



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

March 3, 2015

TO: Members, Subcommittee on Commerce, Manufacturing, and Trade

FROM: Committee Majority Staff

RE: Hearing entitled “Oversight of the Consumer Product Safety Commission and the FY 2016 Performance Budget Request”

I. INTRODUCTION

On Thursday, March 5, 2015, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “Oversight of the Consumer Product Safety Commission and the FY 2016 Performance Budget Request.”

II. WITNESSES

- Elliot F. Kaye, Chairman, U.S. Consumer Product Safety Commission;
- Robert (Bob) S. Adler, Commissioner, U.S. Consumer Product Safety Commission;
- Marietta Robinson, Commissioner, U.S. Consumer Product Safety Commission;
- Ann Marie Buerkle, Commissioner, U.S. Consumer Product Safety Commission; and,
- Joseph Mohorovic, Commissioner, U.S. Consumer Product Safety Commission.

III. BACKGROUND

A. Subcommittee Activity

In July 2012, the Subcommittee held an oversight hearing to review the Consumer Product Safety Commission’s (CPSC or Commission) implementation of H.R. 2715 (Public Law 112-28), enacted in August 2011. The purpose of this law was to address a number of unintended consequences resulting from the requirements of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Since that hearing, there has been significant turnover at the Commission, and new issues have developed. On July 30, 2014, Chairman Elliot F. Kaye was sworn in for his first term as Chairman of the CPSC. Chairman Kaye’s term expires in October 2020. Prior to his confirmation, Chairman Kaye served as the CPSC’s Executive Director and prior to that, as Chief of Staff and Chief Counsel to former Chairman Inez Tenenbaum. Three new

Commissioners have also been appointed to the CPSC. Commissioner Marietta S. Robinson and Commissioner Ann Marie Buerkle were sworn in June 2013. Commissioner Robinson's term expires October 2017. Commissioner Buerkle's term expires in October 2018. Commissioner Joseph Mohorovic was confirmed in July 2014 and his term expires in October 2019.

B. Performance Budget Request

On February 2, 2015, the CPSC's fiscal year (FY) 2016 Performance Budget Request was submitted to Congress. The budget requests \$129 million and 567 full time equivalents (FTE) for the CPSC which is an increase of \$6 million, or 5 percent, over the FY 2015 enacted budget of \$123 million with 567 full time equivalents.

Two program adjustments for critical initiatives and priorities are five million dollars for a new nanotechnology research center and \$1 million to address immediate agency security issues relating to cyber, physical, and personnel. The Subcommittee is interested in learning more about the proposed nanotechnology center, the goals for the center, the expertise of CPSC staff on nanotechnology issues, and how the center would relate to the CPSC's core mission of protecting the public from unreasonable risks of injury or death associated with consumer products.

The performance budget request reiterates the CPSC's request from FY 2015 for user fee authority in order to expand and fund the existing Risk Assessment Methodology (RAM) targeting program. The stated goal of the user fee is to offset the cost of rolling out the RAM program nationwide which is estimated to cost \$36 million annually. Currently, fewer than 5 percent of U.S. ports have CPSC staff on site. The Subcommittee will examine the existing RAM targeting program and how the CPSC is working with U.S. Customs and Border Protection at the ports.

Cyber security is another area of interest for the Subcommittee. This hearing will provide the CPSC with an opportunity to explain the immediate agency security issues from all the three angles identified in the budget request (cyber, physical, and personnel).

CPSC's current budget for FY 2015 includes 567 FTEs with 44 FTEs, or 8 percent, allocated to import surveillance. The FY 2016 Performance Budget Request does not include any increase to FTEs for any other organizations within the CPSC. Hazard identification and reduction and compliance and field operations account for 167 FTEs (29.5 percent) and 159 FTEs (28 percent) respectively. According to the FY 2015 Operating Plan, the Office of Compliance and Field Operations is divided between 56 FTEs at headquarters and 103 FTEs in field operations.

C. CPSC's Rulemaking Agenda

The FY 2016 includes an extensive list of mandatory standards that the “CPSC staff plans to work on.”¹ Generally, the CPSC has authority to set a mandatory standard “when it determines that compliance with a voluntary standard would not eliminate or adequately reduce a risk of injury or finds that it is unlikely that there will be substantial compliance with a voluntary standard.”² There are 19 candidates for rulemaking in the FY 2016 budget, with a significant number carried over from FY 2015. This number includes advanced notices of proposed rulemaking, notices of proposed rulemaking, and final rules.

The Subcommittee will examine the Chairman's priorities for the outstanding and new mandatory rulemakings. In particular, concerns have been raised in a variety of contexts about the Voluntary Recall Rule, Third Party Testing – Determinations, Information Disclosure under Section 6(b) of the Consumer Product Safety Act, Certificates of Compliance – 1110 Rule – E.O. 13659, Recreational Off Highway Vehicles (ROVs), and Window Coverings among others.

D. Consumer Product Safety Improvement Act and H.R. 2715

In 2007, in response to a number of toy recalls for lead-in-paint violations, Congress passed the bipartisan Consumer Product Safety Improvement Act of 2008 (CPSIA) was introduced on November 1, 2007. The significant implementation and compliance problems associated with CPSIA prompted the bipartisan passage of H.R. 2715 in August 2011. The law was intended to relieve the most significant burdens imposed on businesses of all sizes, including small businesses, on issues including:

- Modification of lead limits and exemptions from lead limits;
- Testing cost reductions; and,
- Phthalates.

On October 1, 2013, seven Members of this Subcommittee wrote a letter to then-Chairman Tenenbaum outlining significant concerns with the implementation of burden reduction efforts at the CPSC following the enactment of H.R. 2715 (Public Law No. 112-28) in August 2011. H.R. 2715 directed the CPSC to seek public comment on “opportunities to reduce the cost of third-party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.” During the debate on the FY 2015 CPSC budget, Representative Blackburn introduced an amendment that was adopted to provide an additional \$1 million for testing burden reductions outlined in H.R. 2715. We remain interested in the status of the efforts to reduce third party testing costs pursuant to H.R. 2715 and the additional funding for these efforts provided in the CPSC's FY 2015 budget.

¹ Standards and Rulemakings, 2016 Performance Budget Request to Congress, CPSC, February 2015, p. 30.

² *Id.*

The Commission finally released the Chronic Hazard Advisory Panel on Phthalates (CHAP) report in July 2014, after a closed review process. The CHAP report will presumably serve as the basis for a rulemaking under Section 108 of CPSIA regarding the use of phthalates and phthalate alternatives in children's toys and child care articles. On October 17, 2014, Representative Barton wrote to Chairman Kaye raising concerns about both the CPSC's failure to properly follow guidelines established by the Office of Management and Budget for peer review and the undue weight the CHAP gave to the cumulative risk assessment in finalizing recommendations about regulatory restrictions for one particular phthalate—diisononyl phthalate or DINP. The Subcommittee is interested in hearing from the Commissioners about the status of this process and the scientific methodology and data utilized by the CHAP.

IV. ISSUES

The following issues may be examined at the hearing:

- Chairman Kaye's priorities and goals for his current term as Chairman.
- Examining the unique relationship between the CPSC and the regulated communities and how a cooperative process can improve safety for American consumers.
- How the FY 2015 budget priorities, including test burden reduction, are being implemented and key elements of the FY 2016 performance request.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Paul Nagle and Melissa Froelich of the Committee staff at (202) 225-2927.