

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

February 8, 2016

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

Fr: Committee on Energy and Commerce Democratic Staff

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

On Wednesday, February 10, 2016, at 10:15 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “Industry Perspectives on the Consumer Product Safety Commission.” This hearing is the second held this Congress by this Subcommittee focusing on activities of the U.S. Consumer Product Safety Commission (CPSC). The first hearing was held on May 19, 2015.¹

I. BACKGROUND

The CPSC is an independent agency responsible for protecting consumers from unreasonable risk of injury or death from consumer products.² The Commission carries out its mission by: (1) developing voluntary standards with industry; (2) issuing and enforcing mandatory standards or bans on hazardous consumer products; (3) investigating potential product hazards; and (4) recalling unsafe products or arranging for their repair.³ The CPSC is empowered to protect consumers from dangerous products via three major statutes: (1) the

¹ Additional background information from the May 2015 hearing is available [here](#).

² U.S. Consumer Product Safety Commission, *About CPSC* (online at www.cpsc.gov/en/About-CPSC/) (accessed Jan. 20, 2016).

³ U.S. Consumer Product Safety Commission, *Who We Are- What We Do for You* (online at www.cpsc.gov/en/Safety-Education/Safety-Guides/General-Information/Who-We-Are---What-We-Do-for-You/) (accessed January 14, 2016).

Consumer Product Safety Act (CPSA);⁴ (2) the Federal Hazardous Substances Act (FHSA);⁵ and (3) the Consumer Product Safety Improvement Act (CPSIA).⁶ Of the agencies within the Subcommittee's jurisdiction, the CPSC is the smallest, with an appropriation of \$125 million for fiscal year 2016.

II. FEDERAL LEGISLATION

August 2016 will mark eight years since the enactment of the CPSIA and five years since the enactment of Pub. L. No. 112-28, which made several changes to the CPSIA. These changes were intended to provide businesses with targeted relief from some of the CPSIA's strict requirements for children's products without adversely affecting public health, environment, or consumer protections.⁷

A. The Consumer Product Safety Improvement Act (CPSIA)

H.R. 4040, which became the vehicle for the CPSIA, was introduced on November 1, 2007. Following an extensive conference, the bill passed both chambers of Congress with overwhelming majorities and was signed into law on August 14, 2008. The CPSIA established basic safety standards for eliminating toxic lead and phthalates from children's products; mandated establishment of safety standards for durable infant and toddler products; gave the CPSC new resources and authority; created a public consumer product safety information database; and introduced a product testing system designed to ensure that all products subject to mandatory standards are safe.

The CPSC has successfully issued congressionally mandated safety standards for several durable infant and toddler products since the passage of the CPSIA, including final safety standards for toddler beds, baby cribs, infant walkers, and infant bath seats.⁸ The CPSIA requires that children's products be tested for compliance with child product safety rules by a

⁴ Pub. L. No. 92-573.

⁵ Pub. L. No. 86-613.

⁶ Pub. L. No. 110-314.

⁷ *Moving Forward on Product Safety*, Politico (Aug. 14, 2011) (online at www.politico.com/story/2011/08/moving-forward-on-product-safety-061364).

⁸ U.S. Consumer Product Safety Commission, *Safety Standards for Toddler Beds; Final Rule*, 76 Fed. Reg. 22019 (Apr. 20, 2011); U.S. Consumer Product Safety Commission, *Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Final Rule*, 75 Fed. Reg. 81766 (Dec. 28, 2010); U.S. Consumer Product Safety Commission, *Safety Standard for Infant Walkers; Final Rule*, 75 Fed. Reg. 35266 (June 21, 2010); U.S. Consumer Product Safety Commission, *Safety Standard for Infant Bath Seats; Final Rule*, 75 Fed. Reg. 31691 (June 4, 2010).

third-party, CPSC-accepted laboratory to be given initial certification.⁹ Bicycles, cribs, walkers, bath seats, flammability of children's sleepwear, lead content, certain hazards from toys, and others are among the topics that have been made subject to initial third-party testing.¹⁰

In February 2013, a final rule came into effect requiring manufacturers continue to conduct periodic third-party testing on children's products at least at one-, two-, or three-year intervals.¹¹ The frequency of required periodic testing is determined by CPSC based on the thoroughness and transparency of the manufacturer's internal planning and testing policies.¹² Manufacturers with more detailed internal testing plans may have longer gaps between periodic third-party tests.¹³

B. Public Law Number 112-28

On August 1, 2011, H.R. 2715 was introduced to address some manufacturers' concerns about the CPSIA, including the rigidity of some of the law's standards.¹⁴ H.R. 2715 became Pub. L. No. 112-28, and was signed into law by President Obama on August 12, 2011. Among other things, Pub. L. No. 112-28 allows CPSC more discretion in how to enforce consumer product safety laws, and includes measures to relieve the burden of third-party testing on children's products manufacturers.¹⁵

II. NOTABLE TOPICS SUBJECT TO CPSC OVERSIGHT

A. Recreational Off-Highway Vehicles (ROVs)¹⁶

⁹ U.S. Consumer Product Safety Commission, *Initial Certification Testing*, (online at www.cpsc.gov/en/Business--Manufacturing/Testing-Certification/Third-Party-Testing/Initial-Testing/) (accessed Jan. 19, 2016).

¹⁰ See U.S. Consumer Product Safety Commission, *List of CPSC-Accepted Testing Laboratories* (online at www.cpsc.gov/cgi-bin/labsearch/Default.aspx) (accessed Jan. 15, 2016).

¹¹ U.S. Consumer Product Safety Commission, *Periodic Testing*, (online at www.cpsc.gov/en/Business--Manufacturing/Testing-Certification/Third-Party-Testing/Periodic-Testing/) (accessed Jan. 15, 2016).

¹² *Id.*

¹³ *Id.*

¹⁴ See note 7.

¹⁵ U.S. Consumer Product Safety Commission, *Staff Report to the Committees on Appropriations of the House and Senate on the Status of CPSC Efforts to Provide Third Party Testing Cost Relief While Still Assuring Compliance* (Mar. 17, 2015).

¹⁶ This Subcommittee held a legislative hearing on H.R. 999, the R.O.V. In-Depth Examination Act, was held in conjunction with the May 19, 2015, CPSC hearing. Additional background information on ROVs is available [here](#).

Industry groups have developed voluntary standards for ROVs.¹⁷ The CPSC participated on the development of those voluntary standards, but concluded that staff concerns were not adequately met.¹⁸ In November 2014, the CPSC issued a notice of proposed rulemaking that would establish new safety standards for ROVs, including requirements for handling, a minimum level of passive shoulder protection to keep occupants inside the vehicle, a hang tag on the vehicle at the time of purchase providing information about the vehicle's rollover resistance, and a 15 mph limit on the maximum speed of the vehicle when the seatbelt is unfastened on an occupied seat.¹⁹

The rule was expected to be finalized in 2016.²⁰ However, a rider included in the 2016 omnibus bill passed on December 15, 2016, now prohibits the CPSC from finalizing the rulemaking until after the completion of a study by the National Academy of Sciences, the National Highway Traffic Safety Administration (NHTSA), and the Department of Defense.²¹ Although the rule will not be finalized this year, CPSC has continued to discuss the development of stronger voluntary standards with the ROV industry, providing comments to two separate but similar plans put forward by industry groups.²²

B. Import Surveillance

The CPSC conducts targeted import surveillance at U.S. ports.²³ The program was established under the CPSIA, which calls for the CPSC to create a risk assessment methodology (RAM) to identify the products imported into the U.S. that are most likely to violate consumer

¹⁷ Letter from Caroleene Paul, Division of Mechanical Engineering, U.S. Consumer Product Safety Commission, to Erik Pritchard, Recreational Off-Highway Vehicle Association, and Greg Knott, Outdoor Power Equipment Institute (Oct. 14, 2015).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Congress Erects Hurdle for CPSC's Recreational Off-Highway Vehicle Rulemaking in 2016 Omnibus Bill*, National Law Review (Dec. 22, 2015) (online at www.natlawreview.com/article/congress-erects-hurdle-cpsc-s-recreational-highway-vehicle-rulemaking-2016-omnibus).

²¹ *Id.* The rider was based on the text of H.R. 999, the ROV In-Depth Examination Act.

²² Letter from Caroleene Paul, Division of Mechanical Engineering, U.S. Consumer Product Safety Commission, to Greg Knott, Outdoor Power Equipment Institute (Dec. 1, 2015); Letter from Caroleene Paul, Division of Mechanical Engineering, U.S. Consumer Product Safety Commission, to Thomas S. Yager, Recreational Off-Highway Vehicle Association (Dec. 1, 2015).

²³ U.S. Consumer Product Safety Commission, *Port Surveillance News: CPSC Stops More Than 12.5 Million Units of Violative Products from Reaching Homes in Fiscal Year 2013* (May 5, 2014) (online at www.cpsc.gov/en/Newsroom/News-Releases/2014/Port-Surveillance-News-CPSC-Stops-More-Than-125-Million-Units-of-Violative-Products-from-Reaching-Homes-in-Fiscal-Year-2013/).

product safety rules.²⁴ The CPSC is continuing to develop the RAM targeting system to increase the CPSC's ability to analyze data provided by U.S. Customs and Border Protection (CBP) and label high-risk entries before they reach U.S. ports.²⁵ The CPSC plans to conduct a test for the electronic filing of targeting and enforcement data with CBP.²⁶

C. Flame Retardants

Flame retardant chemicals are applied to materials to prevent the production and spread of fire and thereby increase the safety of materials against the threat of fire. Flame retardants have been shown to leach out of treated materials. Individuals are exposed to flame retardant chemicals by inhaling or swallowing dust, which can cause serious health impacts, including hormonal disruption, reproductive diseases, neurodevelopmental delays, and cancer.²⁷ While some flame retardants have been phased out due to their negative health impacts, other, often similar, flame retardants are still widely used.²⁸ In addition, studies have shown that flame retardants may not effectively reduce the flammability of treated products.²⁹

Many environmental and public health advocacy groups oppose the use of flame retardants arguing they are toxic and ineffective in promoting fire safety.³⁰ Under the Flammable Fabrics Act, the CPSC established standards for carpets and rugs, mattresses and mattress pads, clothing textiles, vinyl plastic films (for clothing), and children's sleepwear.³¹

²⁴ *Id.*

²⁵ U.S. Customs and Border Protection, *CPSC e-Filing Alpha Pilot Implementation Guide* (Jan. 5, 2016) (online at www.cpsc.gov/Global/Business-and-Manufacturing/Import%20Safety/CATAIRCPSCeFilingAlphaPilotImplementationGuide.pdf).

²⁶ U.S. Consumer Product Safety Commission, *Import Safety* (online at www.cpsc.gov/en/Business--Manufacturing/Import-Safety/) (accessed on Jan. 19, 2016).

²⁷ The Environmental Working Group, *No Escape: How Fire Retardants Get into Us* (Aug. 2014) (online at www.ewg.org/research/flame-retardants-2014/how-fire).

²⁸ Environmental Protection Agency, *Flame Retardants Used in Flexible Polyurethane Foam* (Sept. 2015) (online at www.epa.gov/saferchoice/flame-retardants-used-flexible-polyurethane-foam).

²⁹ *Flame Retardants in Consumer Products Are Linked to Health and Cognitive Problems*, Washington Post (Apr. 2013) (online at www.washingtonpost.com/national/health-science/flame-retardants-in-consumer-products-are-linked-to-health-and-cognitive-problems/2013/04/15/f5c7b2aa-8b34-11e2-9838-d62f083ba93f_story.html).

³⁰ Petition from Eve Gartner, Attorney, EarthJustice to Todd Stevenson, Secretariat, U.S. Consumer Product Safety Commission (July 1, 2015).

³¹ U.S. Consumer Product Safety Commission, *Flammable Fabrics Act* (online at www.cpsc.gov/en/Regulations-Laws--Standards/Statutes/Flammable-Fabrics-Act/) (accessed on Jan. 20, 2016).

In 2012, the Chicago Tribune published a report showing that the tobacco companies “worked to preserve a lucrative market for their products” by promoting the use of flame retardants.³² As a result of the tobacco industry’s efforts, California enacted a flammability standard in 1975.³³ The California standard became the *de facto* national standard, resulting in two to three pounds of chemicals being injected into furniture nation-wide. As of January 2014, a new California flammability standard took effect, which establishes a “smolder test” that manufacturers can meet without using flame retardants.³⁴

The CPSC issued a notice of proposed rulemaking on March 4, 2008. The rule would require the use of fire barrier technologies, which may or may not contain flame retardant chemicals.³⁵ CPSC held a meeting on April 25, 2013, regarding upholstered furniture fire safety technologies.³⁶ No action has been taken on the rule since that time.

In July 2015, consumer advocates petitioned the CPSC to request a rulemaking to ban the use of flame retardants in children's products, furniture, mattresses and the casings surrounding electronics.³⁷ On December 9, 2015, the CPSC held a public hearing on the petition. The comment period on the petition closed on January 19, 2016.

D. Hoverboards

Media attention has recently focused on safety concerns regarding fires and explosions caused by self-balancing two-wheeled boards (commonly known as “hoverboards”).³⁸ The boards, which range in price from about \$300 to more than \$1,000, are often powered by

³² *Tribune Watchdog: Playing with Fire*, Chicago Tribune (online at media.apps.chicagotribune.com/flames/index.html) (accessed Jan. 20, 2016).

³³ *Id.*; State of California Technical Bulletin (TB) 117 (1975) (online at www.bhfti.ca.gov/industry/117.pdf).

³⁴ State of California Technical Bulletin (TB) 117-2013 (2013) (online at www.bearhfti.ca.gov/about_us/tb117_2013.pdf).

³⁵ U.S. Consumer Product Safety Commission, *Standard for the Flammability of Residential Upholstered Furniture*, 73 FR 11702 (Mar. 4, 2008) (proposed rule).

³⁶ U.S. Consumer Product Safety Commission, *Upholstered Furniture Fire Safety Technology Meeting* (online at www.cpsc.gov/en/Regulations-Laws--Standards/Federal-Register-Notices/2013/Upholstered-Furniture-Fire-Safety-Technology-Meeting/) (Mar. 15, 2013).

³⁷ See note 30.

³⁸ *Laws Struggle to Keep Up as Hoverboards’ Popularity Soar*, New York Times (Nov. 25, 2015) (online at www.nytimes.com/2015/11/26/us/laws-struggle-to-keep-up-as-hoverboards-popularity-soars.html).

rechargeable lithium-ion batteries.³⁹ The batteries appear to be the cause of the fires.⁴⁰ Poorly designed batteries can overheat and are prone to explosion.⁴¹ CPSC is currently investigating a number of manufacturers and retailers of hoverboards.⁴² Of particular concern are the fire hazards as well as falls associated with hoverboards.⁴³ Hoverboards are not currently regulated and have no safety standards at this time.⁴⁴ ASTM International, a standards setting body, and Underwriters Laboratories, a safety science company, are preparing to work on safety standards for the boards.⁴⁵

III. WITNESSES

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Executive Vice President and General Counsel
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³⁹ *Why Hoverboards Keep Exploding*, Wired (Oct. 12, 2015) (online at www.wired.com/2015/12/why-hoverboards-keep-exploding); *Hoverboard Buying Guide: Tips, Best Brands, Prices and Safety Reminders*, Tech Times (Dec. 15, 2016) (online at www.techtimes.com/articles/116023/20151215/hoverboard-buying-guide-tips-best-brands-prices-and-safety-reminders.htm).

⁴⁰ *Hoverboard Safety Fears Grow as Problems Mount*, New York Times (Dec. 14, 2015) (online at www.nytimes.com/2015/12/15/technology/personaltech/hoverboard-safety-fears-continue-to-grow.html)

⁴¹ *Id.*

⁴² Consumer Product Safety Commission, *Statement from Commissioner on Elliot F. Kaye on the Safety of Hoverboards and the Status of the Investigation* (Jan. 20, 2016) (online at www.cpsc.gov/en/About-CPSC/Chairman/Kaye-Biography/Chairman-Kayes-Statements/Statements/Statement-from-US-CPSC-Chairman-Elliot-F-Kaye-on-the-Safety-of-Hoverboards-and-the-Status-of-the-Investigation).

⁴³ *Id.*

⁴⁴ *Id.*; See note 40.

⁴⁵ *Id.*