



May 15, 2015

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

FROM: Committee Majority Staff

RE: Hearing entitled “Oversight of the Consumer Product Safety Commission”

I. INTRODUCTION

On Tuesday May 19, 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.”

II. WITNESSES

First Panel

- Elliot F. Kaye, Chairman, U.S. Consumer Product Safety Commission;
- Robert (Bob) S. Adler, 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.

Second Panel

- Cheryl Falvey, Co-Chair, Advertising and Product Risk Management, Crowell & Moring LLP;
- Ronald Warfield, Chief Executive Office, ATV/ROV/UTV Safety Consulting;
- Erik Pritchard, Executive Vice President and General Counsel, Recreational Off-Highway Vehicle Association; and,
- Heidi Crow-Michael, Winnsboro, Texas

III. BACKGROUND

The Consumer Product Safety Commission (CPSC) is responsible for protecting the public from unreasonable risks of injury or death associated with the use of consumer products.¹ The CPSC undertakes its mission by working with stakeholders on the development of voluntary

¹ Other Federal agencies are responsible for other products including automobiles, boats, alcohol, tobacco, firearms, food and drugs, pesticides, cosmetics, and medical devices.

safety standards. If the voluntary standard does not adequately address the risk of injury or death, or industry does not substantially comply with the voluntary standard, the CPSC may issue and enforce mandatory safety standards. CPSC may also issue and enforce recalls of consumer products that present a substantial product hazard and engage in research and educational efforts.²

The current Commissioners at the CPSC are Chairman Elliot F. Kaye, Commissioner Robert S. Adler, Commissioner Marietta S. Robinson, Commissioner Ann Marie Buerkle, and Commissioner Joseph Mohorovic. Chairman Kaye was sworn in for his first term in July of last year and his term expires in October 2020. Commissioner Robinson's term expires October 2017, Commissioner Buerkle's term expires in October 2018, Commissioner Mohorovic's term expires in October 2019, and Commissioner Adler's term expires in October 2021.

A. 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 \$5 million 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 five 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 eight 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

² <http://www.cpsc.gov/PageFiles/105435/cpsa.pdf>

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.

B. CPSC's Rulemaking Agenda

The FY 2016 includes an extensive list of mandatory standards that the “CPSC staff plans to work on.”³ 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.”⁴ 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 CPSC Chairman's priorities for the outstanding and new rulemakings. In particular, concerns have been raised by stakeholders about a number of the open proceedings including the phthalates proposed rulemaking,⁵ voluntary recall proposed rulemaking,⁶ third party testing burden reduction determinations, information disclosure under Section 6(b) of the Consumer Product Safety Act,⁷ certificates of compliance proposed rulemaking and implementation of E.O. 13659,⁸ and the advanced notice of proposed rulemaking regarding window coverings.⁹

One open rulemaking that is also the subject of H.R. 999 proposes a mandatory standard for recreational off-highway vehicles. The American National Standard for Recreational Off-Highway Vehicles (ROV), ANSI/ROHVA 1-2014 and the American National Standard for Multipurpose Off-Highway Utility Vehicles, ANSI/OPEI B79.1-2012 are two voluntary safety standards that exist for ROVs.

The most recent ANSI/ROHVA 1-2014 standard was released on September 24, 2014, and updated the 2011 voluntary standard. On that same day, CPSC staff released a briefing package proposing a mandatory standard based on the 2011 standard.¹⁰ On October 17, 2014, CPSC staff released a memorandum with supplemental information on the ROV briefing package, stating that there was a change in their recommendations based on the new 2014

³ Standards and Rulemakings, 2016 Performance Budget Request to Congress, CPSC, February 2015, p. 30.

⁴ *Id.*

⁵ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AD39>

⁶ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AC73>

⁷ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AD36>

⁸ <http://www.cpsc.gov/en/Regulations-Laws--Standards/Federal-Register-Notices/2014/CPSC-Workshop-on-Electronic-Filing-of-Certificates-as-Included-in-Proposed-Rule-on-Certificates-of-Compliance/>

⁹ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AD31>

¹⁰

<http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationalOff-HighwayVehicles-ProposedRule.pdf>; *see also*

<http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AC78>

voluntary safety standard.¹¹ On October 28, 2014, Commissioner Mohorovic received responses from CPSC staff regarding the new 2014 voluntary safety standard and the staff recommendations for a mandatory safety standard.¹² CPSC staff clarified in both memorandums that they saw “no need” for the Commission to delay evaluating the proposed mandatory rule because the new voluntary ANSI safety standard did not meet the dynamic stability, hang tag, vehicle handling, and occupant protection standards in the proposed rule.¹³ The CPSC staff did commit to evaluating comments submitted during the rulemaking process with voluntary standard bodies, industry, and other stakeholders on changes that could be made to the voluntary safety standard.¹⁴

On November 19, 2014, the CPSC published the Notice of Proposed Rulemaking (NPR) in the Federal Register.¹⁵ The CPSC has received 332 public comments on the NPR.¹⁶ These comments focused on a range of issues, including the lateral stability and vehicle handling requirements and testing metrics included in the NPR. The Subcommittee is interested in learning more about the status of this process and what cooperation, if any, between the voluntary standards organizations, the ROV industry, and the CPSC is occurring in light of the existence of multiple safety standards governing ROVs.

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

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. The Subcommittee remains 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.

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

¹¹ <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/SupplementalInformation-ROVs.pdf>

¹² <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Memorandum-StaffResponsestoQuestionsfortheRecordRegardingNPRforRecreationalOff-HighwayVehicles.pdf>

¹³ <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Memorandum-StaffResponsestoQuestionsfortheRecordRegardingNPRforRecreationalOff-HighwayVehicles.pdf> at 1.

¹⁴ <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Memorandum-StaffResponsestoQuestionsfortheRecordRegardingNPRforRecreationalOff-HighwayVehicles.pdf> at 1.

¹⁵ <http://www.gpo.gov/fdsys/pkg/FR-2014-11-19/pdf/2014-26500.pdf>; see also <https://www.federalregister.gov/articles/2014/11/19/2014-26500/safety-standard-for-recreational-off-highway-vehicles-rovs>.

¹⁶ *Id.*

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. H.R. 999 SECTION-BY-SECTION

Section 1. Short Title.

This Act may be cited as the "ROV In-Depth Examination Act."

Section 2. Recreational Off-Highway Vehicle Standards Study.

Section 2 sets forth that the CPSC shall have no authority to establish any standards concerning the performance or configuration of recreational off-highway vehicles (ROVs) until after the completion of a study required by subsection (b).

The study, as required by subsection (b), directs the CPSC to contract with the National Academy of Sciences to conduct a study to determine the technical validity of lateral stability and vehicle handling requirements for ROVs proposed by the CPSC; the number of ROV rollovers that would be prevented if the proposed requirements were adopted; whether there is a technical basis for the proposed requirements to provide additional information on a point-of-sale hangtag about a vehicle's rollover resistance on a progressive scale; and the effect on the utility of ROVs used by the Armed Forces if the proposed requirements were adopted. The National Academy of Sciences is required to consult with the National Highway Traffic Safety Administration and the Department of Defense in carrying out the study.

This section requires the National Academy of Sciences to issue a report to the CPSC with the findings of the study within two years after the date of enactment of this Act. The CPSC must then send the report to the House Energy and Commerce Committee as well as the Senate Commerce, Science, and Transportation Committee along with any comments within 5 days of receiving the report from the National Academy of Sciences.

Section 2 also defines certain terms used throughout the Act including Commission, recreational off-highway vehicle, and vehicles excluded from the definition of ROV.

V. 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.
- CPSC's regulatory priorities including, voluntary recalls, third party test burden reduction, information disclosures under Section 6(b) of the Consumer Product Safety Act, requested import fee authority and other updates to the import surveillance process including electronic filing of certificates of compliance, window blind coverings, and the Chronic Hazard Advisory Panel report regarding phthalates.
- The importance of the voluntary safety standards process to the CPSC's mission and how that process has played out in the development of the proposed mandatory safety standard for ROVs.

VI. 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.