

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

March 3, 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 Thursday, March 5, 2015, at 10:15 a.m. 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 and the FY 2016 Performance Budget Request.”

I. BACKGROUND

The CPSC is an independent agency created by the Consumer Product Safety Act of 1972 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. THE FY 2016 CPSC BUDGET REQUEST

The President’s FY 2016 budget requests \$129 million for the CPSC, including support for 567 full-time equivalent (FTE) employees.¹ This request includes an increase of \$6 million from FY 2015, which would support research regarding the consumer safety of nanotechnology (\$5 million) and help the agency address internal security shortfalls in the areas of cyber, physical, and personnel (\$1 million). The Commission’s nanotechnology work is currently funded at \$2 million; the \$5 million increase would allow the Commission to establish the CPSC

¹ 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).

III. CPSC PRIORITIES IN FY 2016

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. Today, the CPSC is faced with a significant increase in the number of imported products that fall under Commission'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 to the United States (U.S.). The Commission also continues to make progress on implementing the mandates established by the CPSIA, as well as subsequent directives from Congress.

A. Consumer Safety of Nanotechnology

The Commission requests \$5 million to establish CPASION, a consortium of scientists focused on developing robust methods to quantify and characterize the presence, release, and mechanisms of consumer exposure to nanomaterials from consumer products. Nanotechnology refers to products resulting from the control of matter at the nanoscale, or at dimensions between approximately one and 100 nanometers. For context, a nanometer is one-billionth of a meter; a sheet of newspaper is approximately 100,000 nanometers thick.² By manipulating materials at the nanoscale, chemists, physicists, engineers, medical doctors and others have been able to develop a host of new technologies and discover new ways to use existing materials and methods.

Nanotechnology R&D is rapidly being commercialized into consumer products, including products for children. There are currently 1,628 consumer products worldwide in categories ranging from cosmetics to home and garden that incorporate nanotechnology, a number that continues to rise each year.³ In 2011, National Science Foundation (NSF) estimated the worldwide market for final products incorporating nanotechnology at \$3 trillion by 2020.⁴

As this market continues to grow, the CPSC lacks adequate testing methods for characterizing and quantifying nanotechnology materials in consumer products that are already entering U.S. markets. 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.

² National Nanotechnology Initiative, *What Is Nanotechnology?* (online at www.nano.gov/nanotech-101/what/definition) (accessed July 24, 2014).

³ Project on Emerging Nanotechnologies, *Consumer Products Inventory* (online at www.nanotechproject.org/cpi/) (accessed Feb. 25, 2015).

⁴ National Science Foundation, *The long view of nanotechnology development: the National Nanotechnology Initiative at 10 years* (Feb. 12, 2011).

B. Immediate Agency Security Issues

CPSC has security funding shortfalls in cyber, physical, and personnel security. A FY 2013 CPSC Inspector General (IG) audit found several cybersecurity and compliance deficiencies in the Commission's practices which the Commission needs to correct in order to meet a series of Cross Agency Priority (CAP) goals set forth by the Administration.⁵ CAP goals include Cybersecurity, Insider Threat and Security Clearance, and Smart IT Delivery, as well as the Federal Information Security Management Act of 2002 (FISMA) requirements. CPSC requests an additional \$1 million to boost its cybersecurity capability to match the CAP goals.

The addition funding will also support physical security of CPSC facilities. The Federal Protective Service recently assessed the security at CPSC's National Product Testing and Evaluation Center and determined that security needs to be increased to 24 hours per day, 7 days a week to protect Commission assets.

C. Import Surveillance

The Commission requests funding to expand import surveillance programs at U.S. ports, a program originally established by CPSIA to address a wave of noncompliant products aimed at children. Between 2002 and 2013, the value of consumer product imports under the CPSC's jurisdiction grew from \$411 billion to \$723 billion, an increase of 76%.⁶ Currently, however, CPSC can staff fewer than 5% of U.S. ports; a troubling statistic considering more than 80% of consumer product recalls in FY 2013 involved an imported product.

CPSC's budget request would add approximately 50 additional FTEs to the Commission's presence at key ports of entry by FY 2021 in coordination with U.S. Customs and Border Protection (CBP). The request also supports CPSC's development of the Risk Assessment Methodology (RAM) targeting system that increases the CPSC's ability to analyze import manifest data and label high-risk entries before they reach U.S. ports. CPSC estimates this program, once fully implemented, will cost \$36 million per year.

To fund this program, CPSC requests that Congress authorize a product safety user fee on imported products under CPSC's jurisdiction in FY 2016, with collections beginning in FY 2017. CBP would collect this fee on CPSC's behalf. CPSC estimates this fee would be negligible as a percent of the value of covered imported products (approximately \$0.07 per \$1,000 of import value).⁷ 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 violation or defect.

⁵ See Note 1.

⁶ *Id.*

⁷ *Id.*

D. Other Priorities

CPSC intends to continue its implementation of the Danny Keysar Child Product Safety Notification Act in FY2016. That Act requires the CPSC to update all standards for durable infant or toddler products such as highchairs or infant bathtubs. In addition, the Commission will continue its aggressive education and outreach program.

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 implementing CPSIA.⁸ The Commission's goal is to address this issue in a final rule in FY 2016.⁹

IV. WITNESSES

The following witnesses have been invited to testify:

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

⁸ Pub. L. No. 112-28.

⁹ *Id.*