



February 8, 2016

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

FROM: Committee Majority Staff

RE: Hearing entitled “Industry Perspectives on the Consumer Product Safety Commission”

I. INTRODUCTION

On Wednesday, February 10, 2016, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “Industry Perspectives on the Consumer Product Safety Commission.”

II. WITNESSES

- Jonathan Gold, Vice President, Supply Chain and Customs Policy, National Retail Federation;
- Mark Fellin, Director of Regulatory and Legislative Affairs, Juvenile Products Manufacturers Association;
- Erik Pritchard, Executive Vice President and General Counsel, Recreational Off-Highway Vehicle Association; and,
- Rachel Weintraub, Legislative Director and General Counsel, Consumer Federation of America.

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

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

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

In general, 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.”³ During fiscal year (FY) 2015, the CPSC staff participated in 81 voluntary standards activities.⁴

On May 19, 2015, the Subcommittee held a hearing entitled “Oversight of the Consumer Product Safety Commission.”⁵ Chairman Kaye, Commissioner Adler, Commissioner Buerkle, and Commissioner Mohorovic participated on the first panel. The second panel of witnesses examined H.R. 999, the ROV In-Depth Examination Act, introduced by Representative Pompeo.

During the hearing, the Commissioners discussed the CPSC’s FY 2016 budget request priorities, ongoing rulemakings, and Chairman Kaye highlighted his work to establish “a culture of civility, collaboration and constructive dialogue.”⁶ This hearing is an opportunity for the Subcommittee to hear directly from the regulated industry about their perspectives and experience with the CPSC on a variety of issues.

A. Voluntary Standards, Open Rulemakings and Industry Collaboration

A significant number of rulemakings carried over from FY 2015 to FY 2016, including advanced notices of proposed rulemaking, and notices of proposed rulemaking. In FY 2015, CPSC staff prepared 14 candidates for rulemaking and proposed six additional candidates not previously included in the agenda.⁷ Until the Commission votes to terminate a rulemaking proceeding, that rulemaking will remain on the CPSC’s agenda. This scenario has created a substantial amount of uncertainty for the regulatory industry because there are several open rulemaking proceedings with no clear timeline for resolution that the Chairman has not prioritized during his tenure but has not removed from the agenda.

In particular, concerns have been raised by stakeholders about a number of the open proceedings including the voluntary recall proposed rulemaking,⁸ third party testing burden reduction determinations, information disclosure under Section 6(b) of the Consumer Product Safety Act,⁹ certificates of compliance proposed rulemaking,¹⁰ and implementation of E.O. 13659,¹¹ and the advanced notice of proposed rulemaking regarding window coverings.¹²

³ *Id.*

⁴ CPSC Agency Financial Report, p. 5 <http://www.cpsc.gov/Global/About-CPSC/Budget-and-Performance/2015AgencyFinancialReport.pdf>

⁵ <http://energycommerce.house.gov/hearing/oversight-consumer-product-safety-commission-0>

⁶ Statement of Chairman Elliot F. Kaye, p. 6. <http://docs.house.gov/meetings/IF/IF17/20150519/103481/HHRG-114-IF17-Wstate-KayeE-20150519.pdf>

⁷ *Id.*

⁸ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AC73>

⁹ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AD36>

¹⁰ See Statement of Commissioner Ann Marie Buerkle on the Import Surveillance E-Filing Pilot, http://www.cpsc.gov/en/about-cpsc/commissioners/ann-marie-buerkle/ann-marie-buerkle-statements/statement-of-commissioner-ann-marie-buerkle-on-the-import-surveillance-e-filing-pilot-/?utm_source=rss&utm_medium=rss&utm_campaign=commissioner+buerkle+statements+

¹¹ <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/>

One open rulemaking proposes a mandatory standard for recreational off-highway vehicles (ROVs). There are two existing voluntary safety standards for ROVs: the American National Standard for Recreational Off-Highway Vehicles, ANSI/ROHVA 1-2014, and the American National Standard for Multipurpose Off-Highway Utility Vehicles, ANSI/OPEI B79.1-2012. During the normal process of updating the voluntary standards in 2014, there was a recommendation made by staff for a mandatory safety standard for ROVs based on an older version of the standard released in 2011.¹³

During the last two years, there has been an extensive negotiation process between industry and the CPSC to address the concerns raised about the existing voluntary standard. In February 2015, Representative Pompeo introduced H.R. 999, the ROV In-Depth Examination Act, to require a technical study of proposals by the CPSC for a mandatory standard prior to issuing such standards. The bill was considered by this Subcommittee during a legislative hearing in May 2015.¹⁴ The Subcommittee is interested in receiving an update about the status of this process and what cooperation, if any, is occurring between the voluntary standards organizations, the ROV industry, and the CPSC.

B. Consumer Product Safety Improvement Act: Third-party testing burden reduction and import surveillance

Implementation of the Consumer Product Safety Improvement Act (CPSIA), particularly with respect to third-party testing requirements and import surveillance, are ongoing issues. The Subcommittee remains interested in the status of the efforts to reduce third party testing costs, the efforts to improve targeting at the ports without unnecessary disruption of the supply chain for consumer products.

Following the enactment of CPSIA in 2011, Members of this Subcommittee have been engaged in efforts to reduce third-party testing burdens.¹⁵ In particular, the enacted FY 2015 budget for the CPSC included \$1 million directed at third-party testing burden reduction. The Subcommittee is interested in industry's experience with the CPSC's efforts to implement this budget priority and whether there are areas that remain unresolved.

Import surveillance is an important tool for the CPSC to stop violative consumer products from entering the stream of commerce. The Risk Assessment Methodology (RAM) targeting pilot program set baseline targets in FY 2015 with 12.1 percent of entries sampled as identified

¹² <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AD31>

¹³ <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreation1Off-HighwayVehicles-ProposedRule.pdf>; *see also* <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3041-AC78>

¹⁴ *Supra* note 1.

¹⁵ *See* Committee Majority Staff Memo "Oversight of the Consumer Product Safety Commission" p. 3-4, May 2015 <http://docs.house.gov/meetings/IF/IF17/20150519/103481/HHRG-114-IF17-20150519-SD002.pdf>

by the RAM system. Of the products screened by CPSC field staff, 5.9 percent were determined to be in violation of existing standards.¹⁶

The CPSC's goal of rigorous hazard identification includes a "systematic approach to enhance the quality of crucial product hazard data."¹⁷ The Subcommittee will examine how industry is working with the CPSC in the iterative process of participating and providing feedback on the RAM pilot, and specifically what product hazard data has been identified by the CPSC as critical and how that overlaps with existing import disclosure data requested by other Federal agencies such as Customs and Border Patrol.

IV. ISSUES

The following issues may be examined at the hearing:

- Understanding how the voluntary standards process, the preferred regulatory approach in the CPSC's authorizing statute, impacts industry's ability to adjust and improve standards and compliance activities.
- Whether the CPSC is putting its resources to best use to meet Congressional obligations and public safety goals.
- The relationship between the CPSC and the regulated communities and how a cooperative import and recall process can improve safety for American consumers.
- 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.
- What issues are important for Congress to consider when evaluating the forthcoming CPSC budget request for FY 2017.

V. STAFF CONTACTS

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

¹⁶ *Supra* note 6, p. 6.

¹⁷ *Supra* note 6, p. 8.