

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 15, 2015

To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Oversight of the Consumer Product Safety Commission”

On Tuesday, May 19, 2015, at 10:15 am in room 2322 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled, “Oversight of the Consumer Product Safety Commission.”

In March, the Subcommittee was scheduled to hold a hearing focusing on the Consumer Product Safety Commission’s FY 2016 budget request. That hearing was postponed due to inclement weather. This month’s two-panel hearing will address the Commission’s budget, priorities, and policies and H.R. 999, the “ROV In-Depth Examination Act.”

I. BACKGROUND

The Consumer Product Safety Commission (CPSC) is an independent agency created by the Consumer Product Safety Act of 1972 and charged with protecting the public from unreasonable risks of injury or death associated with the use of more than 15,000 types of consumer products under the agency’s jurisdiction. The Commission consists of five members appointed by the President and approved by the Senate. Chairman Elliot F. Kaye was sworn in as the 10th Chairman of the CPSC on July 30, 2014.

II. CPSC PRIORITIES

Consistent with the Consumer Product Safety Improvement Act of 2008 (CPSIA), the Commission remains engaged in a major transformation from a reactive organization to a proactive one. In addition to its long-standing responsibilities to oversee new and existing consumer products, manage and oversee recalls, and provide information and resources to the public, today’s CPSC is facing new demands for time and resources. These demands arise out of an increasing number of imported products that fall under CPSC’s jurisdiction, a steady growth

in the use of novel materials such as nanotechnology in consumer products, and a high number of recalls of products imported into the United States.

A. Overview of FY 2016 Budget Request¹

CPSC requested a \$129 million budget for FY 2016, a \$6 million increase (4.9 percent) from the FY 2015 enacted level. This additional \$6 million allows the Commission to implement two key objectives (nanotechnology and agency security) while maintaining its FY 2015 staff level of 567 full-time equivalent employees (FTE). On March 19, 2015, Chairman Kaye testified before the House Committee on Appropriations Subcommittee on Financial Services and General Government.² The House Committee on Appropriations has not yet released a draft of the FY 2016 Financial Services and General Government bill.

B. Consumer Safety of Nanotechnology

The Commission requested \$5 million in its FY 2016 Budget Request to establish the Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION), a consortium of scientists focused on studying the effects of consumer exposure to nanomaterials in consumer products.³ Nanotechnology is rapidly being commercialized into consumer goods. There are currently more than 1,600 products worldwide that incorporate nanotechnology, in categories including cosmetics and home and garden.⁴ In 2011, the National Science Foundation (NSF) estimated the worldwide market for products incorporating nanotechnology would grow to \$3 trillion by 2020.⁵

Despite continued Federal investment in nanotechnology research and the rapid growth of the nanotechnology market, the CPSC lacks adequate testing methods for investigating the effect of these goods on public health. The creation of CPASION would give the Commission the capability to identify and quantify potentially harmful nanomaterials, and assess the potential health risks of exposure to those materials in consumer products. The CPSC would enter into a 5-year agreement with the NSF to establish the CPASION, which would serve as a resource for manufacturers, distributors, and consumer groups in providing information on the safe use of nanotechnology in consumer products.

¹ U.S. Consumer Product Safety Commission, *Fiscal Year 2016 Performance Budget Request* (Feb. 2, 2015) (online at www.cpsc.gov/Global/About-CPSC/Budget-and-Performance/FY2016BudgettoCongress.pdf) (accessed May 11, 2015).

² Chairman Kaye's opening statement is available [here](#).

³ For context, a nanometer is one-billionth of a meter; a sheet of newspaper is approximately 100,000 nanometers thick. National Nanotechnology Initiative, *What Is Nanotechnology?* (online at www.nano.gov/nanotech-101/what/definition) (accessed July 24, 2014).

⁴ Project on Emerging Nanotechnologies, *Consumer Products Inventory* (online at www.nanotechproject.org/cpi/) (accessed Feb. 25, 2015).

⁵ National Science Foundation, *The Long View of Nanotechnology Development: The National Nanotechnology Initiative at 10 Years* (Feb. 12, 2011).

C. Immediate Agency Security Issues

The CPSC faces security funding shortfalls in cyber, physical, and personnel security. A FY 2013 CPSC Inspector General audit found several cybersecurity and compliance deficiencies in the CPSC's practices. In addition, the Federal Protective Service recently assessed the security at CPSC's National Product Testing and Evaluation Center and determined security needs to be increased to 24 hours per day, 7 days a week to protect CPSC assets.

The Commission needs to correct these practices in order to meet a series of security goals set forth by the Administration.⁶ In its FY 2016 Budget Request, CPSC requested an additional \$1 million to boost its cybersecurity capability to match the Administration's goals, which will also support physical security of CPSC facilities.

D. Import Surveillance

The CPSC conducts import surveillance at U.S. ports, a program originally established by CPSCIA to address a wave of noncompliant children's products. Between 2002 and 2013, the value of consumer product imports under the CPSC's jurisdiction grew by 76 percent to \$723 billion.⁷ Despite the increased need for oversight, CPSC has the resources to staff fewer than 5 percent of U.S. ports. Yet, more than 80 percent of consumer product recalls in FY 2013 involved an imported product.

CPSC is continuing to develop the Risk Assessment Methodology targeting system to increase the CPSC's ability to analyze data provided by the U.S. Customs and Border Protection (CBP) and label high-risk entries before they reach U.S. ports.⁸ To pay for the program, CPSC is requesting in its FY 2016 Budget Request that Congress authorize a new product safety user fee, which would be a percent of the value of covered imported products (approximately \$0.07 per \$1,000 of import value).⁹ Through this expanded import surveillance program, CPSC anticipates the ability to clear compliant cargo faster, allowing the agency to focus its inspections on shipments with a high probability of violations or defects.¹⁰

E. Other Issues

CPSC is also engaged in reducing the cost of third party testing requirements for children's products while assuring compliance with applicable consumer product safety rules, pursuant to a law passed in August 2011, which gave the CPSC additional flexibility in

⁶ See Note 1.

⁷ *Id.*

⁸ Consumer Product Safety Commission, *Port Surveillance News: CPSC Uses Pilot Risk Assessment Tool to Strengthen Import Safety Program* (Dec. 13, 2013) (online at www.cpsc.gov/en/Newsroom/News-Releases/2014/CPSC-Uses-Pilot-Risk-Assessment-Tool-to-Strengthen-Import-Safety/).

⁹ See Note 1.

¹⁰ *Id.*

implementing CPSIA.¹¹ The Commission's goal is to address this issue in a final rule in FY 2016.¹²

In addition, some consumer advocacy groups are calling for legislation to require child-safe packaging for liquid nicotine used in electronic cigarettes. On March 16, 2015, Rep. Esty introduced H.R. 1375, the "Child Nicotine Poisoning Prevention Act," which sought to prevent accidental ingestion of liquid nicotine by children by requiring the CPSC to promulgate regulations requiring special packaging for liquid nicotine containers. A similar bill, introduced by Sen. Nelson, was passed out of the Committee on Commerce, Science, and Transportation on April 13, 2015.

III. RECREATIONAL OFF-HIGHWAY VEHICLES

A. Background

Recreational Off-Highway Vehicles (ROVs) are motorized, four-wheeled vehicles not intended for use on highways or major roads. ROVs are distinguished from all-terrain vehicles (ATV) by their car-like features, including a steering wheel, traditional bucket seating, and traditional gas and brake pedals.¹³ In addition, unlike ATVs, many ROVs can travel faster than 30 mph and often have seat-restraints and rollover protection.

Industry groups have developed voluntary standards for ROVs. CPSC participated in the development of these voluntary standards, but ultimately concluded that staff concerns were not met in the voluntary standards. Among the CPSC's ongoing concerns with the voluntary standards are: (1) inadequate lateral stability and dynamic stability testing used to determine when the vehicle will rollover; (2) a lack of any vehicle handling requirement, which is necessary to ensure that steering does not contribute to rollovers; (3) an eight second seatbelt reminder is insufficient to meaningfully increase seatbelt use, whereas available technology limiting speeds with an unbuckled seatbelt has shown greater success; and (4) failure to require performance testing of occupant side retention devices which keep occupants in the protective inside of the vehicle.

B. CPSC Proposed Rule

On November 19, 2014, the CPSC noticed a proposed rule, which establishes safety standards for ROVs.¹⁴ The CPSC has authority to regulate ROVs as a consumer product under the Consumer Product Safety Act.¹⁵

¹¹ Pub. L. No. 112-28.

¹² See Note 1.

¹³ U.S. Consumer Product Safety Commission, *Recreational Off-Highway Vehicles* (online at www.cpsc.gov/en/Regulations-Laws--Standards/Voluntary-Standards/Recreational-Off-Highway-Vehicles/) (accessed May 11, 2015).

¹⁴ 79 Fed. Reg. 223 (Nov. 19, 2014).

¹⁵ 15 U.S.C. § 2051-2089.

CPSC initiated this rulemaking in response to reports of 335 ROV-related deaths and 506 ROV-related injuries between 2003 and 2013. The rule is intended to reduce or eliminate an unreasonable risk of injury associated with ROVs and bases its conclusions on the 428 reports of ROV-related injuries and death that occurred between January 1, 2003, and December 31, 2011. The rule identifies unique dangers that ROVs have been shown to pose, including: rollover of the vehicle, operation without wearing a seatbelt, occupants being partially or fully ejected from the ROV, and occupants being struck by a part of the vehicle such as the roll cage or the side of the ROV after ejection.

Based on incident data, vehicle testing, and experience with different models of ROVs, the CPSC rule would require ROVs to comply with the following requirements:

- A minimum level of lateral resistance to prevent rollovers when performing a turn;
- A hang tag on the vehicle at the time of purchase providing information about the vehicle's rollover resistance on a scale;
- Meet a handling performance test requirement while exhibiting understeer;
- A 15 mph limit on the maximum speed when an occupied seat has an unbuckled seatbelt; and
- A minimum level of passive shoulder protection to keep occupants inside the vehicle.

C. H.R. 999, the ROV In-Depth Examination Act

On February 13, 2015, Rep. Mike Pompeo introduced H.R. 999, the ROV In-Depth Examination (RIDE) Act. Introduced in response to the CPSC's proposed rulemaking, the bill would suspend the CPSC's authority to promulgate rules affecting ROVs until after the completion of a study to be conducted by National Academy of Sciences (NAS), but not later than two years after enactment of this bill.

The NAS study is to determine:

- The technical validity of the CPSC's proposed rollover reduction requirements;
- The number of rollovers that the new regulations would prevent;
- Whether the CPSC's proposed requirement to include point-of-sale information about an ROV's rollover resistance is feasible; and
- The impact of the standards on the effectiveness of ROVs used by the military.

Companion legislation (S. 1040) was introduced in the Senate by Sens. Joe Manchin and Dean Heller.

D. WITNESSES

The following witnesses have been invited to testify:

Panel One

The Honorable Elliot F. Kaye
Chairman

Consumer Product Safety Commission

The Honorable Robert S. Adler

Commissioner

Consumer Product Safety Commission

The Honorable Ann Marie Buerkle

Commissioner

Consumer Product Safety Commission

The Honorable Joseph Mohorovic

Commissioner

Consumer Product Safety Commission

The Honorable Marietta S. Robinson

Commissioner

Consumer Product Safety Commission

Panel Two

Ronald Warfield

Chief Executive Officer

ATV/ROV/UTV Safety Consulting

Cheryl Falvey

Partner

Crowell & Moring

Erik Pritchard

Executive Vice President and General Counsel

Recreational Off-Highway Vehicle Association

Heidi Crow-Michael

Winnsboro, Texas