See GAO, *Consumer Product Safety Commission: Actions Needed to Improve Processes for Addressing Product Defect Cases*, [GAO-21-56](#) (Washington, D.C.: Nov. 19, 2020), 17–18.

<sup>27</sup>The three ports we reviewed were an East Coast airport, a Southwest Border port, and a West Coast sea port. See app. I for additional information on our scope and methodology.

example, a compliance investigator at the Southwest Border port we reviewed told us products on the remote list were rarely imported through that port, before or during the pandemic. The investigator did not recall seeing bicycle helmets enter the port, for instance, and had only seen cigarette lighters enter the port once or twice in the past several years. In contrast, CPSC port staff, including compliance investigators, at the West Coast sea port (a large trade-volume port) told us they do typically see these types of products

CPSC examination data for the three ports we reviewed were consistent with these observations. For example, CPSC examined 333 shipments from 2018 through 2021 that contained at least one of the two HTS codes for bicycle helmets targeted during the remote procedures. While 199 of these shipments entered through the West Coast sea port, only two such shipments entered through the Southwest Border port.

In addition, the remote procedures and list of products did not account for variations in port staff's procedures for the locations that we reviewed. CPSC compliance investigators noted that procedures differ across ports—for example, examination procedures at airports focus on smaller shipments for local targeting, since their cargo moves quickly and in less bulk. At the Southwest Border port, the compliance investigator described one method of targeting products for in-person examinations as walking with the CBP Contraband Enforcement Team and selecting items for examination on-site at the designated inspection area. But the investigator said this type of targeting could not be conducted under the remote procedures because it required being on-site to identify products for examination.

Port staff also had to rely on CBP support to implement the remote procedures, but CBP staff could not always help because of their own priorities. As noted earlier, the remote procedures required CBP officers to provide CPSC port staff with photos or videos of products. According to the border compliance investigator, the Southwest Border port was unable to conduct remote examinations because CBP officers had competing priorities, such as identifying illegal narcotics. However, staff from the West Coast sea port told us CBP officers there were readily available to assist them.

As a result of these factors, the differences between the number of examinations conducted pre-pandemic compared with the number of remote examinations across the three selected ports varied considerably. As shown in table 1, CPSC staff at the Southwest Border port we

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reviewed conducted no examinations during the period when investigators worked remotely (March 24–September 4, 2020), compared with 121 examinations during the same period before the pandemic. By comparison, staff at the East Coast airport and West Coast sea port we reviewed conducted 116 and 199 examinations, respectively, during this period, compared with 149 and 891 examinations, respectively, prepandemic. For all of these ports, examinations generally returned to prepandemic levels when port staff returned.

**Table 1: CPSC Port Examinations and Staff Presence at Selected Ports during the Period March 24–September 4, in 2019 and 2020**

Selected port	Number of examinations		Time elapsed from March 2020 until port staff fully returned on-site
	Prepandemic (March 24, 2019–Sept. 4, 2019)	Remote telework period (March 24, 2020–Sept. 4, 2020)	
East Coast airport	149	116	13 months <sup>a</sup>
Southwest Border port	121	0	6 months
West Coast sea port	891	199	14 months <sup>b</sup>

Source: GAO analysis of Consumer Product Safety Commission (CPSC) data and documentation. | GAO-23-105445

Note: This table presents information for three selected ports we reviewed. We compared the date range of March 24–September 4 because it was the period in 2020 when remote examination procedures were in place.

<sup>a</sup>One of the two port staff at this location returned in February 2021 and the other returned in April 2021.

<sup>b</sup>Three of the five port staff at this location returned in September 2020, one returned in January 2021, and one returned in May 2021.

## CPSC Did Not Have Completed Plans or Underlying Analysis to Guide Emergency Response

### CPSC Lacks a Complete, Finalized Continuity of Operations Plan and Underlying Risk Assessment

CPSC had an overall agency continuity plan in place prepandemic, but it was in draft form and had not been signed by executives. According to CPSC officials in May 2022, the agency did not have the resources to finalize the continuity plan prior to the pandemic. Our review of the draft plan found it was not complete—for example, it did not include the required risk assessment analysis. Additionally, the CPSC Office of Inspector General previously reported in October 2021 that CPSC had not developed an agency-wide continuity plan.<sup>28</sup> In July 2022, CPSC officials told us they planned to update and finalize their agency continuity plan, but they did not provide a time frame for doing so. Federal Continuity Directive 1 requires agencies to have a finalized continuity plan that includes a comprehensive risk assessment, that should be

<sup>28</sup>Consumer Product Safety Commission, Office of Inspector General, *Evaluation of the CPSC's FISMA Implementation for FY 2021, 22-A-01* (Bethesda, MD: Oct. 29, 2021).

documented and contain a plan for implementing mitigation measures during catastrophic emergencies, including pandemics.<sup>29</sup>

CPSC officials told us they did not use the draft continuity plan to make decisions during the pandemic. Instead, CPSC leadership directed each office to develop an emergency preparedness plan at the onset of the pandemic in March 2020. However, the plan that the Office of Import Surveillance developed did not consider risks or operational variations of individual ports, assumed a low likelihood that all ports and examination warehouses would close simultaneously, and focused on selected ports and warehouses closing in a region. None of the scenarios discussed in the plan approximated the circumstances of the pandemic.

In May 2021, the CPSC Office of Inspector General reported that CPSC did not identify risks and lacked controls over its operations in its import surveillance function.<sup>30</sup> In a separate report, the CPSC Office of Inspector General noted the need for a more established enterprise risk management system that proactively assesses threats and opportunities. The report said that such a system would have allowed CPSC to make more refined decisions regarding the withdrawal of employees from on-site work that would have better balanced the risk to investigators with the safety of consumers.<sup>31</sup>

In contrast to CPSC, other federal agencies we interviewed that inspect imported products at ports—CBP, APHIS, and FDA—had finalized continuity plans in place prior to the pandemic. In addition, their plans were location-specific and included analysis of certain risks. For example, FDA’s continuity plan for a West Coast district was updated in February 2020 and included district-specific policies and risk levels for pandemics, as well as related risk-mitigation steps such as having hygiene items and minimizing face-to-face contact. CBP officials at a Southwest Border port

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<sup>29</sup>Federal Emergency Management Agency, *Federal Continuity Directive 1*.

<sup>30</sup>Consumer Product Safety Commission, Office of Inspector General, *Audit of the CPSC’s Implementation of FMFIA for FYs 2018 and 2019*, 21-A-08 (Bethesda, MD: May 12, 2021).

<sup>31</sup>Consumer Product Safety Commission, Office of Inspector General, *Top Management and Performance Challenges for Fiscal Year 2022*, 21-O-01 (Bethesda, MD: Oct. 21, 2021). In its fiscal year 2021 annual financial report, CPSC reported that it had developed a corrective action plan and made efforts in fiscal years 2020 and 2021 to address the lack of controls and enterprise risk management, but that it had not been able to achieve these goals because of staffing issues. For the purposes of this report, we did not independently conduct a formal assessment of CPSC’s internal controls over import surveillance operations or assess its enterprise risk management approach.

told us their continuity plan helped them respond to the pandemic, such as by having existing protocols in place for communication with industry stakeholders and for isolation areas at ports to minimize cross contamination.

CPSC would have been better-positioned to implement remote inspection procedures and other measures when the pandemic occurred if it had had a complete and final continuity of operations plan that included a risk assessment. For example, full advance planning would likely have facilitated decision-making and a risk-based approach to determining the number and scope of products to be examined remotely. Further, a complete continuity of operations plan could have helped ensure more effective remote operations across ports whose characteristics differ. By finalizing a comprehensive continuity of operations plan, CPSC would be better prepared for disruptions from future emergencies and better positioned to reduce any resulting risk of consumer harm.

#### CPSC Did Not Perform Required Analysis to Support Its Conclusion That None of Its Staff Directly Support Essential Functions

Federal Continuity Directive 1 also states that an organization must identify and prioritize essential functions as part of its continuity plan. The organization must take steps to identify essential functions, including conducting a business process analysis as described in Federal Continuity Directive 2.<sup>32</sup> Designating which functions are essential can help CPSC to readily determine which staff are removed from ports and which continue to remain on-site during emergencies, such as a pandemic. CPSC officials told us that they followed guidance from FEMA in developing their continuity plan and documenting essential designations.<sup>33</sup>

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<sup>32</sup>The underlying analysis to identify essential functions includes conducting a comprehensive business process analysis to understand those processes necessary to the performance of organizational functions and requirements. It also includes conducting a business impact analysis to identify potential impacts on the performance of essential functions and the consequences of failure to sustain them. Federal Emergency Management Agency, *Federal Continuity Directive 2*.

<sup>33</sup>CPSC officials told us they used the following FEMA template as guidance in developing their continuity plan: [https://www.fema.gov/sites/default/files/2020-07/COOP-Planning-Template\\_091813.pdf](https://www.fema.gov/sites/default/files/2020-07/COOP-Planning-Template_091813.pdf).

CPSC's draft continuity plan states that CPSC does not have operations that directly support certain essential functions. As a result, when the agency went to full telework in March 2020, all port staff were removed from the ports.

However, CPSC lacks the underlying analysis documents required by federal continuity directives to support its conclusion that none of its staff directly support essential functions. In particular, CPSC did not conduct the business process analysis or business impact analysis that the directive requires. In an October 2021 report, the CPSC Office of Inspector General also noted that CPSC had not identified essential functions in its business impact assessment of the agency's general support system.<sup>34</sup> CPSC officials explained they had conducted an analysis in 2019 similar to designating essential functions when developing procedures for a potential agency shutdown resulting from a lapse in appropriations.<sup>35</sup> Those procedures identified one Office of Import Surveillance employee who would be considered excepted—that is, mission-essential—if there were a lapse in appropriations.<sup>36</sup>

But the definition used for essential designations related to a lapse in appropriation is different from that for essential functions in continuity planning. Mission-essential functions for a lapse in appropriations address, among other factors, imminent threats to the safety of human life and the protection of property.<sup>37</sup> In contrast, essential functions in continuity planning enable agencies to provide vital services, exercise civil authority, maintain safety, and sustain the economy during an emergency.

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<sup>34</sup>Consumer Product Safety Commission, Office of Inspector General, *Evaluation of the CPSC's FISMA Implementation for FY 2021, 22-A-01* (Bethesda, MD: Oct. 29, 2021).

<sup>35</sup>Consumer Product Safety Commission, *CPSC Lapse in Appropriations: Detailed Implementing Procedures* (Aug. 6, 2019), accessed May 27, 2022, <https://www.cpsc.gov/s3fs-public/D601-IP601.pdf?vQbeaBTHCxaYiIWVvPfPGVdkmDj0ot3B>.

<sup>36</sup>Excepted employees are mission essential employees who may work in advance of appropriations because their activities conform to one or more of the following criteria: necessary to perform activities expressly authorized by law; necessarily implied by law; necessary to the discharge of the President's constitutional duties and powers; necessary to address imminent threats to the safety of human life and the protection of property; and necessary to ensure an orderly shutdown of operations.

<sup>37</sup>Consumer Product Safety Commission, *CPSC Lapse in Appropriations: Detailed Implementing Procedures*.

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Further, neither CPSC’s continuity plan nor its lapse-in-appropriation document included a thorough risk-based assessment and consideration of factors that may affect the performance of essential functions. This would include an analysis of potential threats (beyond government shutdowns), vulnerabilities, and consequences, as outlined in Federal Continuity Directive 2.

In comparison, officials from CBP, APHIS, and FDA told us their continuity of operations plans designated import inspection or the regulation of imported product functions as “essential,” and these agencies therefore had port staff remain on-site throughout the pandemic. For example, APHIS’s Plant Protection and Quarantine’s plant inspection stations are mission-essential. APHIS program officials told us they review and update their continuity plan each year by incorporating lessons learned from past events into their business process and business impact analyses.

Without robust analysis of what functions are “essential,” CPSC may not have considered or documented all factors or inputs, and it lacks assurance that designations of essential functions are based on sound decision-making. By performing this required analysis, CPSC would be better prepared for future emergencies. CPSC’s draft continuity plan states that in the event of a national emergency, CPSC’s functions can tolerate disruption without long-lasting effects on its overall mission. However, as discussed earlier, the removal of port investigators did result in significant effects on the number and scope of examinations of consumer products, potentially affecting its mission of protecting the public against unreasonable risks.

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## CPSC Has Met Some but Not All COVID-19-Related Statutory Requirements

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### CPSC Has Taken Steps but Has Not Met All Requirements of the Consolidated Appropriations Act, 2021

According to our review of the June 2021 CPSC Staff Report to Congress on Port Inspections and CPSC documentation as of July 2022, CPSC has



taken steps to implement most of the requirements in the Consolidated Appropriations Act, 2021 (CAA). However, it had not complied with two specific requirements related to de minimis shipments within the act's time frames (see table 2).<sup>38</sup>

The CAA mandated that CPSC implement the following three COVID-19-related provisions:

1. **Surveillance personnel during the COVID-19 pandemic.** CPSC is to ensure, to the maximum extent feasible, that port investigators are stationed at ports with the goal of covering 90 percent of risk-scored products entering the U.S. for the duration of the public health emergency and consult with CBP and other relevant agencies on methods to safely staff ports during the pandemic.
2. **Additional surveillance personnel at key ports.** CPSC is to hire, train, and assign no fewer than 16 full-time equivalent (FTE) personnel to be stationed at or support these ports of entry, including for de minimis shipments, and sustain certain staffing requirements. The hiring must continue during each fiscal year until the total number of FTEs equals and sustains the staffing requirement identified in the report to Congress required of CPSC under the CAA.<sup>39</sup>
3. **Report to Congress.** CPSC was to submit a study and report to Congress by June 25, 2021, that includes an assessment of the risk to consumers of reducing port inspection activity during the COVID-19 pandemic and six specific reporting requirements, listed in table 2.

**Table 2: Consumer Product Safety Commission's (CPSC) Compliance with the Consolidated Appropriations Act, 2021 (CAA), as of July 2022**

Requirements in Section 2001 of the CAA	GAO assessment
<b>(a) CPSC surveillance personnel during the COVID-19 pandemic</b>	<b>Partially met</b>
Ensure investigators are stationed at ports with a goal of covering no fewer than 90 percent of all risk-scored products	Partially met <sup>a</sup>
Consult with Customs and Border Protection, and other relevant agencies, on methods to safely staff ports during the pandemic	Met

<sup>38</sup>Consumer Product Safety Commission, *Staff Report to Congress Pursuant to Title XX, Section 2001 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) Port Surveillance* (Bethesda, MD: June 25, 2021).

<sup>39</sup>A full-time equivalent is a standard measure of labor that equates to 1 year of full-time work. De minimis shipments consist of small, direct-to-buyer shipments valued at \$800 or less and imported by a single person on a single day.

Requirements in Section 2001 of the CAA	GAO assessment
<b>(b) Additional CPSC surveillance personnel at key ports of entry</b>	<b>Partially met</b>
Hire, train, and assign no fewer than 16 additional full-time equivalent personnel. Such hiring shall continue during each fiscal year until the total number of full-time equivalent personnel equals and sustains the staffing requirements identified in the report to Congress required under subsection (c)(2)(F), which requires a technology and resource staffing plan.	Partially met
<b>(c) Report to Congress</b>	<b>Partially met</b>
(1) Issue a study and report assessing the risk to consumers associated with the reduction in CPSC port inspection activity during the COVID-19 pandemic and the targeting and screening of de minimis shipments, no later than 180 days after the date of enactment	Met
(2) Reporting requirements	Partially met
(a) Identify the risks and planned mitigation steps	Met
(b) Examine a sampling of de minimis shipments	Not met
(c) Examine a sampling of shipments coming from countries identified as high-risk	Met
(d) Detailed plans and timelines to effectively address targeting and screening of de minimis shipments	Met
(e) Establish metrics to evaluate efforts to reduce de minimis shipments containing violative products	Not met
(f) Assess technology and resources, including staffing requirements necessary to implement such plans	Met

Source: GAO analysis of relevant statutory provisions and CPSC documentation. | GAO-23-105445

<sup>3</sup>This requirement for CPSC is for the duration of a public health emergency declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. § 247d) as a result of COVID-19. The provision states that the goal of 90 percent should be pursued to the maximum extent feasible.

For each CAA requirement, CPSC has taken the following steps:

**Surveillance personnel during the COVID-19 pandemic.** CPSC has taken steps to place investigators at ports of entry with the goal of covering no fewer than 90 percent of all risk-scored consumer products in RAM (CPSC’s targeting system). However, CPSC had not yet reached the 90 percent coverage goal under the CAA, as of July 2022.<sup>40</sup> As of November 2020, CPSC had 32 import surveillance staff stationed at 18 ports of entry that accounted for approximately 72 percent of risk-scored consumer products in the RAM system.<sup>41</sup> By July 2022, CPSC had increased its port presence to 45 import surveillance staff stationed at 24

<sup>40</sup>According to CPSC’s June 2021 staff report to Congress, not all consumer products are risk-scored. CPSC conducts targeting based on risk, rather than risk-scoring the thousands of HTS codes under the agency’s jurisdiction.

<sup>41</sup>Consumer Product Safety Commission, *Fiscal Year 2021 Operating Plan* (Bethesda, MD: Nov. 10, 2020).

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ports, and had coverage at ports where approximately 84.9 percent of consumer product entries are risk-scored in the RAM targeting system, according to CPSC.<sup>42</sup>

In addition, in its fiscal year 2023 performance budget request, CPSC requested funding for 12 additional support staff for its e-commerce team. This team operates within the Office of Import Surveillance and physically examines de minimis shipments at ports where a large percentage of de minimis shipments are imported into the U.S. In July 2022, CPSC officials told us if these additional staff are funded, they anticipate an increase to the port coverage percentage. The 90 percent coverage goal applies to CPSC for the duration of the public health emergency under the CAA.<sup>43</sup>

Within the surveillance personnel goal, the CAA includes requirements that CPSC consult with CBP and other agencies relevant to safely staffing ports. Based on our review of CPSC's documentation of communications with relevant agencies, CPSC met this requirement during the COVID-19 pandemic. For example, in April 2020, CPSC obtained information from CBP on the type of personal protective equipment provided to staff at ports during the pandemic. In January 2021, CPSC requested that CBP's COVID-19 vaccinations include CPSC investigators who were located at the same ports. In addition, CPSC communicated with OMB to coordinate with state agencies to help certain CPSC staff (import surveillance, field investigators, and laboratory support) obtain priority vaccines.

**Additional personnel at key ports.** Based on our analysis of CPSC documentation on hiring in fiscal years 2021 and 2022, CPSC hired, trained, and assigned more than the required 16 additional FTEs to be stationed at or support ports of entry, including ports for de minimis shipments. In fiscal year 2021, CPSC hired, trained, and assigned 19.5 FTEs to be stationed at or support ports of entry, seven of whom were

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<sup>42</sup>According to CPSC officials, the percentage was calculated by determining the volume of entry lines risk-scored in the RAM targeting system during calendar year 2021. CPSC coverage is identified by (1) ports where staff are colocated with CBP; (2) ports in close proximity to colocated ports where staff are able to perform examinations (such as nearby airports); and (3) non-colocated ports where CPSC domestic investigators from the Office of Compliance and Field Operations can examine targeted shipments. The percentages for each port with CPSC coverage are added together to calculate the overall port coverage.

<sup>43</sup>The public health emergency was declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. § 247d) as a result of COVID-19.

compliance investigators assigned to an e-commerce team and four new port locations where CPSC did not previously have a presence.<sup>44</sup>

In fiscal year 2022, CPSC authorized the hiring of an additional 13 import surveillance staff or import surveillance support staff, 10 of whom were compliance investigators assigned to ports. As of July 18, 2022, CPSC had filled seven of the 10 compliance investigator positions, and three were awaiting onboarding or recruiting, according to CPSC officials. For fiscal year 2023, CPSC requested an additional \$3.7 million and 19 FTEs to continue implementing requirements related to the CPSC import surveillance program set forth in the CAA. Twelve of these 19 FTEs were requested to support the e-commerce team.

As part of the hiring requirement, CPSC is also required to sustain staffing requirements identified in its report to Congress, where it reported that it would increase staffing by an estimated 55 FTEs to support import surveillance by the end of fiscal year 2026.<sup>45</sup> However, CPSC has not met the sustained staffing requirement. According to CPSC's fiscal year 2022 midyear review, CPSC reduced the number of positions it planned to hire given the uncertainty of future streams of annual appropriations.<sup>46</sup> CPSC still planned to increase staffing by 55 FTEs for import surveillance by the end of fiscal year 2026, but any staffing increases would be subject to appropriations, according to CPSC officials as of July 2022. The act allows CPSC to continue hiring each fiscal year until the total number of FTEs equals the 55 FTE staffing requirement that CPSC identified in its report to Congress and to hire as needed to sustain this level of staffing.

**Report to Congress.** CPSC has taken some steps to address CAA reporting requirements to Congress. CPSC issued its staff report to Congress on June 25, 2021, on the statutory deadline. The report addressed four of the six CAA statutory reporting requirements, including identifying risks associated with the COVID-19 pandemic port inspection activity and mitigating those risks, identifying trends in shipments from

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<sup>44</sup>De minimis shipments are typically processed at e-commerce ports.

<sup>45</sup>CPSC is required to sustain staffing requirements, and increase if necessary from the 16 set out in the CAA, to meet the CAA section 2001(c)(2)(F) reporting requirement to assess technology and resources, including staffing requirements necessary to implement such plans. CPSC identified the 55 FTEs in its June 25, 2021, staff report. See Consumer Product Safety Commission, *Staff Report to Congress Pursuant to Title XX*.

<sup>46</sup>Consumer Product Safety Commission, *Fiscal Year 2022 Midyear Review* (Bethesda, MD: May 4, 2022).

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high-risk countries, detailing plans to address targeting and screening of de minimis shipments, and assessing technology and staffing resources.<sup>47</sup>

However, CPSC's report did not address two CAA statutory reporting requirements:

- **Section 2001(c)(2)(B)** requires CPSC to examine a sampling of de minimis shipments from a representative sample of all types of ports of entry where de minimis shipments are processed to assess the extent to which such shipments include violative consumer products. CPSC reported on analysis previously performed to address e-commerce shipments, but did not include any updated data analysis on de minimis shipments.<sup>48</sup> According to CPSC officials, CPSC was not able to conduct new analysis because of competing demands for staff members and the requirement to report 180 days after CAA's enactment.

In September 2022, CPSC officials provided a plan that outlined an overall approach to examining a sample of de minimis shipments, including a high-level methodology for selection. For example, according to the plan, CPSC will examine e-commerce shipment data from October 2021 to September 30, 2022. CPSC also plans to analyze shipments of international mail facilities in fiscal year 2023. However, CPSC's plan lacked specific time frames for when the agency will conduct the examination steps and does not include details, such as how shipments of international mail facilities will be selected, on what basis specific ports will be selected, or what the examination of sample shipments will entail.

- **Section 2001(c)(2)(E)** requires CPSC to establish performance metrics evaluating the effectiveness of its efforts to reduce the number of de minimis shipments containing violative consumer products entering the U.S. The CPSC staff report to Congress did not contain specific performance metrics for de minimis shipments. In May 2022, CPSC officials told us the agency had not established these metrics because the e-commerce program was still in the early stages of development and the agency needed to better understand the operations of e-commerce ports to develop the performance metrics.

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<sup>47</sup>Consumer Product Safety Commission, *Staff Report to Congress Pursuant to Title XX*.

<sup>48</sup>Consumer Product Safety Commission, *CPSC e-Commerce Assessment Report* (Bethesda, MD: November 2019).

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In July 2022, CPSC officials said the agency planned to establish performance metrics for de minimis shipments in its fiscal year 2024 performance budget request, but they did not provide specific details or milestones related to fully developing the metrics.

Until CPSC fully addresses these two statutory reporting requirements, it remains in noncompliance and its ability to detect and report on noncompliant de minimis shipments, typically found in the growing e-commerce environment, is limited.

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### CPSC Has Addressed Most American Rescue Plan Act Funding Purposes and Has Until September 30, 2026, to Spend Appropriated Funds

CPSC has addressed most ARPA funding purposes, according to our review of CPSC financial and budgetary documents and other agency information.<sup>49</sup> ARPA appropriated \$50 million to CPSC in 2021, with funds available until September 30, 2026, for specific purposes. ARPA specified that the funds were available to CPSC for the following purposes: (1) carry out specified CAA requirements; (2) enhance targeting, surveillance, and screening of products, particularly COVID-19 products; (3) enhance internet monitoring, particularly of COVID-19 products; (4) increase awareness and communication, particularly of COVID-19-related product risks and other consumer product safety information; and (5) improve data collection and analysis, especially with a focus on consumer product safety risks resulting from the COVID-19 pandemic.

In fiscal year 2021, CPSC obligated a total of \$3.6 million of the appropriated ARPA funds for the specified purposes, including hiring 27 FTEs in addition to technology and project funding. These funds were obligated for the five areas specified in ARPA identified above. According to CPSC officials, as of June 28, 2022, CPSC had obligated an additional \$2.2 million of ARPA funds in fiscal year 2022. CPSC has plans for and anticipates spending the remaining ARPA funds prior to September 30,

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<sup>49</sup>For example, see Consumer Product Safety Commission, *Annual Financial Report, Fiscal Year 2021* (Bethesda, MD: Nov. 15, 2021); *Fiscal Year 2022, Performance Budget Request to Congress* (Bethesda, MD: May 28, 2021); *Minutes of Commission Meeting* (Bethesda, MD: Apr. 14, 2021); and *Proposed Fiscal Year 2021 Spending Plan of the American Rescue Plan Act Funds* (Bethesda, MD: Mar. 31, 2021).

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2026, according to its proposed spending plan.<sup>50</sup> For example, CPSC has projected funds to be used for staffing and contracts such as enhancements to its RAM system and port investigator equipment.

As discussed earlier, CPSC has not fully reached the 90 percent coverage goal under the CAA or met the CAA requirements related to additional personnel at key ports, and has not met two reporting requirements to Congress related to de minimis shipments. ARPA funds remain available until the end of fiscal year 2026 for the purposes outlined in the act, including carrying out the specified CAA requirements.

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## Conclusions

CPSC, like other federal agencies, faced challenges related to the COVID-19 pandemic in balancing worker safety with continuing to carry out its mission. CPSC's risk mitigation strategies helped address some of the challenges of conducting remote consumer product examinations. However, because CPSC did not have a fully developed or finalized continuity plan (including underlying risk assessment), it was not well prepared when port staff stopped conducting on-site examinations in March 2020, resulting in significantly fewer examinations. Remote procedures developed at the onset of the pandemic lacked the benefit of full advanced planning, which might have allowed for port-specific procedures and a more consistent number of remote examinations among ports compared to prepandemic examinations. By finalizing a comprehensive continuity plan, CPSC could be better prepared for disruptions from future emergencies.

In addition, CPSC's draft continuity plan has not designated any of its functions as essential, including those related to examinations of consumer products at ports of entry. Because CPSC did not conduct the required analysis of what functions are essential, it lacks assurance that this determination is based on sound decision-making and is consistent with its mission of protecting consumers from unreasonable risks. By performing this analysis, CPSC would be better positioned to respond to emergencies requiring decisions related to essential functions.

Finally, while CPSC has taken steps to meet most COVID-19-related requirements in the CAA, it has not complied with two reporting

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<sup>50</sup>Consumer Product Safety Commission, *Proposed Fiscal Year 2021 Spending Plan of the American Rescue Plan Act Funds and Minutes of Commission Meeting*.

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requirements related to de minimis shipments. Doing so would better position CPSC to detect noncompliance in these shipments and to assess the agency's effectiveness in addressing such noncompliance.

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## Recommendations for Executive Action

We are making the following three recommendations to CPSC:

The Chairman of CPSC should finalize the agency's continuity of operations plan, including conducting and incorporating an underlying risk assessment consistent with Federal Continuity Directive 1. The risk assessment should incorporate port-specific factors that could affect the agency's import surveillance function. (Recommendation 1)

The Chairman of CPSC should perform the required analysis identified in Federal Continuity Directives 1 and 2 to support and determine the designation of essential functions within the agency. (Recommendation 2)

The Chairman of CPSC should fully develop and implement actionable steps and set specific milestones for complying with section 2001(c)(2)(B) and (E) of the Consolidated Appropriations Act, 2021, related to examining a sample of de minimis shipments and establishing performance metrics related to de minimis shipments. (Recommendation 3)

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## Agency Comments

We provided a draft of this report to CPSC and the Departments of Homeland Security, Health and Human Services, and Agriculture for review and comment.

We received written comments from CPSC that are reprinted in appendix II. In its written comments, CPSC concurred with our findings and recommendations regarding finalizing its continuity of operations plan and performing the required analysis to support and determine the essential functions within CPSC. CPSC added that its staff had begun updating the continuity of operations plan, including the business process analysis and business impact analysis, and that it plans to complete the updated plan by December 30, 2022.



CPSC also concurred with our recommendation to fully comply with section 2001(c)(2)(B) and (E) of the Consolidated Appropriations Act, 2021. CPSC stated that its staff began their analysis of e-commerce shipments examined and sampled in fiscal year 2022 in a variety of settings, including express hubs, land border ports, and air cargo ports. CPSC further noted that its staff are in the process of collecting fiscal year 2023 international mail facility data to supplement the fiscal year 2022 data. CPSC added that it will be able to use the full data set to analyze a representative sample of de minimis shipments from all types of ports where de minimis shipments are processed in fiscal year 2023. CPSC also provided technical comments that we incorporated, as appropriate.

CPSC's Office of Inspector General and APHIS provided technical comments that we incorporated, as appropriate.

The Departments of Homeland Security and Health and Human Services notified us that they had no comments on the draft report.

We are sending copies of this report to the appropriate congressional committees, the Chair of CPSC, Secretary of Homeland Security, Secretary of Health and Human Services, Secretary of Agriculture, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://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](mailto: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 key contributions to this report are listed in appendix II.



Alicia Puente Cackley  
Director, Financial Markets and Community Investment

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*List of Congressional Addressees*

The Honorable Patrick Leahy  
Chairman

The Honorable Richard Shelby  
Vice Chairman  
Committee on Appropriations  
United States Senate

The Honorable Roger F. Wicker  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Ron Wyden  
Chairman

The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Patty Murray  
Chair

The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Gary C. Peters  
Chairman

The Honorable Rob Portman  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Marsha Blackburn  
Ranking Member

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

The Honorable Rosa L. DeLauro

Chair  
The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
House of Representatives

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

The Honorable Bennie G. Thompson  
Chairman  
The Honorable John Katko  
Ranking Member  
Committee on Homeland Security  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman  
The Honorable James Comer  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives

The Honorable Richard E. Neal  
Chairman  
The Honorable Kevin Brady  
Republican Leader  
Committee on Ways and Means  
House of Representatives

## Appendix I: Objectives, Scope, and Methodology

This report examines (1) the factors the Consumer Product Safety Commission (CPSC) considered in making the decision to withdraw port staff and the time frames for staff returning to ports, (2) CPSC's risk mitigation strategies and the extent to which CPSC had emergency plans in place at the onset of the pandemic, and (3) the extent to which CPSC implemented COVID-19-related statutory requirements outlined in the Consolidated Appropriations Act, 2021 (CAA) and American Rescue Plan Act of 2021 (ARPA).

To address the first objective, we obtained and reviewed internal communications from CPSC and CPSC's Office of Inspector General to identify factors CPSC considered in making the decision to withdraw staff from ports of entry starting in March 2020 and to return staff to their on-site locations. We reviewed CPSC data on port staff return to determine time frames for staff returning to ports. To help assess the extent to which CPSC conformed with guidance to federal agencies, we reviewed guidance from the Office of Management and Budget and the Office of Personnel Management, such as memorandums on teleworking and returning to normal operations and communications about operating status.

For our first two objectives, we also interviewed CPSC headquarters officials and port investigators and staff at a nongeneralizable sample of three ports where CPSC is colocated with Customs and Border Protection (CBP). These three ports were an East Coast airport, a Southwest Border port, and a West Coast sea port. We selected these three ports based on import volume (those among the top 10 percent of ports in import value from September 2018 through August 2021) and to reflect a mix of geographic locations and transportation modes (airport, sea port, and land port).

To obtain perspectives on how other port inspection agencies operated during the pandemic, we interviewed officials from CBP because of their primary role in reviewing imported shipments at U.S. ports of entry and their lead role in the Commercial Targeting and Analysis Center (CTAC). We also selected two agencies—the Food and Drug Administration and the Animal and Plant Health Inspection Service—that, similar to CPSC,

have a specific inspection function, and have similar roles to CPSC in conducting port inspections, including working closely with CBP and partnering with CTAC.

We also conducted interviews with representatives from two consumer groups (Consumer Federation of America and Kids In Danger) and four industry groups (American Association of Exporters and Importers, Juvenile Products Manufacturers Association, National Customs Brokers and Forwarders Association of America, Inc., and Retail Industry Leaders Association). We selected these organizations because they were cited in multiple sources as relevant to CPSC's port inspection process and they represented consumers and a mix of industries.

To address our second objective, we reviewed documentation on CPSC's risk mitigation strategies. This included CPSC remote examination procedures issued in March 2020 and August 2020 and CPSC's June 25, 2021, staff report to Congress.<sup>1</sup> We also reviewed CPSC Office of Inspector General reports on CPSC's internal controls and risk management, including those associated with port inspections.<sup>2</sup> We compared CPSC's business continuity of operations planning and analysis documents against the requirements and guidance in Federal Continuity Directives 1 and 2.<sup>3</sup>

We also analyzed CPSC data on examinations and violations, CBP data on targeting, and Census Bureau data on imported trade for calendar years 2018 through 2021.

- **Examination and violation data.** For CPSC examination data, we obtained and analyzed data from CPSC's International Trade Data System/Risk Assessment Methodology (RAM) system for calendar years 2018–2021, including fields from the RAM inbox and RAM

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<sup>1</sup>Consumer Product Safety Commission, *Staff Report to Congress Pursuant to Title XX, Section 2001 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) Port Surveillance* (Bethesda, MD: June 25, 2021).

<sup>2</sup>Consumer Product Safety Commission, Office of Inspector General, *Top Management and Performance Challenges for Fiscal Year 2022, 21-O-01* (Bethesda, MD: Oct. 21, 2021) and *Audit of the CPSC's Implementation of FMFIA for FYs 2018 and 2019, 21-A-08* (Bethesda, MD: May 12, 2021).

<sup>3</sup>Federal Emergency Management Agency, *Federal Continuity Directive 1, Federal Executive Branch National Continuity Program and Requirements* (Jan. 17, 2017) and *Federal Continuity Directive 2, Federal Executive Branch Mission Essential Functions and Candidate Primary Mission Essential Functions Identification and Submission Process* (June 13, 2017).

logbook components. We analyzed monthly trends on the number of unique entries examined for each calendar year during the 4-year period of our review.

We also analyzed violation data in CPSC's Integrated Field System for violations that were associated with the CPSC examination data we reviewed. We identified monthly trends from March through August 2020 compared to the same period in 2019. In addition, we reviewed trends for three specific violation types for calendar years 2019 and 2020: Lead-in-Paint Toy/Children's Product/Consumer Product Safety Act, Exceeds Phthalate Permanent Ban Limit, and Lead in Children's Product/Federal Hazardous Substances Act. We analyzed trends in CPSC's examinations of shipments that contained the Harmonized Tariff Schedule (HTS) code 9503.00.0090—a subcategory of toys—from March through August 2020 compared to the same period in 2019.<sup>4</sup>

We also analyzed CPSC examination data by port of entry for the three ports we selected, which consisted of a Southwest Border port, a West Coast sea port, and an East Coast airport. We analyzed these data to (1) compare the number of examinations conducted from March through August 2020 to the same period in 2019 at the selected ports; (2) identify the number of examinations for shipments with HTS codes for bicycle helmets for calendar years 2018–2021 at the West Coast sea port and Southwest Border port; and (3) establish when monthly examination levels returned to prepandemic levels at the selected ports.<sup>5</sup>

We assessed the reliability of CPSC examination and violation data by reviewing documentation such as user guides, interviewing CPSC headquarters officials and port staff from selected ports, and testing data by comparing them to summary data CPSC provided. We found these data to be reliable for the purposes of identifying and analyzing trends in CPSC's import examinations and violations.

- **Targeting data.** To analyze targeting data, we obtained data from CTAC for calendar years 2018–2021 related to automatic targeting

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<sup>4</sup>Congress enacted the Harmonized Tariff Schedule of the United States, which is an internationally recognized system and is maintained and published by the U.S. International Trade Commission. HTS is used to classify goods and provide applicable tariff rates for imports into the U.S.

<sup>5</sup>The HTS codes for bicycle helmets that we used were 6506.10.3045 and 6506.10.6045.

that held shipments for CPSC examination. We analyzed these data to find yearly and monthly patterns, including for the period when CPSC targeting at CTAC was suspended from March 16, 2020, to September 13, 2020, and the period after targeting was reinstated in September 2020 to determine when the number of hits returned to prepandemic levels.

We assessed the reliability of these data by reviewing relevant documentation such as data dictionaries and privacy impact assessments, interviewing CTAC officials about steps taken to ensure data accuracy, and manually reviewing the data for errors and conducting follow-up with agency officials, as needed. We found these data to be sufficiently reliable for the purposes of describing the volume and trends of CTAC automatic targeting and holds of shipments for CPSC examination.

- **Trade data.** To analyze trends in trade data, we used trade statistics from the Census Bureau combined with HTS codes that CPSC targets for examinations. To determine the HTS codes that CPSC would typically target in a given month, we reviewed CPSC HTS targeting lists. We compared the set of HTS codes that CPSC would typically target to the list of codes that CPSC actually targeted under its remote examination procedures.

Specifically, we queried and downloaded trade data from the Census Bureau's Application Programming Interface for international trade data using the following filters: (1) all HTS codes, to measure total import value, (2) all shipments with HTS codes that CPSC had targeted at least once from 2018 through 2021, (3) shipments with HTS codes that CPSC would normally target in a given month, (4) shipments with HTS codes included in CPSC's March 2020 and August 2020 remote examination procedures, and (5) shipments with the specific toy HTS code 9503.00.0090, mentioned above.

With the resulting census data, we analyzed each grouping to calculate monthly total imports and year-over-year percentage changes in total imports for data from 2018 through 2021. We identified the difference in imported trade value between the period of port staff withdrawal in 2020 and the same period in 2019, and the difference in trade value between what CPSC targeted for examinations under the remote procedures and what it would typically expect to target. We compared the trade value of shipments with the specific toy code during the period of CPSC port staff withdrawal in 2020 to the same period in 2019. We compared monthly trade values

to the nearest comparable prepandemic month to determine when the imported trade value of products that CPSC typically targets returned to and surpassed prepandemic levels.

We assessed the reliability of these data by reviewing the Census Bureau's international trade data user guide; testing the data electronically to identify any anomalies or errors such as missing data, outliers, or unexpected values; and reviewing data reliability assessments conducted for the same dataset in prior GAO work. We found these data to be sufficiently reliable for the purpose of analyzing trends in the trade value of imported products, including those that CPSC would typically target and those that it targeted under the remote procedures, nationally, and at specific ports.

To address our third objective, we reviewed the specific CAA and ARPA provisions for CPSC.<sup>6</sup> To assess CPSC's implementation of these provisions, we interviewed CPSC headquarters officials and obtained written responses from CPSC, including about implementation of statutory requirements related to port coverage, consultation with CBP, port staff hiring in fiscal years 2021 and 2022, and the use of ARPA funding. We reviewed CPSC documentation on consulting with CBP and other agencies on methods to safely staff ports.

Additionally, we reviewed CPSC's written response and documentation on the hiring of port staff for fiscal years 2021 and 2022. We also reviewed CPSC's June 25, 2021, staff report to Congress, fiscal year 2021 annual performance report, fiscal year 2022 operating plan, fiscal year 2022 midyear review, and the fiscal year 2023 performance budget request to determine whether the agency met CAA reporting requirements.<sup>7</sup>

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<sup>6</sup>Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. FF, title XX, § 2001, 134 Stat. 1182, 3301. American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 7401, 135 Stat. 4, 108.

<sup>7</sup>Consumer Product Safety Commission, *Performance Budget Request to Congress Fiscal Year 2023*, (Bethesda, MD: May 28, 2022); *Fiscal Year 2022 Midyear Review*, (Bethesda, MD: May 4, 2022); *Fiscal Year 2021 Annual Performance Report* (Bethesda, MD: Mar. 28, 2022); *Fiscal Year 2022 Operating Plan*, (Bethesda, MD: Sept. 24, 2021); and *Staff Report to Congress Pursuant to Title XX; Fiscal Year 2021 Operating Plan* (Bethesda, MD: Nov. 10, 2020).



Further, we reviewed CPSC’s written responses and documentation on its spending plans, operating plans, and budget requests, including its proposed fiscal year 2021 spending plan for the ARPA funds, fiscal year 2021 annual financial report, fiscal year 2022 operating plan, and performance budget requests for fiscal years 2022 and 2023 to analyze CPSC’s planned spending of ARPA funds for fiscal years 2021–2026.<sup>8</sup>

We conducted this performance audit from September 2021 to October 2022 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.

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<sup>8</sup>Consumer Product Safety Commission, *Performance Budget Request to Congress Fiscal Year 2023* (Bethesda, MD: May 28, 2022); *Annual Financial Report Fiscal Year 2021* (Bethesda, MD: Nov. 15, 2021); *Fiscal Year 2022 Operating Plan* (Bethesda, MD: Sept. 24, 2021); *Fiscal Year 2022 Performance Budget Request to Congress*, (Bethesda, MD: May 28, 2021); and *Proposed Fiscal Year 2021 Spending Plan of the American Rescue Plan Act Funds* (Bethesda, MD: Mar. 31, 2021).

# Appendix II: Comments from the Consumer Product Safety Commission



United States  
**Consumer Product Safety Commission**

October 13, 2022

Ms. Alicia Puente Cackley  
Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 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 "Consumer Product Safety Commission: Action Needed to Improve Preparedness for Product Examination Disruptions" (GAO-23-105445).

We agree with the conclusions and support the recommendations for CPSC regarding finalizing our continuity of operations plan, performing the required analysis identified in Federal Continuity Directives 1 and 2 to support and determine the essential functions within CPSC. Staff has begun work on updating our continuity of operations plan, including the business process analysis and business impact analysis. We plan to complete the updated plan by December 30, 2022.

We also agree with the conclusion and support the recommendation to fully comply with section 2001(c)(2)(B) and (E) of the Consolidated Appropriations Act, 2021, related to examining *de minimis* shipments and establishing metrics related to *de minimis* shipments. Staff has begun work on its analysis of eCommerce shipments examined and sampled in fiscal year 2022 in a variety of settings, including express hubs, land border ports, and air cargo ports. Staff is also in the process of collecting fiscal year 2023 international mail facility data to supplement the fiscal year 2022 data. With this full set of data, in fiscal year 2023, staff will be able to analyze a sufficient and representative sample of *de minimis* shipments from all types of ports where *de minimis* shipments are processed.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Alexander D. Hoehn-Saric".

Alexander D. Hoehn-Saric  
Chair

U.S. Consumer Product  
Safety Commission  
4330 East-West Highway  
Bethesda, MD 20814  
[cpsc.gov](http://cpsc.gov)

National Product Testing  
& Evaluation Center  
5 Research Place  
Rockville, MD 20850

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## Text of Appendix II: Comments from the Consumer Product Safety Commission

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Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
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Thank you again for providing us with the opportunity to comment on the draft report.

Sincerely,

Alexander D. Hoehn-Saric Chair

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## Appendix III: GAO Contact and Staff Acknowledgments

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### GAO Contact

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

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### Staff Acknowledgments

In addition to the contact above, Tarek Mahmassani (Assistant Director), Verginie Tarpinian (Analyst in Charge), David Dornisch, Shaundra Patterson, Angela Pun, Jessica Sandler, Jennifer Schwartz, Jena Sinkfield, and Robert Treadwell made key contributions to this report.

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